



A study on existing and new options of alternative family care for children and adolescents

Aimed at creating alternatives for its implementation within Guatemala's System for the Protection of Children and Adolescents

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List of Acronyms

CNA	Consejo Nacional de Adopciones - National Adoptions Council
Corte IDH	Corte Interamericana de Derechos Humanos - Inter-American Court of Human Rights
CTWWC	Changing the Way We Care
DDHH	Derechos Humanos – Human Rights
Ley PINA	Ley de Protección Integral de la Niñez y Adolescencia - Law for the Comprehensive Protection of Children and Adolescents
NNA	Niños, Niñas y Adolescentes (Boys, girls and adolescents)
OJ	Organismo Judicial - Judicial Branch
PGN	Procuraduría General de la Nación - Attorney General's Office
SBS	Secretaría de Bienestar Social de la Presidencia – Presidential Secretariat for Social Welfare
UNCRC	United Nations Convention on the Rights of the Child

Executive Summary

Worldwide, the United Nations Guidelines for the Alternative Care of Children and the Convention on the Rights of the Child establish that institutionalization should be the last resort for children and/or adolescents whose rights have been violated. All alternative family care options must be exhausted beforehand, with the understanding that if reintegration into a biological family is not possible, the extended family and/or foster family should be consulted or, as suggested by the Guidelines, other foster care alternatives should be pursued.

Guatemala's Law for the Comprehensive Protection of Children and Adolescents recognizes the importance and positive consequences of children and/or adolescents growing up and developing within a family environment. In the event that separation from the biological family is necessary, preference should be given to an alternative family environment, such as the extended family. If that is not possible, a surrogate or foster family, the latter being the only legal alternative form of family care in Guatemala, should be sought. To determine the applicable foster family measures, the Children and Adolescent's Courts must first establish the needs of children and adolescents who are in need of protection. Second, they must exhaust all available means offered by the system (protection measures, service and social assistance programs, etc.) to strengthen and empower the family, prioritizing keeping the child with them. Third, if this is not possible or if at the time the intervention is not in accordance with the best interests of the child, they must consider temporary placement in a foster family while taking actions for the child or adolescent to return to their biological family in the appropriate time. What should always be at the center of any action, as laid out by the law, is for the child or adolescent not to lose his or her relationship with his or her biological family or community environment.

There are still challenges facing the proper implementation of Guatemala's Foster Family program, known as the Foster Care Program. The entity responsible for executing this program is the Presidential Secretariat for Social Welfare (Secretaría de Bienestar Social de la Presidencia, or SBS, in Spanish). The SBS has scarce human and material resources at the national level to decentralize and cover the recruitment, promotion, certification, evaluation, training, and monitoring of families as well as the post-reintegration monitoring of the child or adolescent with their biological or extended family. It therefore remains necessary to strengthen this program since its implementation is still incipient due to various factors.

In addition, an important identified finding is that, to this date, the Guatemalan System for the Protection of Children and Adolescents does not have a range of alternative care options for children who are without parental care or separated from their families. Currently, the only options are extended or foster families and residential care; therefore, this study recommends analyzing, designing, and implementing various alternative family care modalities, based on best practices identified in other countries such as the United States, Moldova, Mexico, Colombia, Costa Rica, and Argentina, which involve deinstitutionalization and family preservation. Additional options must consider the timing of the measure and implement modalities such as emergency families, temporary foster families, and long-term families, while also factoring in the type of foster care, such as community families, comparable families, families for groups of siblings, children with disabilities, and children with HIV, or families for unaccompanied migrant children, among others.

Likewise, another recommendation is to analyze Agreement 40-2010 of the Supreme Court of Justice, which places a six-month limit on placement in a foster family. This period is not always in line with the experiences and weaknesses of the System for the Protection of Children and Adolescents and can therefore work against the best interests of the child or adolescent. In many cases, six months is insufficient time to resolve the situation that led

the child or adolescent to enter the protection system in the first place, or to allow the primary family to prepare for the child/adolescent's reintegration into the family.

The report also describes the efforts made by institutions guaranteeing protection, such as the Attorney General's Office (Procuraduría General de la Nación, or PGN, in Spanish), to change their methodology for receiving and handling cases through the Protection Plan, and to put in place administrative mechanisms that seek the solution and restitution of human rights. This, in turn, has contributed considerably to the decrease in institutionalization of children and adolescents in public or private orphanages.

It is important to begin analyzing and discussing the expansion of alternative care options and the decrease of institutionalization to guarantee the right of children and adolescents to grow up in a nurturing family environment, and that temporary housing is as close as possible to being a family environment. It is also necessary to think about policies and programs around care modalities through an intercultural lens so that the child's placement considers and respects his or her origin, language, religion, and culture, so the family that welcomes them is as close as possible to their biological family's environment. An example of this model can be found in the practices of the First Court for Children and Adolescents in Conflict with the Law in the department of Quetzaltenango, which considers the context's reality when solving cases in its tribunal.

Introduction

This document is a study on existing and new options for alternative family care for children and adolescents, aimed at promoting their incorporation into Guatemala's System for the Protection of Children and Adolescents, which should consider the national reality and the perspectives of both governmental and non-governmental institutions, as well as international cooperation organizations.

On March 8, 2017, Guatemalan society was deeply shaken when 41 girls that were sheltered in one of the orphanages managed by the Presidential Secretariat for Social Welfare died in a tragic fire. The State was unable to provide them with protection and security, the lack of which being the reason they were driven into the orphanage in the first place.¹

These events were compounded with the awakening that had been occurring in Guatemala since the enactment of the Comprehensive Law on Children and Adolescents, the 2007 reform of adoption legislation, and the creation of internal agreements between various state institutions that have a direct relationship with the System for the Protection of Children and Adolescents. All these measures were aimed at implementing mechanisms that improved the approach towards children and adolescents whose human rights are being violated.

Guatemala has seen the need to forge strategic alliances with international organizations, non-governmental organizations, and the international cooperation so that, through inter-institutional collaboration, it can find successful mechanisms to improve Guatemala's System for the Protection of Children and Adolescents. This includes changing its vision and the way it acts to be more in favor of Guatemalan children, whose rights are further violated by the systems in place due to ignorance, wrong approaches, or the lack of capacity to implement mechanisms that substantially improve the quality of life for children and adolescents, which are often the most vulnerable populations.

In partnership with Lumos and Maestral International, Catholic Relief Services CRS-USCCB is implementing a global initiative called "Changing the Way We Care" in Moldova, Kenya, Guatemala, Haiti, and India. The initiative promotes care reform through family preservation and the reduction of child and adolescent institutionalization, considering the evidence that proves the negative effects of institutionalized care in the integral development of children and adolescents. The initiative also proposes the promotion of a national enforcement mechanism that includes the following components: a) a family care policy; b) the prevention of unnecessary separation; c) family strengthening and reintegration; and d) the transition from residential care to ambulatory and community care services. This process is framed within the United Nations Guidelines for the Alternative Care of Children², which establishes that the State of Guatemala must adopt appropriate forms of alternative care that promote the child's comprehensive and harmonious development while seeking permanent foster care solutions or in the event that existing solutions are unfeasible or go against the child's best interest. This implies the need to analyze the procedures used by the institutions of the Guatemalan System for the Protection of Children and Adolescents,

¹ Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (2018). Las víctimas del Hogar Seguro Virgen de la Asunción. Un camino hacia la dignidad (*OHCHR, Victims of Virgen de la Asunción Orphanage. A path to dignity*). Guatemala, pages 9 and 47. Link: <https://www.oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/InformeHSVA.pdf>

² Naciones Unidas (2010). Directrices sobre las modalidades alternativas de cuidado de niños (*UN Guidelines for the Alternative Care of Children*). Link: <http://www.cna.gob.gt/Documentos/Directrices.pdf>

where it is necessary to identify the forms of alternative care that are being used that do not serve the purpose of restoring rights, especially to a family environment, or those that are identified as best practices.

An opinion study, conducted at the institutional and general levels on knowledge, attitudes and practices on family separation, orphanages, and alternative care of children and adolescents, demonstrates that the State is unable to provide services, and that it is necessary to seek alternative care options for institutionalized children and adolescents. The opinion study also revealed that temporary foster care is perceived in a negative light.³

Based on this, the present study will first establish what the Guatemalan law regulates regarding children and adolescents, starting from the general to the particular. It is important to first analyze the legal framework of the Political Constitution of the Republic, and then analyze the Law for the Comprehensive Protection of Children and Adolescents, considering that it covers the specific rule on protection. Then, the study will analyze the Adoptions Law and review the Internal Regulations of each institution that forms an essential part of the System for the Protection of Children and Adolescents, Internal Agreements, and Constitutional jurisprudence to establish the reasoning and principles considered by the highest court in constitutional matters regarding children and adolescents. The study will then interpret international standards related to children, analyzing whether domestic legislation complies with these approaches. Through interviews with key stakeholders, information will be obtained on the best practices they carry out every day to improve the quality of life of children and adolescents who, for one reason or another, fall into the State's System for the Protection of Children and Adolescents. The study will pay close attention to actions aimed at deinstitutionalization and family preservation in order to complete the analysis determining legislated alternative care options, current best practices, and legal and pertinent options that other countries demonstrate regarding family-based care that could be incorporated into the Guatemalan system. Finally, after the analysis, the study will present its conclusions and recommendations.

³ Cid Gallup. (2019). Estudio de Opinión sobre conocimientos, actitudes y prácticas sobre la separación familiar, hogares de protección y cuidado alternativo de niños, niñas y adolescentes a nivel institucional. (*Opinion Study on knowledge, attitudes, and practices on family separation, orphanages, and alternative care of children and adolescents at the institutional level*)

I. Legislation Related To the Right to Family Life

1.1 Ordinary Laws

1.1.1 Political Constitution of the Republic

When analyzing laws in any area, it is impossible to set aside the fundamental basis of its legislation and legal organization, since it is from that primary law from which all other laws, regulations, agreements, etc. arise. The Political Constitution of the Republic of Guatemala not only establishes the administrative and political form in which the State is governed, but the fundamental principles on which it bases its entire organization. The preamble establishes an important point worth highlighting: *“We, the representatives of the people of Guatemala, freely and democratically elected, gathered in the National Constituent Assembly, for the purpose of organizing the State legally and politically; affirming the primacy of the human person as the subject and end of the social order; recognizing the family as the primary and fundamental genesis of the spiritual and moral values of society, and the State as responsible for the promotion of the common good ... determined to promote the full enjoyment of Human Rights...”*⁴

Article 2 also stipulates, “Duties of the State: ... it is the duty of the State to ensure **the integral development of the individual**. In this regard, the Constitutional Court has interpreted the obligation to guarantee not only freedom but also other values in referring to the duties of the State towards the inhabitants of the Republic, such as those of justice and the integral development of the person, **for which it must adopt the measures it deems appropriate in accordance with the needs and conditions of the moment**, which may be not only individual but also social...”⁵

Therefore, according to the Constitution, it is the State's obligation to generate those conditions that are necessary for people to develop in an integral way⁶ in all aspects of life, remembering that the concept of a PERSON refers to both adults and children (from conception). Another important aspect mentioned within this constitutional interpretation is that the Law must be dynamic and constantly revised since it is the needs and conditions of the moment that dictate what is needs to be legislated; or if it is already legislated, reformed; not the other way around. This does not exclude any branch of Law, especially in matters regarding children.

The rules in this matter must be revised constantly, respond to the best interests of the child at all times and not be rigid, since what was convenient for children, and adolescents ten years ago may not be so today.

Likewise, Article 51 of the Constitution establishes that *“The State will protect the physical, mental and moral health of minors and the elderly... It will guarantee their right to food, health, education, security, and social*

⁴ Constitución Política de la República de Guatemala (1985) (*Political Constitution of the Republic of Guatemala*). Guatemala. Link: https://www.minfin.gob.gt/images/downloads/dcp_marcolegal/bases_legales/Constitucion_politica_de_la_republica_de_guatemala.pdf

⁵ Gaceta jurisprudencial No 12-86, página No 3, sentencia 17-09-86. Link: <https://www.cc.gob.gt/> (*Jurisprudential Gazette No. 12-86, page No. 3, Sentence 17-09-86*)

⁶ Op cit. Constitución Política de la República de Guatemala (*Political Constitution of the Republic of Guatemala*) (1985). Guatemala.

welfare,” recognizing that, within the sphere of family care, there are vulnerable individuals with a greater need for protection.

1.1.2 Law for the Comprehensive Protection of Children and Adolescents

Because it is the duty of the State to guarantee its inhabitants the full enjoyment of their rights and freedoms and protect the physical, mental, and moral health of children and adolescents⁷, it was established that the Children's Code had stopped responding to the needs of children. Therefore, there was a drastic need to reform the way in which the problems of such a vulnerable sector of society, such as children and adolescents, were being addressed. It was also necessary to abide by the provisions of the Political Constitution of the Republic of Guatemala, international treaties and agreements, international covenants on human rights ratified by Guatemala, as well as to promote the comprehensive development of children and adolescents, and to adapt the legal reality of this development to its international doctrine and regulations.

In 2003, with the publication of Law for the Comprehensive Protection of Children and Adolescents, which contains a human rights approach towards children and adolescents, there was a legal reform and paradigm shift from a guardianship approach to a comprehensive protection approach. The latter recognizes children and adolescents as full beneficiaries of specific human rights, and seeks to comprehensively meet the needs of children, both in terms of prevention for those who have not suffered a violation as well as for those children who have suffered human rights violations and urgently and effectively require restitution. However, the result obtained tends to be more of a reactive approach; that is, once the violation of the human right has occurred, a way is sought to restore it.

The Law for the Comprehensive Protection of Children and Adolescents is the legal instrument for family integration and promotion aimed at achieving the comprehensive and sustainable development of Guatemalan children and adolescents within a democratic and unrestricted human rights framework... (Article 1, Purpose of the Law). In addition, the prevailing approach of said law is that “the State must promote and take the necessary measures to protect the family, legally and socially, as well as **guarantee the fulfillment of the obligations of parents and guardians** with regard to life, freedom, security, peace, personal integrity, health, food, education, culture, sport, recreation, **and family and community coexistence** of all children and adolescents...”⁸ The law also clearly establishes that,

*The objective of the State is to carry out all the necessary actions to give parents the opportunity to fulfill their parental obligations, and for children to grow up within their family or in a family environment if it is not possible to do so with their biological parents.*⁹

⁷ Ley de Protección Integral de la Niñez y Adolescencia, Decreto 27-2003 del Congreso de la República de Guatemala. Considering 1. Link: https://www.oas.org/dil/esp/ley_de_proteccion_integral_de_la_ninez_y_adolescencia_guatemala.pdf (Law for the Comprehensive Protection of Children and Adolescents. Decree 27-2003 of the Guatemalan Congress)

⁸ Op cit. Ley de Protección Integral de la Niñez y Adolescencia 2003. Artículo 4. (Law for the Comprehensive Protection of Children and Adolescents, Article 4)

⁹ Ibid. Ley de Protección Integral de la Niñez y Adolescencia 2003. Artículo 13. (Law for the Comprehensive Protection of Children and Adolescents, Article 13)

The aforementioned law contains a definition for the "*Superior Interest of the Child*." Before the enactment of this regulation, it was an unknown concept in national legislation and was obviously not used within the System of Protection of Children and Adolescents, which is understood as far from being an environment that sought the effective protection of children and adolescents in Guatemala.

According to The Law for the Comprehensive Protection of Children and Adolescents, the *Best Interest of the Child* is a guarantee that any decision adopted in relation to children and adolescents must ensure the exercise and enjoyment of their rights, respect their family ties and ethnic, cultural, and linguistic origins, and always take into account their opinion based on their age and maturity.¹⁰ In no case may its application diminish, distort, or restrict the rights and guarantees recognized in the Political Constitution of the Republic or in Treaties and International Conventions on Human Rights accepted and ratified by Guatemala.¹¹

The same article also establishes what is understood to be the *interest of the family*: defined as all those actions aimed at promoting the unity and integrity of the family and the respect of relations between parents and children, as implemented within the legal system. It also clarifies that the State shall promote and adopt the necessary measures for the effective fulfillment of the interests of children and families; being the right of childhood a tutelary right of public order and of inalienable character. This regulation emphasizes the importance of boys and girls being brought up within their families.

Growing up in an orphanage without having a constant emotional reference or interactions with their family, causes a delay in all areas of children's development. Therefore, all countries must ensure that children and adolescents grow and develop primarily within their biological or extended family. If it is not possible to place them in a family environment, it is here where it is necessary to highlight the importance of including alternative family care modalities in the System for the Protection of Children and Adolescents.

The Law for the Comprehensive Protection of Children and Adolescents establishes that all children have the right to be raised and educated **within their family** or, in the case of an exception, **within a foster family**, thus ensuring family and community living. It also regulates that the State must promote the stability and well-being of the family as the basis of society, creating the conditions to assure the child or adolescent family and community living in an environment conducive to their integral development. This is why it is important to support programs that focus on locating parents or relatives of children and/or adolescents by obtaining information that facilitates family reunification.¹²

At the international level, the UN Convention on the Rights of the Child states that:

Unnecessary separations should be avoided at all costs and each case should always be analyzed individually under the principle of the Best Interest of the Child. The measure that is least harmful

¹⁰ Ibid. Ley de Protección Integral de la Niñez y Adolescencia 2003. Artículo 5. (*Law for the Comprehensive Protection of Children and Adolescents, Article 5*)

¹¹ Conventions such as: the Convention on the Rights of the Child, the United Nations Convention against Organized Crime

¹² Ibid. Ley de Protección Integral de la Niñez y Adolescencia 2003. Artículos 18 y 19. (*Law for the Comprehensive Protection of Children and Adolescents, Articles 18 and 19*)

*to the child should be chosen, and in the event that family separation is the only viable alternative, family reintegration must be sought as soon as possible.*¹³

As a first point, it is important to establish who is considered a “child” or “adolescent.” The Convention on the Rights of the Child establishes that any human being under the age of 18 will be considered a child and that States Parties must establish a minimum age before which it will be presumed that children do not have the capacity to violate criminal laws, to establish the difference between children and adolescents.¹⁴

The Law for the Comprehensive Protection of Children and Adolescents regulates that any person is considered a boy or girl from conception until they turn 13 and that adolescents are those between ages 13 and 18.¹⁵

The Law for the Comprehensive Protection of Children and Adolescents contains a very important presumption to avoid possible threat to a child when their age has not been reliably established. It is the presumption contained in Article 137 that establishes that *when the age of a person presumably under the age of 18 cannot be verified by any means, this person will be considered under 18 and will be subject to the provisions of this law.*¹⁶ This situation is regulated this way since for no reason should a child be treated as an adult, especially in the event of a criminal law violation, since children under the age of 13 are not criminally liable. However, anyone between the ages of 13 and 18 may be subject to a juvenile criminal process that will be carried out with socio-educational procedures and measures, regulated in the same law.

Once the definition of who is considered a child or adolescent is clarified, the emphasis is on the guiding principles on which the law is based, mentioned above, such as the Best Interest of the Child and the Right to the Family, among others.

Considering the aforementioned principles (best interests of the child and family preservation), the Law for the Comprehensive Protection of Children and Adolescents made a very assertive consideration, establishing *that the lack or lack of material resources of the parents or family does not constitute sufficient reason for the loss or suspension of child custody.*¹⁷ *If there is no other reason authorizing the measure to be decreed, the boys and girls will be kept in their family of origin. The State shall provide appropriate assistance to parents, family members and*

¹³ Convención sobre los Derechos del Niño. Asamblea General de las Naciones Unidas. (*Convention on the Rights of the Child. United Nations General Assembly*). Nov. 20, 1989. Article 9. Link: <https://www.un.org/es/events/childrenday/pdf/derechos.pdf>

¹⁴ Op. Cit. Convención sobre los Derechos Del Niño (*UN Convention on the Rights of the Child*). Nov. 20, 1989. Article 1

¹⁵ Ibid. Ley de Protección Integral de la Niñez y Adolescencia (*Law for the Comprehensive Protection of Children and Adolescents*). 2003. Article 2.

¹⁶ Ibid. Ley de Protección Integral de la Niñez y Adolescencia (*Law for the Comprehensive Protection of Children and Adolescents*). 2003. Article 137.

¹⁷ Código Civil, Decreto-Ley 106 del Congreso de la República. Artículo 273 (*Civil Code, Decree-Law 106 of the Congress of the Republic. Article 273*): Parental authority is suspended: 1. In the absence of the person exercising it, declared by a court; 2. By interdiction, declared by a court; 3. By customary inebriation; and 4. For having the habit of gambling or the constant abuse of narcotic drugs. And it is lost, Article 274: 1. By the depraved or scandalous customs of the parents; excessive harshness in the treatment of the children or abandonment of their family duties; 2. For dedicating the children to begging or giving them orders, advice, insinuations and corrupting examples; 3. For an offence committed by one of the parents against the other, or one of their children; 4. For the exposure or abandonment by the father or mother of the children, for which he or she has exposed or abandoned them; and 5. For having been sentenced two or more times for an offence of the common order, if the penalty exceeds three years' imprisonment for each offence. It is also lost when another person adopts the child.

*legal representatives for the performance of their functions with regard to the upbringing and care of the child, promoting and facilitating the creation of institutions, facilities and support services that promote the family unit.*¹⁸

As can be seen, the Law for the Comprehensive Protection of Children and Adolescents took into account the reality of the country, which has a high degree of poverty and extreme poverty, by clarifying that poverty in itself is not a sufficient reason to separate boys and girls from their families. Instead, it provides the first guideline for the process of protection and compliance with the principle of family separation: that the State must have services that support and strengthen families so that, despite the economic situation they are in, they can access mechanisms to stay together and so that children may grow up in their family environment.

Section C of the General Observation 14 of the Committee on the Rights of the Child establishes, The Preservation of the family environment and maintenance of relationships, contained in numerals 59 and 60, says: 59 *“the family is the fundamental unit of the society and the natural environment for the growth and well-being of its members, particularly children. The child's right to family life is protected by the Convention. The term “family” must be interpreted in a broad sense that includes biological, adoptive or foster parents or, where appropriate, members of the extended family or community, as established by local custom (Art. 5).”*

*Numeral 60: “Preventing family separation and preserving the family unity are important elements of the child protection system, and are based on the right set forth in article 9, paragraph 1, which requires “that the child not be separated from his or her parents against his or her will, except when [...] such separation is in the child’s best interest.” Likewise, a child that is separated from one or both parents has the right to maintain personal relationships and direct contact with both parents on a regular basis, unless this is contrary to the child’s best interest (Art. 9, par. 3). This also applies to any person who has the right of custody, legal or habitual guardians, adoptive parents and people with whom the child has a close personal relationship.”*¹⁹

The Law for the Comprehensive Protection of Children and Adolescents does not provide a definition of family of origin and only mentions it in Article 21, by saying “children and adolescents will be kept with their family of origin...”. Further, the study will describe the definitions set forth in the Adoptions Law.

The Royal Spanish Academy defines the family as, “...a group of people united by kinship, it is the most important organization to which man can belong. This union can be formed by blood ties or by a legally constituted and recognized bond, such as marriage or adoption.”²⁰

This definition provides a broad concept of what should be understood as a family, without providing any classification or distinctions of family types according to how it came to be formed, either by birth or by coexistence during the different stages of life.

¹⁸ Ibid. Ley de Protección Integral de la Niñez y Adolescencia 2003. Artículo 21. (*Law for the Comprehensive Protection of Children and Adolescents, Article 21*)

¹⁹ Observación General No. 14: sobre el derecho del niño a que su interés superior sea una consideración primordial, CRC/C/GC/14 (Comité de los Derechos del Niño, mayo 29, 2013). Artículo 5 y 9 (*General Comment 14: on the right of the child to have his or her best interests as a primary consideration, CRC/C/GC/14, Committee on the Rights of the Child, May 29, 2013, Articles 5 and 9*). Link: <https://www.unicef.org/UNICEF-ObservacionesGeneralesDelComiteDeLosDerechosDelNino-WEB.pdf>

²⁰ Real Academia Española. (2019, July 22). Link: <https://www.rae.es/>

Doctrinally, the Guide to Standards for the Practice of Foster defines the family of origin as follows: *“The group into which the boy or girl was born and lived until the moment of being separated, for various reasons, from their family environment. It can be made up of parents, both or one, alone or with their new spouse, their children, etc. We consider family of origin to be the nucleus of coexistence in which the child or adolescent has spent most of their life at the time of the intervention. This is inserted into a broader family network: relatives by blood ties, such as grandparents, uncles or older brothers; or by affinity, as neighbors, neighborhood groups, and friends with whom they may have developed significant ties.”*²¹

As can be seen, the concept of family of origin, according to this Guide, is a broad concept, since it encompasses both the consanguineous family and those people who are significant in the child’s life, without there necessarily being kinship or blood relations between them. Decree-Law 106 in Guatemala’s Civil Code²² recognizes the relationship of consanguinity within the fourth degree, that of affinity within the second degree and the civil relationship, which arises from adoption... alluding only to the legally recognized relationship without mentioning what type of family to which it refers.

The second important concept that the Law for the Comprehensive Protection of Children and Adolescents mentions is that of a foster family. The aforementioned Article 18 states that children and adolescents have the right to be raised and educated within their family and, exceptionally, in a foster family. Complementary to this, Article 12 of the same Law, Subsection G regulates it as a provisional measure...²³

The Adoptions Law establishes the following concept for an extended family: The one that includes all people who are related by blood or affinity with the adoptee who are not parents or siblings; *and other people who maintain a relationship with the adoptee comparable to the family relationship according to national and community practice and customs.*²⁴

For its part, Agreement 40-2010 of the Supreme Court of Justice²⁵ also provides a concept that is very similar to the one established by the Adoptions Law. It states that an extended family comprises all persons who are not their biological family, who are related by blood or affinity or maintain a relationship comparable to the family relationship with the children or adolescent whose human rights are threatened or violated, in accordance with national and community practice, habits, and customs.

²¹ Kapustiansky, F. E. (n.d.). Acogimiento Familiar, Guía de Estándares para las Prácticas. RELAF, UNICEF. (*Family Foster Care, Standard Practice Guide*)

²² Op cit. Código Civil, Octubre 07, 1963. Artículo 190 (*Civil Code, Article 190*)

²³ Ibid. Ley de Protección Integral de la Niñez y la Adolescencia. Artículo 112 Medidas: Los juzgados de la niñez y la adolescencia podrán determinar, entre otras las siguientes medidas... g) Colocación provisional del niño, niña y adolescente en familia sustituta. (*Law for the Comprehensive Protection of Children and Adolescents. Article 112 Measures: The courts for children and adolescents may determine, among others, the following measures ... g) Provisional placement of the child and adolescent in a foster family.*)

²⁴ Ley de Adopciones, Decreto número 77-2007 del Congreso de la República de Guatemala diciembre 20, 2007. Artículo 2. (*Adoptions Law, Decree 77-2007 of the Congress of the Republic of Guatemala, December 20, 2007. Article 2.*)

²⁵ Reglamento para la Aplicación de Medidas de Protección a Niños Privados de su Medio Familiar por parte de juzgados que ejercen competencia en materia de Niñez y Adolescencia Amenazada o Violada en sus DDHH. Acuerdo Número 40-2010 de la Corte Suprema de Justicia Septiembre 10, 2010. (*Regulations for the Application of Protective Measures for Children Deprived of their Family Environment by courts that exercise jurisdiction in matters of Children and Adolescents whose Human Rights are Threatened or Violated, Agreement 40-2010*). Link: <http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnálisisDocumentaciónJudicial/cds/CDs%20leves/2010/pdfs/acuerdos/A040-2010.pdf>

This regulation also considers that people who are a significant part of the child's life, who have created a relationship like the one they would have with a member of their consanguineous family, will also be considered extended family.

Article 111 of the Law for the Comprehensive Protection of Children and Adolescents establishes that measures to be taken will consider the needs of the affected person, with a priority given to those that are aimed at *strengthening family and community ties* and respecting personal and cultural identity. To better understand the intercultural approach, the following will be considered: *the incorporation of tools that allow the analysis of the relationships between cultural groups that inhabit the same space from two dimensions - the distribution of power in decision-making over the development and control of their lives and the level of recognition of their cultural differences without it being grounds for exclusion or discrimination.*"²⁶

Therefore, in order to determine the application of the foster family measure, courts with jurisdiction in matters of childhood must first establish the needs of the child subject to protection. Second, they must exhaust the available means that the system offers (protection measures, social assistance services and programs, etc.) to strengthen and empower the family, giving priority to keeping the child or adolescent with their family. Third, if this is not possible or is not in the child or adolescent's best interests, the courts must consider a foster family that can provide a temporary family environment to the child or adolescent while taking action to ensure that he or she returns to his or her family within a specific time frame. It should not be forgotten that placing children and adolescents in foster families is, in principle, a temporary measure, and the end goal, as dictated by the Law, should be that the child does not lose his or her relationship with his or her biological family or community environment.

In summary, the Law for the Comprehensive Protection of Children and Adolescents recognizes the importance and all the positive consequences that result from children growing up and developing with their family, whether biological or extended, or with a foster family if the primary family environment is not an option.

To ensure compliance with the specific human rights of children and adolescents, the levels of comprehensive protection are hierarchized as follows: a. Basic social policies: a set of actions to guarantee all children and adolescents the full enjoyment of their rights; b. Social assistance policies: a set of actions to guarantee the rights of children and adolescents in situations of extreme poverty or in a state of emergency through family support programs; c. Special protection policies: a set of actions formulated by the State and society to guarantee the physical, psychological and moral recovery of children or adolescents whose rights are threatened or have been violated; d) Guarantee policies: a set of actions to ensure minimal guarantees to the children or adolescents subject to judicial or administrative proceedings.²⁷

1.1.3 Adoptions Law

Like the Law for the Comprehensive Protection of Children and Adolescents, the Adoptions Law is based on principles consistent with the doctrine of integral protection, especially the principles of family preservation and

²⁶ *Guía Metodológica de transversalización del enfoque de interculturalidad en programas y proyectos del sector Gobernabilidad*. Lima GIZ. 2015. (Methodological Guide for the Transversalization of the intercultural approach in government programs and projects)

²⁷ *Ibid.* Ley de Protección Integral de la Niñez y Adolescencia 2003. Artículo 82. (Law for the Comprehensive Protection of Children and Adolescents, Article 82)

the best interests of the child. The law seeks to implement agile procedures and mechanisms that restore the rights of children and adolescents.

The purpose of the law is to regulate adoption as an institution of national interest and its judicial and administrative procedures; and to create the National Adoptions Council (Consejo Nacional de Adopciones, or CNA in Spanish) as an autonomous entity under public law, with legal standing, its own assets, and full capacity to acquire rights and obligations.²⁸

Adoption is an alternative form of permanent family care that seeks to restore the right to a family of children and adolescents who, due to various circumstances, are unable to reintegrate with their family of origin or extended family. Through adoption, the Protection System offers children and adolescents the opportunity to grow up in a family environment and not in an orphanage, shelter or other kind of institution.

The Adoptions Law provides various definitions, these being:²⁹

- Adoption: A Social Institution of protection and public order, protected by the State, by which a person takes another person's child as his or her own child.
- Adoption eligibility: Judicial declaration issued by a children and adolescent's judge that is made after a process that examines the social, psychological and medical characteristics of the child and establishes the impossibility of reunifying the child with his or her biological family. Its primary objective is the restitution of the right to a family and the integral development of the child.
- Extended family: It includes all people who are related by blood or affinity to the adoptee other than their parents or siblings, and other people who maintain a relationship with him or her comparable to the family relationship according to practice, uses and national and community customs.
- Biological family: Includes parents and siblings.
- Temporary foster home: Includes those people who are not members of the biological or extended family and who receive a child in their home temporarily for the duration of the adoption process.

This law defines what must be understood by adoption, biological family, and extended family. The first two definitions do not have much scope for analysis, since they are closed definitions that clearly and specifically establish who we should consider a biological family, as well as who are considered an adoptive family. A broader concept is found in the definition of an extended family since it is not limited only to the blood or kinship relatives of the child, *but to all those who have been present in a significant way in the life of the child, and whose relationship means they are considered family*. An example of this could be in small communities in which godparents care for children.

²⁸ Op cit. Ley de Adopciones, 2007. Artículo 1. (*Adoptions Law, Article 1*)

²⁹ Ibid. Ley de Adopciones, 2007. Artículo 2. (*Adoptions Law, Article 2*)

The extended family should always be the first option for children deprived of parental care. In principle, foster care should be a last resort and the family of origin should be the first alternative. If this is not possible, other forms of legally established temporary foster care should be considered.³⁰

Therefore, the Adoptions Law provides an alternative for family care, not fully developed in said regulations, this being the extended family. Under the principle that the laws of a legal system must be interpreted in an integral and not an individual way, this legal body brings forth the option of resorting to an integration with the extended family as required by the principles of the Rights of Children and Adolescents.

Another relevant aspect is to ensure that siblings who may be adopted are not separated before or during the adoption process and for the same family to adopt them, unless this is contrary to their best interests. Again, any alternative care measure will always seek for children to preserve their identity, history, and in the case of siblings, their relationship with their biological family (among them) when children cannot remain with their parents or primary caregivers.

It is also important to mention that, although the law specifically regulates the adoption process, the CNA also has programs that are aimed at family preservation. One such program is the Program for Mothers in Conflict with their Maternity. Carried out through of the Biological Family Unit, it is responsible for guiding biological parents who at some point wish to give their children up for adoption in understanding the implications of adoption as well as determining the reasons why they would like their children to be adopted.³¹

Through information obtained by the CNA and with emphasis on the Program for Mothers in Conflict with their Maternity, the following relevant data were obtained:

- Most of the women who come to the CNA wanting to put their children up for adoption have several situations in common: they are indigenous women who, because they are pregnant without the support of the baby's father, have been rejected by their families and communities regardless of whether the pregnancy is consensual or nonconsensual. The majority come from poverty, are jobless, and have little or no schooling.
- They arrive at a time of crisis since they do not have the support of the baby's father, or the child is only a few months old and they cannot find family support.³²

It is at this moment that the first approach is made to address the crisis: the psychologist meets with the mother and, once the situation is controlled, he/she carries out social work and institutional coordination to address the emergency. The main obstacles facing the institution in these processes is that the State of Guatemala does not have a system of shelters that respond to the needs of these women, so they have had to resort to institutions whose main function is not to deal with these types of situations, but which still provide their support. There are also few entities that can provide them with the specialized medical care they need free of charge; some of the

³⁰ Luna, M. (2018) *Modelo de Cuidados Alternativos Aplicables en la República de Guatemala (Alternative Care Models Applicable in the Republic of Guatemala)*. Guatemala: USAID

³¹ Ibid. Ley de Adopciones, 2007. Artículo 37. (*Adoptions Law, Article 37*)

³² Interview with Flor Mejía. Biological Family Unit Sub-Coordinator, National Adoptions Council. July 22, 2019. (Claudia Archila, interviewer)

entities that have supported them are non-governmental organizations.³³ They also receive support from State Health Centers, which do not always have medications in stock. In addition to the medical care that every pregnant woman needs, most of these women arrive after 4 or 5 months of pregnancy without ever having taken prenatal vitamins, having had an ultrasound or a medical check-up, and with some degree of malnutrition. The Unit has found free support services offered by various organizations in the area of psychology or legal assistance. However, it is not the type of support that the population served requires, which is, for example, programs that support them at least during the following two months with room, food, and medical control. Even so, it is very important to mention that 90% of women approached in this Unit decide to keep their children, avoiding abandonment and preserving the unity between the child and the mother.³⁴

It should be noted that the aforementioned Unit is important for family preservation; however, the CNA has not managed to decentralize its services at the national level, so there is limited access to guidance for mothers and fathers in conflict with their parenting. Although there is coordination with local support networks, the institutional presence at the national level is important.

1.1.4 Internal Institutional regulations

In addition to ordinary laws that regulate this particular subject matter, each institution of the System for the Protection of Children and Adolescents regulates its own programs and actions within a more specialized regulatory framework for each subject. This framework can consist in Agreements, Regulations or Notices that establish certain functions of the people in charge of the programs, profiles and routes to follow to address cases, or develop concepts or guidelines of certain allowable legal figures, to facilitate their application in each specific situation.

Therefore, the following two points will analyze the Regulation for the Application of Protection Measures to Children Deprived of their Family Environment by Courts that exercise jurisdiction in matters of children and adolescents whose human rights are threatened or violated, Agreement Number 40-2010 of the Supreme Court of Justice and Agreement CNA-CD-010-2010 of the CNA.

1.1.4.1 Regulation for the Application of Protective Measures to Children Deprived of their Family Environment by Courts that exercise jurisdiction in matters of children and adolescents whose human rights are threatened or violated, Agreement Number 40-2010 of the Supreme Court of Justice.

Background: During the internal armed conflict, many human rights violations against civilian populations took place, especially of children who are without family care due to the death of their parents or guardians. This led to the adoption of these children by members of the military or people close to them without implementing an adequate and legitimate adoption process.³⁵

³³ These include the organization Sí a la Vida, the Family Welfare Association (Asociación Pro-Bienestar de la Familia, or APROFAM, in Spanish) and others.

³⁴ Op cit. Interview with Flor Mejía, July 22, 2019.

³⁵ Comisión Internacional Contra la Impunidad en Guatemala. *Informe sobre actores involucrados en el proceso de adopciones irregulares en Guatemala a partir de la entrada en vigor de la Ley de Adopciones (International Commission against Impunity in Guatemala. Report on actors involved in the irregular adoption process in Guatemala upon the enactment of the Adoptions Law)*. (2010). Guatemala: CICIG. Link: https://www.cicig.org/uploads/documents/informes/INFOR-TEMA_DOC05_20101201_ES.pdf

After the end of the internal armed conflict, foreign families mostly carried out adoptions and this became a profitable business because of the large number of children who were orphaned or abandoned during the years of fighting. The situation devolved into a perverse system dedicated to international adoptions as a business and not a form of restitution of rights to children without parental care. Many nurseries emerged with the sole purpose of hosting children who were destined for international adoption. There was also a surge in lawyers dedicated solely to these processes and who were specifically linked to these nurseries, as well as many state officials who worked within these networks to facilitate processes without adequate procedures or legitimate investigations of the children's origin. In most cases, they profited from not returning these children to their families of origin.³⁶

This background left Guatemalan society with a certain fear and reservation about the adoption processes, which led to the creation of more appropriate mechanisms and regulations to prevent irregular adoptions from happening again, a fear that even today is still present and extended to temporary foster care mechanisms.

In addition to this, at the international level, the conception of adoption and the pre-eminence of national over international adoptions were also being reformed, through the Convention Relating to the Protection of Children and Cooperation in the Field of International Adoption, which regulates that States must ensure guarantees regarding international adoption.

Therefore, in 2007, the need arose to change the legislation on adoptions and everything related to alternative foster care. This was not an isolated reform, since 2003 had seen the publication of the Law for the Comprehensive Protection of Children and Adolescents, because of the change that Guatemala needed to make to improve the way children were viewed and especially the way in which the State dealt with human rights violations against them. The Adoptions Law was enacted on December 31, 2007.

While it is true that the effort through more adequate laws was beginning to take place with this change in legislation, there were still situations in which people tried to take advantage of other foster care mechanisms to obtain an adoption, without implementing an adequate and legitimate process to restore a child's right to grow up in a family.

Facing this need, programs were reactivated and created in 2009 to more directly address children, adolescents, women and families in extreme poverty. The Presidential Secretariat for Social Welfare (Secretaría de Bienestar Social de la Presidencia, or SBS, in Spanish) already had a Temporary Foster Care Program (foster families), which had very little coverage and few staff. This program required changes so that it could respond to the children's needs and be able to opt for a family environment. Thus, in 2011, the Temporary Family Foster Care Program Regulations were created with the support of UNICEF.

Likewise, after several meetings with institutions of the System for the Protection of Children and Adolescents, the Judicial Branch established the need to regulate the scope of the foster family measure. Both the Presidential Secretariat for Social Welfare and the Attorney General's Office considered it necessary to establish some rules in the field of alternative family care, mainly because stakeholders were confused about what should be understood as a foster family. This led to the creation of the Regulations for the Implementation of Protection Measures for

³⁶ Mayorga, M. (2019). Informe sobre área de demostración (*Demonstration Area Report*). Guatemala. Changing the Way We Care. Page 9.

Children Deprived of their Family Environment by courts that deal with matters of children and adolescents whose human rights are being threatened or violated.³⁷

The scope of this Agreement applies to all the courts of the Republic of Guatemala that exercise jurisdiction over children and adolescents whose human rights are being threatened or violated. It is designed to bring judicial practice into line with the System for the Protection of Children and Adolescents in the application of protective measures and temporary shelter for children deprived of their family environment.

In Article 5, the aforementioned Agreement establishes within its principles that of the *Preservation of the Family*, stipulating that the competent bodies must guarantee the preservation of the child in the natural environment for his or her growth, well-being and protection, being that his or her biological family. If this is not possible, an extended family should be considered and, if that is not possible, a foster family that is certified by the SBS or, as an exception, a public or private entity dedicated to childcare.

The Alternative Care Model Applicable in the Republic of Guatemala proposes that, in each case, after verifying that reintegration with the biological family is not possible, the extended family should be used as the first alternative family care. If this is not possible, then any other protection measure should be analyzed, giving priority to those that offer care within a family environment and considering institutionalization as a last resort.³⁸

As mentioned above, Article 6 of the Supreme Court of Justice Agreement 40-2010 defines the *biological family* as that comprising the parents and siblings of the child or adolescent. In addition, it provides that the competent judge must respect the protection of children and adolescents in the biological family before placing them in the care of any other form of temporary shelter, using this supervision by the Attorney General's Office, which must carry out its research while guaranteeing the best interests of the child.

Also, Article 7 defines the extended family as comprising all people who are not biological family (parents and siblings), who are related by blood or kinship, or who maintain a relationship comparable to the family relationship with children whose human rights are threatened or violated, in accordance with national and community practice, habits, and customs.

This article creates confusion since the second paragraph establishes that, "...the psychobiosocial and economic capacity of the *foster family* must always be evaluated prior to the placement of a child within said family." However, this is considered a redaction error, since the article regulates the figure of the extended family and the following article regulates the figure of the foster family, so it is considered that the correct wording should be *extended* and not *foster*, as indicated.

Article 8 of Agreement 40-2010 defines the foster family as a family that, without having a legal relationship of consanguinity or affinity, temporarily welcomes the child or adolescent who is deprived of his or her biological or extended family environment. It adds that, as part of protective measures, the Judge for Children and Adolescents or the Justice of the Peace may order the placement of a child or adolescent in a foster family certified by the

³⁷ Op cit. Reglamento para la Aplicación de Medidas de Protección a Niños Privados de su Medio Familiar por parte de juzgados que ejercen competencia en materia de Niñez y Adolescencia Amenazada o Violada en sus DDHH , Acuerdo Número 40-2010 (Corte Suprema de Justicia Septiembre 10, 2010). (*Regulations for the Application of Protective Measures for Children Deprived of their Family Environment by courts that exercise jurisdiction in matters of Children and Adolescents whose Human Rights are Threatened or Violated, Agreement 40-2010*)

³⁸ Op cit. Modelo de Cuidados Alternativos Aplicables en la República de Guatemala. 2018 (*Alternative Care Model Applicable in the Republic of Guatemala*)

Secretariat for Social Welfare. It is a temporary protection measure whose objective is to avoid institutionalization in a public or private protection home, and it may not exceed six months. Likewise, it establishes that under no circumstance may the foster family designated for the protection of a child or adolescent request the adoption of the child that it houses.

This article establishes several aspects that are important to analyze: *the foster family is a temporary measure, with a time limit of six months, must be ordered by a judge with jurisdiction over children and adolescent matters, and these families are prohibited from requesting the adoption of the children they shelter.*

It is first important to clarify that placement in a foster family is an option that judges must resort to as an alternative to institutionalization when placement with the biological or extended family is not possible and which, according to Agreement 40-2010, should not exceed a period of six months.

The Attorney General's Office processes of investigation, for reasons often unrelated to the staff, last more than six months. Additionally, when the biological or extended family has been located but cannot receive the child or adolescent that is subject to a protection process, preparing the families to be able to carry out a successful reintegration requires, on average, more than six months.

The six-month term is unrealistic given the Guatemalan context, thus abiding by this limit enforced on placement in foster families is generally not possible.

Concurrently, the prohibition against the foster family requesting the future adoption of the child that it shelters presents several elements that must be analyzed. In principle, the temporary nature of the foster family figure must be respected and should not be considered as a means for adoption, since the primary objective of the temporary family protection measure is to protect the child during a reasonable amount of time. This time, in turn, would allow the System for the Protection of Children and Adolescents to strengthen the biological family or locate another family suitable for the child or adolescent who, for one reason or another, is unable to live with his or her biological or extended family. Thus, as a precaution, the child is placed in a safe family environment to avoid further harm that may be caused by institutionalization in an orphanage, as their situation is resolved through the protection process.

The eventual transition from a temporary measure such as a foster family, to a permanent measure such as adoption, requires further analysis. However, without detriment to the temporality of the measure, weighing which family is ideal for a child must take into account the best interests of the child. This, in turn, must be done for each specific case while taking into account individual, and not general, needs, regardless of the particularities and convenience of each situation, as stipulated in General Comment 14 issued by the Committee on the Rights of the Child.³⁹

According to Article 27 of the Adoptions Law, the Multidisciplinary Team must issue an opinion within the process of selecting the ideal family for the child that is to be adopted. In other words, the Multidisciplinary Team must

³⁹ Op cit. Observación General No. 14: sobre el derecho del niño a que su interés superior sea una consideración primordial. 2013 (*General Comment No. 14: on the right of the child to have his or her best interests as a primary consideration, 2013*)

assess all the essential elements of an adoption, with emphasis on the best interests of the child and the restitution of the right to family life.

In addition, Article 10, section b of the Adoptions Law stipulates that: it is prohibited for “the biological parents or legal representatives of the child to expressly stipulate who will adopt their child; except when the child in question is the child of a spouse or cohabitant, or of the foster family that has previously sheltered the child.”

In conclusion, within the adoptions process, the National Adoptions Council’s Multidisciplinary Team selects the appropriate family for each child, as established in Article 27 of the Adoptions Law. In addition, the foster family is not prohibited from adopting the child or adolescent they fostered, according to Article 10, Section b, which is the highest legal norm in the matter of adoptions.

From an eminently legal point of view, according to the Guatemalan Legal Hierarchical System, a prohibitive norm expressing that the foster family cannot apply for the adoption of the child or adolescent that it fostered should be contained in the specific law on the matter. In this case that would be the Adoptions Law, and not a lower-level internal regulation such as Agreement 40-2010 of the Supreme Court of Justice or Agreement 10-2010 of the Executive Council of the CNA.

Article 10 of the Adoptions Law establishes the prohibitions on adoption, including Section b, which prohibits the biological parents or legal representatives of the child from expressly stipulating who will adopt their child; except when the child in question is the child of a spouse or cohabitant, or of the *foster family that has fostered the child*.

⁴⁰ As explained earlier, unlike Agreement 40-2010 of the Supreme Court of Justice, the Adoptions Law does clearly conceptualize the meaning of biological and extended family. In this case, it would be appropriate to consider the possibility that the foster family may opt at some point for the adoption of the child or adolescent that it fosters. This is perfectly aligned with the principles of the right of the child, since the foster family, in the time that it fostered the child or adolescent, gave him or her all the necessary care and love that a biological or extended family should offer. If, under any circumstances, the child or adolescent is unable to return to his or her family of origin or extended family, after a reasonable period has elapsed, it is only logical that he or she should remain in the family with whom he or she has formed a bond and life together.

This does not mean that the foster family must become a prior step for adoption. Rather, in those exceptional cases where the child or adolescent has remained with the foster family for a period longer than established by law, a reciprocal bond has been created, and it is not possible for him or her to return to his/her biological or extended family, it makes no sense for the foster family to be unable to request his/her adoption. Likewise, this family would be subject to the evaluations that the CNA considers pertinent to determine the origin of their accreditation as an adoptive family. The Adoptions Law itself contemplates, although not in a developed way, the possibility for the foster family to opt for the adoption of the child or adolescent they are hosting. It is therefore not correct for other lower hierarchy regulations to prohibit it, since this would be harmful to children and

⁴⁰ Ibid. Ley de Adopciones. 2007. Artículo 10 (*Adoptions Law, Article 10*)

adolescents by making them go through another separation to integrate them with a new family and would not be considerate of their best interests.

In any situation regarding the restitution of the right to a family, the CNA Multidisciplinary Team (the agency specialized in the subject) must weigh the suitability and feasibility of adoption by the foster family to abide by the general principles on children, the recommendations of the Committee on the Rights of the Child, the UN Guidelines on Alternative Care for Children, and the best interests of the child. According to the Adoptions Law, it is in this space that the suitability of adopting the child or adolescent welcomed by the temporary foster family should be assessed with objectivity and transparency, based on the case precedents and the specific situation of each child and/or adolescent.

The information obtained in the First Instance Courts for Children and Adolescents of the Metropolitan Area shows that Agreement 40-2010 of the Supreme Court of Justice does not represent an obstacle to the restoration of the violated human rights of children and adolescents subject to protection. However, the specific rule prohibiting foster families from adopting the children they are fostering could be analyzed in a way that leaves the possibility for families that foster children and adolescents who are unable to return their family of origin to be considered as priority adoptions (special cases due to age or medical condition). This is based on respecting their best interests and on the fact that the System for the Protection of Children and Adolescents should not create obstacles for the restitution of the rights of children and adolescents.⁴¹

The former President of the Judicial Branch and of the Supreme Court of Justice expressed that this Agreement arose from a need that existed in Guatemalan society to regulate this measure, since there was a bad precedent set due to irregularities that occurred with international adoptions and bad practices in the temporary foster care system. Indeed, they did not want history to repeat itself. However, almost ten years later, he expressed that it is time to review said regulation since the Right of the Child must be dynamic and constantly revised. He also commented that on a personal level and considering the current panorama facing children, he does not agree with completely closing the doors for foster families to opt for the adoption of the child they host. Although it is true that, in principle, foster families are of a temporary nature, after verifying that reunification with the biological or extended family is not possible and fulfilling a series of prerequisites, preventing the child from remaining in a family that has provided it with a family environment, care, and above all love, would go against his/her best interests and constitute a new violation of his/her human rights.⁴²

Regarding the six-month term limit, in the opinion of consulted jurists, Agreement 40-2010 of the Supreme Court of Justice has not represented an obstacle for children to remain in a foster family, given that each case must be analyzed individually. A review of the cases in which a child has been placed in a foster family shows that they remain in foster families for an average of eight months, and in some cases longer, either because the investigation needs to be completed, the parents or relatives of the child are not yet ready to receive them, or they still do not have an adoptive family. Therefore, the term of the measure is extended until it is possible to reunite the children

⁴¹ Interview Calderón, Juan Orlando. Fourth Judge of First Instance of Childhood and Adolescence of the Metropolitan Area. 2019, July 19. (Claudia Archila, Interviewer)

Interview Reyna, María Belen. Sixth First Instance Judge of Childhood and Adolescence of the Metropolitan Area. 2019, July 19. (Claudia Archila, Interviewer)

⁴² Interview Medrano, G. A. Former President of the Supreme Court of Justice and the Judiciary, period 2009-2014. 2019, July 19. (Claudia Archila, Interviewer)

with their biological or extended families.⁴³ Based on the reports and investigations of the Attorney General's Office, when it is necessary to extend the placement of children or adolescents in a foster family care beyond the six months, said period must be extended for the necessary time as long as it does not exceed one year, to allow for the completion of the investigations or to give the family of origin time to prepare to reunite with their child.⁴⁴

1.1.4.2 Agreement CNA-CD-010-2010 of the Executive Council of the National Adoptions Council: Technical guidelines that establish the participation of the foster family and temporary home.

As with Agreement 40-2010 of the Supreme Court of Justice, the CNA established the need to regulate certain aspects of the foster family figure, such as prohibiting them from adopting the child that they sheltered, considering the dark past of international adoptions explained previously and the abuses committed. It regulated the same situation in Agreement CNA-CD-010-2010⁴⁵, establishing the following points:

According to Articles 1 and 2 of the aforementioned legal document, "within the adoption process, the foster family assumes the functions and responsibilities of a biological family on a temporary basis without having any relationship of consanguinity with the child, with the objective of providing them with a family environment during the adoption process." The foster homes are those that, despite not being a child's biological or extended family, receive a child in their home temporarily throughout the duration of the adoption process. The National Adoptions Council again emphasizes the temporary nature of the measure and underscores it by establishing that they are responsible for providing the necessary family environment only while the adoption process lasts.

Article 5 of that same agreement, amended through Agreement CNA-CD-011-2011, states the following from *the final Resolution of the legal situation of children delivered to foster families*: Requests from foster families to adopt the children they foster and whose designation has been judicially ordered, before the enactment of Agreement CNA-CD-010-2010, may be admitted and analyzed for their approval, provided that they do not contradict judicial or administrative provisions issued within the protection system.

Through this reform, the difference is made between the foster families judicially designated for this role and those foster families certified by the SBS, in response to several factors. First, a rule cannot have retroactive effects, and families that previously housed children could not be forbidden the right to request the adoption of the child they housed if this situation was not regulated by any law or regulation.

Second, it specifically regulates and differentiates the foster families that were designated as such by a judge and not from those that would have been certified as such by the SBS. Therefore, in accordance with Agreement 40-2010 of the Supreme Court of Justice, the prohibition to adopt children they are fostering continues to be enforced for foster families.

It is important to mention that Article 5 of the United Nations Declaration on the Rights of Indigenous Peoples indicates that Indigenous Peoples have the right to preserve and strengthen their own political, legal, economic, social and cultural institutions. Article 9 of the same Declaration establishes that an indigenous individual has the

⁴³ Op cit. Interview Reyna, María Belen. 2019, July 19.

⁴⁴ Op cit. Interview Calderón, Juan Orlando. 2019, July 19.

⁴⁵ Lineamientos Técnicos que establecen la participación de la Familia Sustituta y Hogar Temporal, Acuerdo interno No. CNA-CD-010-2010 Consejo Nacional de Adopciones agosto 17, 2010. Artículos 1 y 2. (*Technical Guidelines establishing the participation of the Foster Family and Home, Internal Agreement No. CNA-CD-010-2010, National Adoptions Council, August 17, 2010. Articles 1 and 2*)

right to belong to an indigenous community. For this reason, it is important to mention that, for example, the Children and Adolescents' Court in Quetzaltenango provides different names to the mechanisms for placing children in families not certified by the SBS. Among those named, depending on the role they have had in the life of the child in question, are comparable, elective, and community families. These figures are not regulated and respond to local customs of the area where the measure is decreed. Their regulation is necessitated to avoid arbitrariness, bad practices and the distortion of the work conducted by both the SBS and the CNA. A proposition is to carry out exercises of intercultural dialogue of these figures to expand the options for foster care, as established in paragraphs 55 and 74 of the United Nations guidelines.⁴⁶

Likewise, it is important to demonstrate that over the years, there have been a considerable number of informal fostering cases within the communities and populations in Guatemala. Although they fulfill the objective of providing children without parental care with a parental environment consisting of people within the same community or familiar individuals, because these foster care measures are not formally recognized, there is no state institution ensuring that the children are actually doing well.

As proposed in the Guidelines for alternative family care, it is important to establish that:

1. Within a comprehensive System for the Protection of Children and Adolescents, there must be a range of alternative family care options that respond to different needs and to each specific case, so that a real assessment can be achieved based on the child's best interest. In this way, the child is placed in an environment that better responds to his or her reality and well-being.
2. Mechanisms for the inclusion of existing informal care must be implemented and the necessary mechanisms must be sought to make them part of the current regulations, always making a prior analysis of which are considered good practices, and discarding those that are considered to be harmful to the restitution of the rights of children and adolescents.⁴⁷

1.2. International regulations

1.2.1 Convention on the Rights of the Child

The UN Convention on the Rights of the Child (UNCRC) is an international treaty that recognizes the human rights of all children, defined as persons under 18 years of age. The Convention establishes, in the form of international law, that the States Parties must ensure that all children, without any type of discrimination, benefit from a series of special measures of protection and assistance; have access to services such as education and health care; can fully develop their personalities, skills and talents; and grow up in a stable family environment.

States Parties should pay more attention to the following three aspects:

1. Early childhood care: assume a rights approach in its State programs and policies in favor of children and adolescents;

⁴⁶ Op cit. Directrices sobre las modalidades alternativas del cuidado de los niños (*UN Guidelines for the Alternative Care of Children*). 2010. Paragraphs 55 and 74.

⁴⁷ Ibid. Directrices sobre las modalidades alternativas del cuidado de los niños (*UN Guidelines for the Alternative Care of Children*). 2010. Page 14.

2. Education: generate equal access for both boys and girls, as well as improve their quality and reach;
3. Family preservation: programs aimed at creating enabling conditions and spaces for parents to fulfill their roles as caregivers, without this being confused as irresponsibility on their part.

States Parties must consider these aspects in order to have adequate legislation with a human rights approach in place for children and adolescents.

What should we understand by a rights approach, when creating policies, actions, and programs in favor of children and adolescents? The “rights approach” will be understood as a *“conceptual framework for the human development process that, from the normative point of view, is based on international human rights norms and, from the operational point of view, is oriented to the promotion and protection of human rights. Its purpose is to analyze the inequalities at the center of development problems and to correct discriminatory practices and the unfair distribution of power that hinder progress in development.”*⁴⁸

Therefore, States Parties must consider this approach when legislating or adapting their legislation, especially in matters regarding children and adolescents. Guatemala must continue to close the economic and social gaps in its efforts to ensure that opportunities are provided for all, adults, children, and adolescents alike, and to create conditions that allow families to remain together, without having to mobilize forcefully to achieve them and thus break with the family union. It must also invest in quality health and education, ensuring that it is accessible to all children and adolescents, especially in rural and hard-to-reach areas, as well as specializing justice officials and their institutions so that they can effectively restore rights and create a System for the Protection of Children and Adolescents that truly meets the needs of Guatemalan children and adolescents.

In the case of Guatemala, it is also necessary to think about policies and programs with an intercultural approach, especially in alternative family care, since this is an aspect that must be taken into account when considering the placement of a child in a foster family: their origin, language, religion, culture, etc., without seeing these considerations as discriminatory. On the contrary, they should consider them so the family chosen to temporarily house the child is as close as possible to what the child knows and where the child aims to return, which would be his or her biological or extended family.

Article 2 of the UNCRC establishes that States Parties must respect enshrined rights without discrimination of any kind, and must adopt specific measures to guarantee equal conditions in the exercise of these rights. That is to say, that the fulfillment or restitution of a right cannot be restricted for reasons of race, age or gender; for example, without jeopardizing the individual analysis of each case and with the required specialty.⁴⁹

Regarding the right of children to grow up in a family environment, the main rights established by the Convention are:

- Right of the family of origin, the extended family, and the community to be respected and supported.

⁴⁸ Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. (2006). Preguntas Frecuentes Sobre el Enfoque de Derechos Humanos en la Cooperación para el Desarrollo. New York y Ginebra: Naciones Unidas (*Office of the United Nations High Commissioner for Human Rights. (2006). Frequently Asked Questions About the Human Rights Approach in Development Cooperation. New York and Geneva: United Nations.*) Link: <https://www.ohchr.org/Documents/Publications/FAQsp.pdf>

⁴⁹ Ibid. Convención sobre los Derechos Del Niño (*UN Convention on the Rights of the Child*). Nov. 20, 1989. Article 2.

- Right to identity and family relationships.
- Principle of non-separation from the family.
- Right to family reunification.
- Parental responsibility: both parents have common obligations regarding the upbringing and development of the child. The primary responsibility of the upbringing and development of the child will be the responsibility of the parents or, where appropriate, the legal guardians.
- Right to social security and for the people who support the child to receive support.
- Material assistance and state support programs for parents regarding nutrition, clothing, and housing.

As can be seen, all these rights are aimed at family preservation, and the obligation of the State to provide the necessary and appropriate conditions for parents and legal representatives to fulfill their role and provide the child with the family environment and integral development that each child needs and has the right to have.

1.2.2 United Nations Guidelines for the Alternative Care of Children

*“The Guidelines for the Alternative Care of Children were born out of a recognition of gaps in the application of the Convention on the Rights of the Child to millions of children worldwide who are without parental care, or at risk of losing it. The international community has come to an agreement and has developed these Guidelines for the Alternative Care of Children. They are the result of five years of debates and negotiations between the United Nations Committee on the Rights of the Child, the governments headed by Brazil, UNICEF, experts and academia, representatives of non-governmental organizations and, last but not least, young people with experience in guardianship of minors.”*⁵⁰

The Guidelines for the Alternative Care of Children highlight the need for appropriate policies and practices with respect to two basic principles:

First, *on the Principle of Necessity*. Article 9 of the Convention on the Rights of the Child establishes the following: *“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.”* It also establishes that, *“State Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the best interests of the child.”*⁵¹

Therefore, at the heart of the need is the desire to support children to remain with and be protected by their family, unless staying with his or her biological family poses a greater threat of causing harm to the child than separating him or her from the family. The State must therefore seek another suitable family remedy, preferably by respecting family ties such as the extended family or, if this is not possible, placing the child in another

⁵⁰ Ibid. Directrices sobre las modalidades alternativas de cuidado de niños (*UN Guidelines for the Alternative Care of Children*). 2010. Page 4.

⁵¹ Ibid. Convención sobre los Derechos Del Niño (*UN Convention on the Rights of the Child*). Nov. 20, 1989. Article 2

alternative family environment such as a foster family and only, and as an exceptional measure, in an orphanage or children's home. What must always be sought is the effective application of the best interests of the child in each specific case.

Second, the principle of *convenience*. In this sense, the Committee on the Rights of the Child establishes that the States Parties must explain how this right has been respected in the decision. That is, what has been considered to be in the best interests of the child, on what criteria has the decision been made, and how have the interests of the child been weighed against other considerations, whether they are general regulatory issues or specific cases?

This is how these Guidelines define a series of alternative guardianship options. Each child in need of guardianship has specific requirements, just as siblings will have other needs, or children with medical needs will require specialized attention, etc. The chosen guardianship option must be tailored to individual needs. The suitability of the placement should be reviewed periodically to assess the continued need for the provision of guardianship, and the feasibility of possible family reunification.⁵²

In conclusion, the Guidelines for the Alternative Care of Children is an instrument that guides the States Parties to direct and frame the policies and actions related to children and adolescents, framed and adapted in each national legislation, under the principles of need and convenience, always seeking to achieve the best decision for children, in an individual and specialized way.

According to the Guidelines, the following aspects must be considered regarding foster care:⁵³

- Children under the age of three should be fostered in family settings, and the bond between siblings should be encouraged, as the case may be, and efforts should be made to ensure that the foster home is as close as possible to their usual place of residence to avoid uprooting.
- The bond between families of origin and children that are temporarily fostered must be sustained and facilitated, and separation should last as little as possible.
- Foster families who have a child in their care must ensure that their rights are respected, count on the support of special services, and have the opportunity to make their voices heard when evaluating the situation of the foster child.
- The foster care measure must be transitory, and before being chosen, the possibility that other relatives or members of the community, after prior evaluation, may carry out alternative foster care must be sought.
- Both foster children and their families of origin should receive support and accompaniment throughout the foster process. Stigmatization for being in that situation should be avoided.

Therefore, Guatemalan legislation must use these guidelines as a model for plans, programs and policies in favor of children and adolescents, with the view that any legal or administrative action or decision is based on the principle of the best interest of the child, gives paramount attention to the family, and guarantees the integral development of the child with its family.

1.2.3 Jurisprudence

⁵² Ibid. Directrices sobre las modalidades alternativas de cuidado de niños (*UN Guidelines for the Alternative Care of Children*). 2010. Page 8

⁵³ Ibid. Directrices sobre las modalidades alternativas de cuidado de niños (*UN Guidelines for the Alternative Care of Children*). 2010. Page 7

In actuality, the broad development of International Human Rights Law seems indisputable, especially the recognition of the rights of children and adolescents. The adoption of the Convention on the Rights of the Child in the early 1990s was a great step towards the protection of their rights in addition to the radical change in considering them objects to being subjects with full rights. The Convention has been ratified by 195 countries in the world, of which 35 belong to Latin America and the Caribbean, which makes it the most ratified international instrument.

Below are some examples of resolutions in Latin American countries reflecting the implementation of the Convention taken from the following document: *“Ibero-American Protocol for judicial action to improve access to justice for people with disabilities, migrants, girls, boys, adolescents, communities and indigenous peoples, XVII Ibero-American Judicial Summit Chile, 2014.”*⁵⁴

On the right to life, survival and development:

- Inter-American Court of Human Rights. OC/1002 Legal Status and Human Rights of the Child:

86. “In sum, the education and health care of children involves various protection measures and constitute the fundamental pillars to guaranteeing the enjoyment of a dignified life by children, who are often found by virtue of their immaturity and vulnerability to be devoid of adequate means for the effective defense of their rights.”

- Inter-American Court of Human Rights. Case of the “Street Children” (Villagrán et al.) vs. Guatemala.

196. “The above-mentioned regulations make it possible to specify, in various directions, the scope of the “protection measures” referred to in Article 19 of the American Convention, including those referring to non-discrimination, special assistance to children deprived of their family environment, the guarantee of the survival and development of the child, the right to an adequate standard of living, and the social reintegration of every child who is the victim of abandonment or exploitation.”

- Inter-American Court of Human Rights. Case of the Juvenile Reeducation Institute vs. Paraguay

161. “In this sense, Articles 6 and 27 of the Convention on the Rights of the Child include in the right to life the State's obligation to guarantee, to the best of its ability, the survival and development of the child. The Committee on the Rights of the Child has interpreted the word “development” in a broad, holistic way, encompassing the physical, mental, spiritual, moral, psychological and social aspects. Viewed in this way, a State has, with respect to children deprived of liberty, and therefore, in its custody, the obligation, inter alia, to provide them with health and educational assistance, in order to ensure that the detention to which they children are subject will not destroy their life projects.”

- Inter-American Court of Human Rights. Case of the Xakmok Kasek Indigenous Community vs. Paraguay

28. “This Court has established that the education and health care of children involve various protection measures and constitute the fundamental pillars to guarantee the enjoyment of a dignified life by children, who by virtue of their condition are often devoid of adequate means for the effective defense of their rights. In the present case,

⁵⁴ Link: <http://migracion.iniciativa2025alc.org/protocolo-iberoamericano-de-actuacion-judicial-para-mejorar-el-acceso-a-la-justicia-de-personas-con-discapacidad-migrantes-ninas-ninos-adolescentes-comunidades-y-pueblos-indigenas/>

the Court reiterates its previous considerations regarding access to water, food, health, and access to education for members of the Community.⁵⁵

Once we analyze what is regulated in national and international legislation on the Human Rights of Children and Adolescents and especially on the issue of temporary foster care, it is necessary to know what the institutions effectively do for the execution of this measure. In addition, it is important to understand what actions they carry out to reduce the institutionalization of Guatemalan children and adolescents, what tools are available to them and what obstacles they face every day to fulfill their functions and, above all, to protect and guarantee the rights of those they seek to safeguard: the children and adolescents of Guatemala.

II. Applicable Best Practices

2.1 Temporary Foster Care Department of the Presidential Secretariat for Social Welfare: Changes and Results

The following information was obtained from the Foster Care Program of the Secretariat for Social Welfare.

Since the implementation of the new Model for Alternative Care Measures Applicable to the Republic of Guatemala and changes in the Regulation of Temporary Foster Families of the Presidential Secretariat for Social Welfare, the use of material and human resources has been improved. However, the strengthening of human resources and work tools remains a challenge.⁵⁶

Previously, there was a model that defined the route for the promotion, recruitment, evaluation and integration of children and adolescents in foster families as follows:

1. Promotion and recruitment of families interested in being part of the foster Families program.
2. Reception of documents requested from interested families and psychological and social evaluation.
3. Suitability.
4. Integration of the child or adolescent in the family: in some cases, it was possible to ensure a certain level of coexistence with the biological family.
5. Reintegration with biological / extended or adoptive family.

The new model proposes for the child not to lose his or her relationship with the family of origin. Therefore, during the process of integrating a child in a temporary foster home, care should be taken to organize meetings with the biological family and to work with them to find a solution that addresses the reasons why the child was separated from his or her family in the first place. Within the new Regulation, the following was considered:

1. Integration of the principles established in the United Nations Guidelines for the Alternative Care of Children and International Treaties ratified by Guatemala on the matter.

⁵⁵ Link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.pdf. Paragraphs 194 to 213.

⁵⁶ Interview Villalobos, Angie. Head of the Family Foster Department of the Secretariat of Social Welfare of the Presidency of the Republic of Guatemala. 2019, July 18. (Claudia Archila, Interviewer)

2. It distinguishes between the cases it considers special: those involving children with disabilities, adolescent and girl mothers, migrants, those with HIV or AIDS or any other serious illness, those affected by natural disasters and groups of siblings.
3. Within its purposes, it includes promoting family reunification, through prevention and family strengthening programs.
4. Had a small increase in staff; now has a lawyer and a supervisory unit.
5. They have workshops for foster families to interact with each other and share their experience. Foster families also receive training on trauma and an integration kit (milk, diapers).

Strengthening of post-reunification monitoring is still required. In this sense, they have received support from strategic allies in foster care, such as Buckner Guatemala and Vida para Niños.

In her interview, Angie Villalobos indicated that by July 2019, there were 117 certified families, of which 54 have been matched with children. Not all families have foster children because the children who enter the System for the Protection of Children and Adolescents do not fit the profiles for which these families are certified, either because of their age or because of their health conditions. The majority of families are certified for boys or girls between the ages of zero and five who are healthy, and do not feel prepared to care for children with health conditions or who are groups of siblings.⁵⁷

The Regulation of the Temporary Family Foster Department of the SBS establishes formal requirements for being a foster family, these being:

1. In the case of foreigners, permanent residence extended by the General Directorate of Migration
2. Lack of criminal and police records
3. Proof from the Public Ministry's National Registry of Sexual Offenders
4. Blood test
5. Proof of economic income
6. Letters of recommendation
7. Photographs and bank account number.

Some children who could benefit from temporary foster care are children with special medical needs who require families with a high economic income; most foster families, however, are lower-middle class. The economic subsidy received by the foster families is GTQ 1,500.00 (approximately USD 200.00). Due to internal Secretariat for Social Welfare procedures, the families, on average, receive the first payment within the second or third month of fostering. This makes it difficult for families to care for children who may represent a larger economic challenge, since most families that approach the System looking to become certified as foster families are lower-middle class; few are middle or upper class.⁵⁸

⁵⁷ Op cit. Villalobos, Angie. 2019, July 18.

⁵⁸ Prensa Libre, August 1, 2019, "Condiciones de vida se asemejan en los tres países: Honduras, El Salvador Guatemala" (*Living conditions are similar in these three countries: Honduras, El Salvador, Guatemala*). According to this news article, Guatemala has the following indexes: Poverty: 59.3%, extreme poverty: 23.4% and inflation: 4.8% as of June, which means that the percentage of Guatemalan families that have true economic stability that would allow them to qualify (economically) for being a foster family for a boy or a girl with special medical needs is 17.9%. This does not take into account that, of this percentage, not all families qualify in other ways and not all want to be foster families.

In addition to the formal requirements, the families must be a married couple or be single-parent families that fully understand the concept of foster family and that it is a temporary measure. They must be of sufficient economic wellbeing to meet the needs of their family group, since although it is not necessarily intended that they be families of a higher economic standing, they must be families that enjoy economic stability. They must also be of legal age, and preferably, belong to the same ethnic, social, cultural and language group of the child they will foster.

This is definitely a challenge, since many times there is no data on the background of children who enter the System for the Protection of Children and Adolescents, especially babies or very young children who have been abandoned on the streets or in hospitals. In addition, many family placements are carried out through the intervention of the courts on duty (those that operate from 3:30pm to 8:00am). They are practically emergency placements, since once the court receives a child, it communicates with Attorney General's Office, which in turns communicates with the SBS to inquire whether the Program has a foster family for the child in question. This process is carried out with the little information they manage to obtain at that point, which will be the approximate age and what can be inferred at first sight about the child's state of health.

Likewise, it should be noted that the Program has a payroll of eight people: The head of the Department, an assistant, a lawyer, an attorney, two psychologists, a social worker and a supervisor. In this situation, it is logical that families cannot receive monthly or periodic monitoring, since it is physically impossible to follow up on fifty-four families per month with a staff of eight people who have to comply with various administrative functions within the Program.

The Secretariat for Social Welfare has sixteen offices in various departments of the Republic, which have intervened in the decentralization of the Family Foster Program to provide greater coverage of services, from efforts to attract suitable families, to monitoring after reintegration of the child or adolescent with its biological or extended family. However, it is necessary to strengthen the intervention, since due to various factors the implementation of the new model at the national level is still incipient.

2.2 The Attorney General's Office, Implementation of the New Care Model Experience, Results, and Challenges

The Attorney General's Office has modified how it approaches and analyzes cases. In order to achieve this, it restructured the Office of the Procurator for Children and Adolescents, dividing it into action coordination units, with specific but interrelated functions. The primary objective of this was to avoid unnecessary prosecution of cases of children and adolescents whose rights had been violated by administratively resolving those situations through internal coordination within the institution and through referral networks from the different departments or institutions, to refer only those cases that, due to their nature, need to be heard by a children's judge.

Coordination of the Area for the Reception and Analysis of Complaints to the Attorney's Office for Children and Adolescents, a branch of the Attorney General's Office.⁵⁹ The coordination has the following areas, functions and personnel:

- Administrative area and receipt of complaints: For findings, there are three social workers, two psychologists and two investigators. The administrative area has a psychologist on staff, a lawyer, an assistant, a psychologist, a social worker, and babysitters during the day.
- At night, they have three psychologists. The coordinator and the lawyer take turns to cover night shifts.

Regarding actions to reduce the institutionalization of children and adolescents, the Office of the Procurator for Children implemented a change in procedures for dealing with cases, which is now done through the following administrative channel:

The staff that is available on that day and at that time receive the complaint. Using the psychologist on staff as an example: once the parties are listened to and if the staff psychologist is on duty, she transfers the case to the Area Coordinator. The Area Coordinator, in turn, is responsible for deciding, based on the information that was provided, whether the case can be resolved through administrative channels (for instance, if the child is not registered in the National Registry of Persons, or is not enrolled in the school system) or if the case merits prosecution (for example, in the event of mistreatment or abuse).

If the case is resolved through administrative channels, it will be followed up on during the necessary time. The protection plan will be worked on and the case will be closed. If a decision is made to prosecute the case, it is referred to the Judicial Protection area. The inter-institutional area coordination follows up on cases resolved through administrative channels.

These procedures are being applied in the department of Guatemala and in seven Regional Delegations, and it is progressively being expanded to other delegations to achieve national coverage.

According to data provided by the Office of the Procurator for Children and Adolescents in 2017, of all the cases that were received in the department of Guatemala, 41% were resolved through the courts. In 2018, 24% of the cases were referred to the competent courts and 76% were resolved through administrative channels. As of July 2019, of the 4,041 cases received, 916 have been referred to the judicial area and 3,125 have been dealt with administratively. Of the total cases received, 77% have been resolved through administrative channels and only 23% have been prosecuted. This positive institutional practice seeks to keep the admission of cases under control.

⁶⁰

Coordination of the Inter-institutional Area of the Attorney General's Office of the Procurator for Children and Adolescents

⁵⁹ Interview with Celada, Gabriela. Coordinator, Area for the Reception and Analysis of Complaints of the Attorney General's Office of the Procurator for Children and Adolescents. 2019, July 17. (C. Archila, Interviewer)

⁶⁰ Op cit. Celada, Gabriela. 2019, July 17.

Based on Agreement 056-2018 of the Attorney General's Office and Regulations of its Office of the Procurator for Children and Adolescents, the entity participates in inter-institutional spaces to analyze the cases of institutionalized children and adolescents, with the aim of establishing a route for the restitution of the right to family.⁶¹

To conduct this task, the Inter-institutional Coordination Area has 12 staff members: six social workers and six psychologists. Their main function is to form and strengthen referral networks, which they turn to in order to find support for families and especially children whose human rights have been affected in one way or another. When the Coordination of the Area for the Reception and Analysis of Complaints or any other coordination of the institution needs support from other institutions, they resort to this agency to activate inter-institutional relations with local and departmental entities of civil or state society.

The Inter-institutional Coordination Area is in charge of monitoring cases after the establishment of a protection measure in favor of a child or adolescent who enters the Protection System.⁶² The Derivation Networks include municipalities, mayors' offices, Community Councils for Urban and Rural Development (Consejos Comunitarios de Desarrollo Urbano y Rural -COCODES-, in Spanish) non-governmental organizations, community leaders and schools. Through these networks, it has been possible to obtain support for cases in the form of housing construction or repair, food, schooling for parents, and furniture, among other forms of support.

A best practice that was identified is the coordination that has been achieved at the community level through the referral networks and, little by little, the aforementioned institutions have managed to coordinate better and have indeed obtained support for children and their families. Among the challenges facing the entity is the need for resources, in the form of human capital and work tools, to fulfill its functions. For example, many times the personnel who work during the day have to take night shifts, which is extremely exhausting for them. They also lack enough vehicles to conduct case monitoring and verification. Likewise, in the municipality of Guatemala, they receive an average of 250 to 300 complaints per month and with the staff they have they are able to address 35 to 40 per month; that is, 13%.⁶³

Each case requires a comprehensive analysis of the information received to correctly determine the best way to restore children and adolescents' rights and thus establish whether the case can be resolved through an administrative procedure or if referral to a children and adolescent's court is necessary. As previously stated, upon receiving the complaint, a psychologist carries out the first action, and immediate actions must be taken to obtain information in the social area. For example, if possible, it might be necessary to establish whether the child or adolescent has any family member he or she may contact or, if it is a health-related situation, to which health center the child or adolescent can be referred.

In other departments in the Republic of Guatemala, there are multidisciplinary teams in seven Regional Delegations. In the rest of the delegations, the teams' functions are not limited exclusively to attending to children

⁶¹ Reglamento de la Procuraduría de la Niñez y Adolescencia de la Procuraduría General de la Nación, Acuerdo 056-2018. Procurador General de la Nación (*Regulation of the Attorney General's Office of Procurator for Children and Adolescents Agreement 056-2018*). May 8, 2018.

⁶² Interview with Mencos, Marielos. Inter-institutional Area Coordinator for the Attorney General's Office of the Procurator for Children and Adolescents. 2019, July 17 (Claudia Archila, Interviewer)

⁶³ Op cit. Mencos, Marielos. 2019, July 17.

whose human rights are violated. Rather, they address all kinds of problems, civil proceedings, voluntary jurisdiction, etc.

2.3 Exceptional Agreement for Children Sheltered in Temporary Foster Families of the National Adoptions Council

As previously mentioned, as a result of bad practices in the past, in 2010 the CNA, through Agreement CNA-CD-010-2010 of the CNA Executive Council, and the Supreme Court of Justice through Agreement 40-2010, established that foster families would not be eligible to adopt the child or adolescent they were fostering, but would be eligible to adopt another child, as this is a temporary measure and placement should not exceed six months. However, owing to deficiencies in the entire system for the protection of children and adolescents, the proceedings last much longer than that, which leads to the establishment of an even stronger link between the child and its foster family.

This is how in 2014, the technical teams of the CNA established that, in several cases, children had remained with their foster families for a long period of time, which had inevitably caused a strong bond between them to form.

If it is certain that a bond has been formed between the foster family and the foster child, the point of this family environment is precisely for the child to feel at home, loved, and protected.

During the process of fostering a child or adolescent, it is expected that an emotional bond will be established, which is healthy since a human being cannot live without relationships. What is not good is the prolonged placement of a child in a foster family without the possibility of it becoming permanent at some point. If it is not possible for the child or adolescent to return to their biological or extended family, this creates an unstable and harmful environment for the foster child, exposing them to a new separation and all the subsequent negative consequences of that separation.

General Comment 14 issued by the Committee on the Rights of the Child asserts the right of the child to have his or her best interests taken as a primary consideration in all actions or decisions when looking for the most suitable solution to each specific case. It also references that children's perspectives are not the same as adults', so that delayed decision-making processes have particularly adverse effects on the resolution of each case. Therefore, authorities that deal with these cases must make it a priority to review them promptly to arrive at a permanent solution that serves the child's best interests.

For a foster family, the lack of legal certainty regarding the child's situation creates an environment of uncertainty. This, in turn, makes it difficult to achieve daily harmony, which, for the aforementioned reasons, primarily affects the children for which they care.

These circumstances led to the creation of a technical committee comprising the CNA, the Attorney General's Office, the Office of the Human Rights Procurator, the Judicial Branch, the National Register of Persons, the Presidential Social Welfare Secretariat, and the Public Ministry. The committee reviewed the feasibility of continuing the adoption process of 14 individual cases where they had to find a way to restore the children's right

to grow up in a stable family without increasing the trauma that the children had already suffered due to abandonment. The affective bond that these children had developed with their foster families was already very strong and the rupture of this bond would have been a much greater affectation, damaging the children's emotional, cognitive, physical, psychological and social development.

Therefore, after a comprehensive analysis, it was concluded that the following considerations should be addressed in order to continue the adoption process:

1. That the duration of foster care significantly exceeds the legally established term for the measure of care in a foster family;
2. That the existence of an emotional bond between the child or adolescent and the requesting family is established;
3. That the child/adolescent expresses his/her desire to remain with the family that has previously fostered him/her.

Thus, in accordance with the best interests of the child, national and international regulations, the Exceptional Agreement was approved, and with it, the 14 cases were approved to continue with the adoption process.

2.4 Judicial Branch: Report of the Census of Children and Adolescents Housed in Private Orphanages and Shelters

In 2016, the CNA carried out a census of orphanages at the national level, which revealed 4,215 institutionalized children in private orphanages. The information on the orphanages in charge of the SBS was delivered to the Judicial Branch's Unit for Children and Adolescents in Conflict with the Law, leading to a total of 1,052 children and adolescents institutionalized in state homes and 5,267 children and adolescents in both public and private homes.

According to data from the XII National Population Census and the VII Housing Census of 2018, over 54.69% of the Guatemalan population is under the age of 24 and the population under 14 is 33.37%, which represents a third of the population. In addition, 44.66% of the population is between the ages of 0 and 19 years, corresponding to 6,655,577 children and adolescents, making it the Central American country with the largest population in this age range.⁶⁴

On March 9, 2018, in *Ramírez Escobar et al vs Guatemala*, the Inter-American Court of Human Rights ordered the State to conduct a census, keep up-to-date records of institutionalized children, and ensure the progressive deinstitutionalization of the children and adolescents in its care, providing for and implementing alternative measures to institutionalization.⁶⁵

⁶⁴ Instituto Nacional de Estadísticas (*National Institute of Statistics*). (2018). XII National Population Census and VII Housing. Guatemala: INE and UNFPA. Link: <https://www.censopoblacion.gt/>

⁶⁵ Sentencia *Ramírez Escobar y otros vs Guatemala*, Corte Interamericana de Derechos Humanos (*Sentence, Ramírez Escobar et al vs Guatemala, Inter-American Court of Human Rights*). March 9, 2018. Link: https://www.corteidh.or.cr/docs/casos/articulos/seriec_351_esp.pdf

During the months of February and March 2019, the Judicial Branch through the Secretariat for the Protection of Children and Adolescents and Juvenile Criminal Justice, and the PGN through the Attorney’s Office for Children and Adolescents, with the support of other entities, carried out a National Census of Orphanages that were authorized or in the process of being authorized.

According to information obtained from the Secretariat for the Protection of Children and Adolescents and Juvenile Criminal Justice of the Judicial Branch, it was difficult to obtain this information and the data was scattered prior to carrying out the Census. Therefore, it was uncertain which protection measures had been issued by Children and Adolescent Courts, as well as the exact number of institutionalized children and adolescents, where they were sheltered and how long they had been institutionalized.⁶⁶

The Census also served to identify those courts that tend to institutionalize the most and the reasons why they do so. The 2019 Census data as of March are:

Record of private orphanages and their status	Total
Orphanages authorized as of January 20, 2019	47
In the process of revalidation	28
In the process of authorization	49
Total	124

The following is a chart that disaggregates the number of children institutionalized by age and status of the orphanage:

No	Girls, boys and adolescents	Female	Male	Total
1	CNA Authorized Orphanages	805	630	1,435
2	In the process of revalidation	394	282	676
3	In the process of authorization	754	453	1,206
	Total	1,953	1,365	3,318

Although the number of institutionalized children decreased by 1,949 as compared to the year 2016, the number of institutionalizations remains high. This is especially true now that it is known that many of these children could

⁶⁶ Interview with Mazariegos, Amalia. Secretariat for the Protection of Children and Adolescents and Juvenile Criminal Justice of the Judicial Branch. 2019, July 12. (Claudia Archila, Interviewer)

stay with their families if they had adequate access to family strengthening services and programs and that, according to the Census, the ten main causes of institutionalization are:

No	Reason	Female	Male	Totals
1	Social risk	475	423	898
2	Negligence	297	213	510
3	Sexual abuse	350	108	458
4	Abandonment	209	223	432
5	Family and economic situation	157	68	225
6	Violation of Rights	120	70	190
7	Orphanhood	54	48	102
8	Mistreatment	49	46	95
9	Violence	42	30	72
10	Others	200	136	336
Totals		1,953	1,365	3,318

It is interesting to mention that the meaning of the concepts behind the causes for institutionalization are not unified. The category of social risk, specifically, can encompass various situations. For instance, families living in “red zones” whose children and adolescents may be forcibly recruited into gangs under the threat of death, and who have no resources to relocate their homes, arrive at the Courts to request that their children be placed in an orphanage for fear that they may be killed. Thus, social risk may also be understood as living in extreme poverty.

In this regard, while it is true that the law establishes that poverty cannot be a reason for institutionalization, when families do not have the means to feed their children or they lack access to health services and social programs to help them get ahead, they see orphanages as an alternative for their children to have access to food and medicines. For this reason, **it is important to highlight the fact that poverty is a cause of institutionalization in Guatemala.** The State must therefore take urgent action to implement public policies that generate better conditions for families to develop together, improve access to family strengthening programs and basic services so that parents and legal representatives of children and adolescents have alternatives to institutionalization, and allow children and adolescents to develop within their family and community environment.

In relation to poverty, the Report on Multidimensional Poverty in Children and Adolescents in Guatemala establishes that *“the results at the national level for the measurement of poverty and extreme multidimensional poverty are presented in Table 2 for the years 2006 and 2014. The indicator of total multidimensional poverty shows that 54.8% of the households inhabited by members under the age of eighteen live in a situation of not only*

*monetary poverty, but also, their social rights are being violated in at least two dimensions.*⁶⁷ This situation contributes to the institutionalization of children and adolescents in orphanages, since, as can be seen, poverty has a high effect on institutionalization.

The Census also sheds light on number of years that certain children have been living inside orphanages, some examples being the following:

- 20 7-year-olds have been institutionalized for 7 years
- 18 8-year-olds have been institutionalized for 8 years
- 14 11-year-olds have been institutionalized for 10 years

As can be observed, these children have been in orphanages practically all their lives.

This information is also of utmost importance because accurate data allows for concrete actions to be carried out for each case. They should be carried out urgently to support successful results, to change the lives of these children in a permanent way, and to restore in the best possible way all the rights they have lost by virtue of being sheltered in these orphanages.

Efforts to have a unified registry are not new. However, institutions are afraid of sharing information among themselves, due to the potential misuse of data from the files. As a result, case management becomes extremely difficult, since there is no accurate statistical data, nor can more agile interventions be carried out because so much time is spent searching for information regarding which court received a case, which professional from the PGN carried out the social study, which psychologist carried out the first interview, etc.

This census represented the first steps in obtaining accurate and reliable information on the status of each file of institutionalized children and adolescents, and it was done in collaboration with many institutions. However, Guatemala should already have on-demand access to information and use the advantages of technology to access information in real-time in a reliable way. It is therefore necessary for institutions to invest in cutting-edge software, considering that statistics are a useful tool that every System for the Protection of Children and Adolescents should have to restore and respond in accordance with the best interest of the child or adolescent.

It is imperative to highlight the importance of having a single registry among the specialized justice organisms (the Judicial Branch), special protection (SBS), representatives of the children and adolescents (PGN), and the central authority in matters of adoptions and in charge of monitoring public and private orphanages, as well as the registration of sheltered children and adolescents in orphanages (CNA).

2.5 Role of Judges for Children and Adolescents in the Reintegration of Children and Adolescents into their Family Environment: Obstacles and Challenges

⁶⁷ Instituto Centroamericano de Estudios Fiscales (ICEFI). (2016). Pobreza multidimensional infantil y adolescente en Guatemala. Privaciones a superar (*Multidimensional child and adolescent poverty in Guatemala*). ICEFI 2016. Page 28.

National court coverage has expanded over the years. In 2011, the Metropolitan Children and Adolescents' Court was inaugurated under a hearing-based model to expedite proceedings. It incorporates the Attorney General's offices and Multidisciplinary teams; resources that the judges did not have previously. Currently, there are 30 Specialized Courts comprising 41 judges, and each Judge has a complete multidisciplinary team that includes a Social Worker, a psychologist, and a pedagogue, in addition to creating the position of babysitter, which allow for the specialized care and protection of children and adolescents while they remain in court. In addition, 17 jurisdictional Chambers are competent to hear cases about children and adolescents and 376 Justices of the Peace know about the issue of children and adolescents and juvenile criminal justice. The Children and Adolescents' Courts are in Guatemala, Jutiapa, Jalapa, Santa Rosa, Suchitepéquez, Quiché, San Marcos, Izabal, Escuintla, Quetzaltenango, Alta Verapaz, Baja Verapaz, Chimaltenango, Sacatepéquez, Petén, Izabal, Sololá, Chiquimula, Zacapa, and Retalhuleu.⁶⁸

In recent years, there has been some visible progress in the matter of children and adolescents, especially concerning coverage and support from authorities high up in the Judicial Branch. Regarding actions carried out by the children's courts to reduce or avoid institutionalization, two factors influence the decision to resort to institutionalization:

1. Available services
2. Need and suitability of institutionalization⁶⁹

Regarding the first point, when hearing the case, analysis is carried as to whether the violated right that is being reclaimed can be restored through a social program or service, whether provided by the State or some other private non-profit institution, non-governmental organizations, etc. Regarding the second point, if the violation of the right is of such magnitude or difficulty that it cannot be restored through any measure other than institutionalization, then admission to an orphanage is ordered as all other mechanisms in favor of the child or adolescent have been exhausted. There are cases in which mothers approach the courts because gangs in the area where they live are threatening their children's lives, and they are asked if there is the possibility of moving to another home or sending the child with a relative somewhere else while the threat dissipates. However, when families are under-resourced, there are no alternatives, so the right to life should be weighed against the right to family life, there not being another option at that time other than institutionalization. The case is ordered to be monitored so that the duration of the child in the orphanage is kept to a minimum.

Among the existing obstacles is the shortage of services to which families can be referred to avoid institutionalization. Non-governmental organizations that offer their services in different areas free of charge have limited resources. When families resort to the State, the answer is that they no longer have the means to provide more services, be it in the form of day care, medicine, food, etc. The provision of ambulatory orphanage services would also be a good alternative; however, most households have not yet made this transition. The provision of ambulatory services refers to the fact that children and adolescents whose human rights have been violated can find restitution through access to services that orphanages could provide without the need for them to stay at the

⁶⁸ Judicial, P. G. (2019). Plan de Desinstitucionalización de Niños, Niñas y Adolescentes desde los Hogares Privados de Guatemala. Organismo Judicial. Guatemala 2019. (*Plan for the Deinstitutionalization of Children and Adolescents in Guatemalan Orphanages*)

⁶⁹ Ibid. Interview Calderón, Juan Orlando. 2019, July 19

orphanage and be separated from their families. An example could be that they receive psychological or physical therapy certain times a week but return home with their parents or legal guardians.⁷⁰

In relation to the different types of family that are regulated by law and those used by various courts on a daily basis without being regulated, in urban areas the recognized figures of a family environment are: family of origin, extended family, community family, and the comparable family, which in the department of Guatemala would be the godparents of the boy or girl.⁷¹

Among the challenges still facing the judiciary are:

- Court personnel must commit to their work and need more training in areas such as raising awareness and a Human Rights approach.⁷²
- Identifying available services where families can go to avoid institutionalization, which are scarce or null. For example, the times that they have requested cooperation from the Ministry of Social Development, the response has always been negative. There have also been several cases where parents must leave their children home alone because they have no one to take care of them, nor do not have the money to pay someone else, since they both work or are single parents. They could get help by leaving their children in day-care centers or nurseries, but the SBS responds by saying they do not have space available in their day-care centers or Center for Comprehensive care.⁷³

One advancement that is highlighted is that inter-institutional coordination has improved, though actions are still required to make it optimal. Among the actions that are carried out to avoid institutionalization is the referral to services that State or civil society entities can restore the violated rights of children and adolescents in cases where this is possible. In most situations, if the System for the Protection of Children and Adolescents had ambulatory services for health, medicine, food, and others, institutionalization would be minimal. However, as previously stated, the lack of basic services often leaves the Justice system with no alternatives.⁷⁴

2.5.1 Model of the First Instance Court for Children and Adolescents in Conflict with the Law of the Department of Quetzaltenango

The First Instance Court for Children and Adolescents in Conflict with the Law of the department of Quetzaltenango uses the following family typology when solving cases in its judicature, considering the customs and reality of the context and based on the Adoptions Law:

- **Community Family:** Those who are part of the community where the child has developed and lived. In order to determine if a child can be placed in one of these families, community leaders are consulted on

⁷⁰ Ibid. Interview Calderón, Juan Orlando. 2019, July 19

⁷¹ Ibid. Interview Calderón, Juan Orlando. 2019, July 19

⁷² Ibid. Interview Reyna, María Belen. 2019, July 19

⁷³ Ibid. Interview Reyna, María Belen. 2019, July 19

⁷⁴ Ibid. Interview Reyna, María Belen. 2019, July 19

the background of the case and it is therefore possible to determine how to proceed, in addition to the investigation that the PGN multidisciplinary team must carry out according to the law.

- Elective family: The child or adolescent in question asserts in an audience with which family they want to stay. The multidisciplinary team of the court, together with the Attorney General's Office, collect the necessary elements to determine the feasibility of accepting the selection of the child or adolescent.
- Comparable family: That family that, without there being consanguinity based on the laws that govern such matters, or any kinship with the child or adolescent they would host, has had a comparable social and affective relationship with the child or adolescent, for which reason it is also considered family.⁷⁵

Likewise, all these families must go through the process of investigation and it must be determined whether they meet the requirements to be considered as an ideal family resource.

The act of minding customs and the contextual reality is also because "informal" fostering is a daily practice in indigenous communities and constitutes an ancestral practice. Assuming that the different indigenous peoples that cohabit in Guatemala descend from the Mayan civilization, and that the history of exclusion has been the same in the last five centuries, it can be affirmed that it is a practice of the indigenous peoples of Guatemala.⁷⁶

In addition, considering that the principle of the best interest of the child is the exercise of the rights and interests oriented to the full development of the child, as a person, they imply not only primary rights such as a home, health or physical integrity, but also cultural rights such as ethnic identity, and with it spirituality, worldview, language, and culture, among others. Based on the principles of interpretation of human rights and the indivisibility of rights, this must constitute a practice throughout the System for the Protection of Children and Adolescents in Guatemala.⁷⁷

2.6 Experiences of Other Actors that are Allies of the System for the Protection of Children and Adolescents

2.6.1 Justice for Youth and Gender Project

The Justice for Youth and Gender Project of the United States Agency for International Development -Chemonics- has worked in alliance with the SBS to strengthen the Temporary Foster Families Program, by recruiting suitable families who wish to be part of the Program and thus increase the number of families willing to temporarily receive a child in their home.⁷⁸

⁷⁵ Interview Baquiáx, O. Judge, First Instance Court for Children and Adolescents and Adolescents in Conflict with the Law of the department of Quetzaltenango). 2019, August 21. (Claudia Archila, Interviewer).

⁷⁶ Morales, B. Peritaje Cultural sobre el Acogimiento Familiar Informal de Niños, Niñas y Adolescentes en Comunidades Indígenas (*Cultural Expertise on the Informal Foster Care of Children and Adolescents in Indigenous Communities*). Guatemala 2015.

⁷⁷ Op cit. Morales, Benito. 2015

⁷⁸ Interview Ramírez, Lorena. Institutional Specialist, Chemonics Justice, Youth and Gender Project. 2019, July 17. (Claudia Archila, Interviewer)

As a first step, the project cooperated with the creation and implementation of the *Alternative Care Model applicable to the Republic of Guatemala* and, based on this document, the SBS readapted its alternative family care regulations.

Likewise, it subcontracted the entity *Viva Juntos por la Niñez* to help the promotion, recruitment, and evaluation of families interested in being foster families. The goal was to recruit families to be transferred to SBS for accreditation; 59 families were certified.

The process began with the promotion of approximately **400 families**. Of these, approximately **300 (75%)** were evaluated, of which **59 (19.67% of those evaluated) were certified**. These families reside in the departments of Quetzaltenango and Guatemala, and most were recruited from evangelical churches. The process was carried out over the course of a year.

The coordination of institutions and the flow of information remain a challenge. Once these families are handed over to the SBS, the hope is that this family bank will be used.⁷⁹

2.6.2 Vida para Niños Orphanage

This orphanage has a population of girls who have been victims of sexual violence and girls who are mothers. A residential community, it provides shelter as well as therapeutic and medical treatment. It also assists in criminal proceedings against the aggressors and works together with the biological or extended families if necessary to prepare them to reintegrate the girls into a family environment in a successful way. After the reintegration, the orphanage continues to monitor families for approximately one year, whereby families - in audience with the judge - sign an agreement where both parties agree to fulfill certain obligations and responsibilities, always with the desire, as mentioned above, for there to be a successful reintegration.⁸⁰

Over the years, the orphanage has managed to have an accurate measure of the time it takes for this type of population to be able to be reintegrated into their biological family, which is approximately 15 months. Given the reasons for these girls' institutionalization, it is extremely difficult for them to be reintegrated in a shorter period of time. The factors that influence this period are:

- The time it takes to remove the aggressor from the victim's home, since he is generally a close relative or the father, stepfather, or partner of the mother, cousins, or aunts.
- The time that each therapeutic process lasts for both the girl survivor and the family, since for reintegration to be successful it is necessary to work with both, and not only with the girl.⁸¹

The following are some of the positive actions that have been implemented over the past years:

- The Timeline instrument: On a single sheet, they transcribe the time of each step of the process, starting with the hearing (reasons for its suspension), whether the PGN has submitted reports, a summary. Then, in a single document, it is possible to visualize and chronologically measure each girl's process. This same

⁷⁹ Op cit. Ramírez, Lorena. 2019, July 17.

⁸⁰ Interview Dukes, Corby, Herrera Donis, Floridalma, & Cabrera, Carmen. Vida para Niños Orphanage. 2019, July 18. (Claudia Archila, Interviewer)

⁸¹ Op cit. Dukes, Corby, Herrera Donis, Floridalma, & Cabrera, Carmen. 2019, July 18.

document shows the reasons why some cases have stalled and what actions can be taken to reactivate them.

- They have also implemented a program that promotes the figure of Mentors. The Director of the orphanage explained that he is aware of a percentage of the orphanage population (30% to 40%) that will not be able to reintegrate with their biological or extended family for various reasons. Some of these include the fact that their aggressors continue to live in the house with the consent of the mother, or because they lack a family. There is the need to look for other alternatives for these girls since they cannot stay in the orphanage their entire lives, and the healthiest and most appropriate thing to do is to support them in becoming self-sustainable. That is why the idea of the Mentor figure arose: couples who want to participate in the program are recruited in churches. They are given an explanation for the type of children sheltered in the orphanage. If they accept, they begin the process of getting to know the girl. Mentors are a benchmark of support for girls who have no family. They visit the girls in the orphanage and establish a friendship from which the girls can lean. There have been experiences where, once the girls turn 18, the mentors continue to communicate with them and continue supporting them even after they leave the orphanage.

It is important to point out that the SBS has five foster families for the care of adolescents that have been recruited through the Mentors Program. This is uncommon, since as mentioned above, most of the foster families are certified for children between 0 and 5 years of age.

The Mentors Program represents a small window of opportunity for these adolescents who enter the System for the Protection of Children and Adolescents.

2.6.3 Luis Amigó Orphanage

The Luis Amigó Orphanage belongs to the Conference of Religious Peoples of Guatemala (Conferencia de Religiosos y Religiosas de Guatemala, or COFREGUA in Spanish), which is a determined group of private orphanages with a Catholic religious base that provide humanitarian aid and protection to children and adolescents in need.

The home has a program called “Colaboradores Amigonianos,” which aims to attract groups of families who can provide those children and adolescents with no alternative to family reintegration the opportunity to live as a family during vacation or weekends. Families, recruited from within the religious congregation, participate in specialized workshops four times a year in order to prepare to collaborate with the children. In some cases, children who turn eighteen stay with the participating family.⁸²

2.7 Comparative Law Alternative Family Care Options

2.7.1 United States of America and Moldova

⁸² Interview Alvarez, Aura Marina. Member of the Board of Directors of the Conference of Religious of Guatemala -Confregua-. 2019, October 25. (María José Ortiz, Interviewer).

The initiative "Changing the Way We Care" seeks to take up good international practices so that, as much as possible, they are contextualized for Guatemala. For this, the experiences in the United States of America and Moldova, among others, have been analyzed.⁸³

In these places, there are several ways to provide temporary foster care to children who cannot be cared for by parents or legal representatives. Among the different forms are:

- **Foster care:** This type of care is temporary and the child or adolescent remains with a family that has been selected by the competent authorities during the time that it takes for the family to receive the child/adolescent back into their home. In Guatemala, this is known as a **foster family**.

Within foster care, there are alternatives depending on the timing of the measure:

- **Short / emergency foster care:** Families that will take care of children in emergencies and the foster care will last approximately 24 hours.
- **Short break foster care / respite:** This type of care is considered for those families or mothers who, due to their living and working conditions, are too physically and/or emotionally stressed to take care of their children daily. They therefore resort to this measure in which a family will take care of the child or adolescent to give the mother or parents time to rest for a few days, then the child/adolescent is returned to his/her parents. This alternative care modality does not exist in Guatemala.
- **Family foster care:** Families that are evaluated to temporarily take care for 5 to 7 children at a time. It is a figure that could work well with groups of siblings.
- **Long-term foster care:** It is an equally temporary type of foster care, but with the particularity that the time that the child stays with the foster family will be much longer than usual.

In addition to the temporary fostering modalities, there is a figure known as the **Kinship (guardiancy)**, through which the care and fostering of the child in question is given to the child/adolescent's extended or wider family, facilitated by state assistance. This can include grandparents, uncles, siblings, or a family friend with whom they have a relationship that is comparable to the one they have with their family of origin. Likewise, there is no institution in charge of verifying that children are indeed better in this environment since it is not a registered case and therefore does not have a follow-up mechanism. The United Nations Guidelines for the Alternative Care of Children urge States to seek mechanisms for the inclusion of these informal care mechanisms in the formal sector in order to carry out adequate control.

As in many countries, this figure occurs formally and informally. The formal way is when care is granted to a family, such as grandparents, through a competent court. The informal way is when it occurs naturally within communities. The problem with the informal route is that families find it difficult to access government services and assistance through social programs, since their situation is not formally established and therefore there is no supporting documentation. When they turn to aid institutions to access services, they are asked for

⁸³ Interview Bradford, Beth. Technical Director of the Changing the Way We Care Initiative. 2019, July 30. (Claudia Archila, Interviewer)

documentation that proves they have the child or adolescent legally. When they are unable to provide this proof, they are denied service.⁸⁴

Another form of alternative care is the one known as **Alternative care in small group homes**, which consists in residences run by a family where several children are accommodated. However, there are times when the caregiver family changes, so while it is indeed a form of alternative care, is not a form of family-based care, since the relationship with the family in charge of care is not stable or continuous, as it happens with the people in charge of the foster homes.

Among the options for the permanent restitution of the right to family, in addition to the successful reintegration that occurs with biological families, is adoption. On the subject of adoption, in the United States of America the legislation in each state is different, but in general terms, investigations to determine whether a child is given up for adoption are lengthy or simply not carried out within a reasonable amount of time.

In addition, in that country, adoption has several arms. For instance, there is **Open adoption**, where the biological and adoptive families maintain a relationship amongst each other, and where the adopted child/adolescent maintains a relationship with his or her biological family.

Unlike Guatemala, in the United States of America, foster families do have the option of applying for the adoption of the child they are fostering. This modality is known as **Foster to adopt**, and families that host a child as a foster family after some time, depending on the circumstances of each case, can request the adoption of the child they fostered. This is something that is known to families from the beginning of the process. Each case must be analyzed individually and in certain cases the legislation should consider the possibility that foster families may choose to adopt the children they foster.⁸⁵

Another Foster to Adopt modality is the one used by Buckner International in the United States, which includes the following options:⁸⁶

- **Foster care:** Provides temporary homes to children or adolescents who have been removed from their families due to abuse or neglect. Within this category are families that provide a special health service; for example, for children who need emotional therapy or who have some degree of mental or developmental disability. There are also group foster families, which house an average of 6 children or more, and emerging families caring for a child/adolescent for no more than 72 hours, after which they are placed with another foster family.
- **Foster care with the option of adoption:** Provides a permanent home for children who were previously in the care of a foster family, who in turn has the option of adopting the children they have fostered.
- **Open adoptions:** Provides permanent homes for children whose parents have decided to put them up for adoption without losing their relationship with their children by maintaining a relationship with the adoptive family. This program provides counseling services for parents who, during pregnancy, want to

⁸⁴ Op cit. Interview with Bradford, Beth. 2019, July 30.

⁸⁵ Ibid. Interview with Bradford, Beth. 2019, July 30.

⁸⁶ Foster Care and Adoption Ministry. Buckner. Link <https://www.buckner.org>. Visited 2019, August 23.

give their children up for adoption, explaining what this entails. It was established that 94 percent of parents who were accompanied during pregnancy decided to keep their children.

From the perspective of comprehensive human rights of children and adolescents, this figure makes a lot of sense. Previously, it was stated that, in principle, the foster family should be a temporary figure to ensure preservation with the biological or extended family. However, as is recommended by the Guidelines, within a comprehensive system for the protection of children and adolescents, there should be many options of alternative family-based care that can respond to each specific case and help resolve the specific need of each child or adolescent.

2.8 UNICEF: Alternative Care Perspective and Opinion of Agreement 40-2010 of the Supreme Court of Justice

Regarding Agreement 40-2010 of the Supreme Court of Justice, the interviewee considers that said agreement does have a Human Rights approach. Regarding the six-month period for children or adolescents to remain in foster homes, she indicated that this should be enough time for the System for the Protection of Children and Adolescents to carry out all the necessary actions to determine whether or not it is possible for the child or adolescent to be reunited with their family, or establish the declaration of adoption eligibility for the child/adolescent. What has happened is that the System for the Protection of Children and Adolescents has not been able to respond within the established deadlines.⁸⁷

Regarding the possibility of adoption by the foster families that have sheltered a child or adolescent, the interviewee indicated that, in principle, foster family care is a temporary measure while a permanent solution to the lack of a family environment is found for the child or adolescent. However, for nearly ten years while the Agreement has been in force, there have been cases where, for reasons beyond the control of the children, they have stayed in the foster families for more than six months, sometimes even years. These cases, which should be the exception, should be referred to the children's courts, and the declarations of adoption eligibility should be forwarded to the CNA so that this entity determines the viability of the families' requests to adopt the children or adolescents that they shelter. Among other things, it would be necessary to analyze the length of stay, the emotional bond, and the suitability of the adoption based on the best interests of the child.⁸⁸

UNICEF has been referring to the figure of the *permanent family* in various spaces. In this regard, the interviewee indicated that alternative family care modalities should include:

- **The foster family:** Temporary foster protection measure whereby a child is temporarily housed with a family with whom there is no blood relation.
- **The emerging (foster) family:** A foster family that will take care of a child only a few hours (generally 24 hours). An example would be a case where the extended family is unable to pick up the child immediately or needs a day to arrive where the child is being sheltered.

⁸⁷ Interview Muñoz, Dora Alicia. UNICEF Protection Officer. 2019, July 18. (Claudia Archila, Interviewer)

⁸⁸ Op cit. Muñoz, Dora Alicia. 2019, July 18.

- **The long-term/permanent family:** According to the interviewee, in this type of family, foster care is temporary. The difference is the period established in the current regulations (the SBS Temporary Foster Care Program Regulations), this format being generally applied according to the best interest of the child who needs to spend more time with the foster family. What has generated confusion is that the long-term family has been called a *permanent* family, since it seems that the foster care will be permanent. What the term actually refers to is the foster care period, so it should be called a long-term family instead of a permanent family. This could be included within the SBS Temporary Foster Care Regulation. This format would be ideal for those cases in which an adoption is not desired and it is sought not to break the link with the biological or extended family but, for conditions not surmountable at that time, the child or adolescent cannot be reintegrated with them.

The interviewee also commented that for the System for the Protection of Children and Adolescents to work well, it must have a range of options for protection measures that can be chosen according to how suitable they are for each specific case. For example, in the case of children with disabilities, programs in other countries have been implemented with tutors/educators. In these programs, two or three children or adolescents with different previously analyzed disabilities are housed together so that they can complement each other, and are placed in the care of one or two mentors (a couple) with experience and knowledge in the management of these disabilities. There, they are taught to take care of themselves, and have as independent of a life as possible.⁸⁹

In cases where the disability is of such magnitude that they cannot take care of themselves, the Ministry of Health must implement mechanisms and programs to provide each case lifelong and specialized support. In cases of children or adolescents who reach adulthood, the State must establish transition houses so that they can be transferred and follow up with them anywhere between six months to a year so that they learn to fend for themselves, acquire a trade, learn how to manage their money, obtain employment, etc.⁹⁰

Lastly, she mentioned that a comparable family is one that is made up of people who have had a relationship with children and adolescents for most of their lives and recognize each other as family. Generally, informal foster care occurs in comparable families; however, this type of (informal) foster care cannot be formally recognized and the State has to find mechanisms for people to inform the authorities about the foster care they provide to these children and thus provide adequate monitoring.⁹¹

2.9 Other National Legislation to Consider

It is considered important to highlight what Decree-Law 106 of the Republic of Guatemala Civil Code establishes in Article 221, which is that paternity can be judicially declared when:... 2: the pretensor is in notorious possession of status of son/daughter of the alleged father.

⁸⁹ Ibid Muñoz, Dora Alicia. 2019, July 18.

⁹⁰ Ibid Muñoz, Dora Alicia. 2019, July 18.

⁹¹ Ibid Muñoz, Dora Alicia. 2019, July 18.

Additionally, Article 223 says: In order for there to be notorious possession of status, the alleged child must have been treated as such by his/her parents or relatives and, in addition, any of the following circumstances are established:

- They have provided for their subsistence and education;
- That the child has used, constantly and publicly, the father's last name; and,
- That the child has been presented as such in the social relations of the family.

As can be seen, Guatemalan legislation makes an assessment of social and family relationships in people's lives, giving a legal solution, such as the declaration of notorious possession of status, so as not to leave people unprotected under this circumstance, especially children and adolescents that grew up in a family environment other than their biological family. As mentioned, it is necessary to find a mechanism and take advantage of situations already regulated by law, to incorporate informal family care into the formal sector.

2.10 Regulation of Foster Care Protection Measures in Other Latin American Countries

Comparative Table No. 1: Internal legislation

No.	Country	Legislation	Regulation of alternatives
<i>Guideline 10: All decisions concerning the child’s alternative care should take full account of the desirability, in principle, of keeping the child as close as possible to his or her habitual place of residence, in order to facilitate contact with - and possible reintegration into - their families and to minimize disruption to their educational, cultural and social lives.</i>			
1.	Peru	Foster Care Law: Foster care is designed to ensure that children and adolescents who are unable to live with their parents do so exceptionally and temporarily with a family nucleus that allows them the restoration, the enjoyment, and the exercise of their right to live in a family and provides them with the necessary care for their development, provided that it is in their best interests.	These figures are regulated according to internal legislation.
2.	Colombia	There is no specific legislation on children and adolescents separated from family care in its legislative framework. The legislation only stipulates that the State must guarantee the right to a family, stating that they must be reintegrated into their families of origin, placed in the extended or adoptive family, but does not provide alternatives for those who do not have any of these options, so they remain in long-term institutions. There are administrative guidelines established by the Colombian Family Welfare Institute (Instituto Colombiano de Bienestar Familiar, ICBF, in Spanish)	The Childhood and Adolescence Code defines the placement of a child or adolescent in a family of origin or extended family; a halfway house, as a temporary measure when no family appears, or is responsible for its care and which may not exceed eight working days; foster care, consisting of a family that commits to providing care and attention in place of the family of origin, for the shortest time possible, but not for more than six months; and adoption.

	<p>on protective entities and/or different forms of care regulated in the country.</p> <p>Case law refers to sentences for the resolution and interpretation of cases relating to children and adolescents, highlighting the constitutional jurisprudence in the case of sentences issued on guardianship actions to guarantee the right of children and adolescents to have and not be separated from a family.</p>	<p>The Constitutional Court has implemented measures to prevent institutionalization, so that the child can be temporarily placed in family foster care, while determining whether he or she is reintegrated with his or her family of origin, or declared eligible for adoption.</p>
<p>Source: SOS Children's Villages International Latin America and the Caribbean Region. (2016) Analysis, Reflections and Challenges in the Implementation of UN Guidelines for the Alternative Care of Children. Montevideo, Uruguay: Pages 7-27. Link: https://www.aldeasinfantiles.org/getmedia/69048d29-462d-4c77-9a76-ee3c58bf054f/Directrices-assessment-LAAM_ESP.pdf</p>		

Comparative Table No. 2: Public Policies and Programs

No.	Country	Public Policy or Program	Inclusion of alternatives
<p><i>Guideline 33. States should develop and implement coherent and mutually complementary family-oriented policies to promote and strengthen the ability of parents to fulfil their child-care responsibilities.</i></p>			
1.	Argentina	<p>National Action Plan for the Rights of Girls, Boys and Adolescents 2012-2015, the objective of which is to create conditions for the effective fulfilment of the rights of children and adolescents, in their capacity as citizens, through the development of comprehensive public policies, implemented at the inter-institutional and inter-sectoral levels, and with a territorial approach.</p> <p>The Ministry of Education implements the National Child Development Program (Programa Nacional de Desarrollo Infantil) through various strategies aimed at raising awareness of the importance of the first years of life and the role of adults. It implements training activities to support upbringing, families, and the community.</p> <p>The National Early Childhood Program (Programa Nacional Primeros Años) of the National Council for the Coordination of Social Policies aims to establish a comprehensive approach to the development of children ages 0 to 4 in their family and community context.</p>	<p>Exceptional measures should consider temporary stay in family settings as an alternative. The measures consist in the search for, and identification of, persons connected with children through lines of kinship by consanguinity or affinity, or with other members of the extended family or community, as is customary. Only in an exceptional and subsidiary manner and for the shortest time possible a form of coexistence can be used as an alternative to that of the family group, and the return of the children and adolescents to their family and community group or environment should be encouraged through rapid and agile mechanisms. These measures taken in relation to groups of siblings must preserve their coexistence.</p> <p>The lack of economic, physical, policy or program resources of the administrative body shall not be a justification for the application of an exceptional measure.</p>

		<p>The Growing Together Program (Programa Creciendo Juntos) proposes to build, expand, and equip early childhood care facilities, with the aim of improving the conditions for the care and education of children.</p>	
2.	Paraguay	<p>In 2012, the National Special Protection Policy (Política Nacional de Protección Especial, PONAPROE, in Spanish) was approved by the National Council for Children and Adolescents for the period 2012-2018. This policy specifically addresses the situation of children and adolescents separated from their family environment.</p> <p>The <i>overall objective</i> of PONAPROE is the promotion and protection of the rights of children and adolescents and their comprehensive care in all situations in which, for various reasons, they are separated from their families.</p> <p>It considers three specific objectives, namely:</p> <ol style="list-style-type: none"> 1. Strengthening the permanence of children and adolescents in their families of origin. 2. The formulation of alternatives for comprehensive care in cases where they are separated from such an environment, promoting the link with the family of origin and establishing reintegration into the family nucleus as the central strategic axis. 3. Promotion, support, and strengthening of alternatives for the care of children and adolescents deprived of their family environment. Its strategies include the search and tracing of biological families, the maintenance of ties, and foster care in families in the community. 	<p>Among others, article 34 of the Children and Adolescents Code provides for material support for the child or adolescent, shelter, placement of the child or adolescent in a foster family, and placement of the child or adolescent in a home.</p> <p>Article 35 provides that the shelter consists of the placement of the child or adolescent in an entity for the protection and care of the child or adolescent. The measure is <i>exceptional and temporary and is ordered only when it is intended and necessary to prepare the application of a measure of placement of the child or adolescent in a foster family, or the placement of the child or adolescent in a home.</i></p> <p>The protection and support measures referred to in Article 34 may be ordered separately or jointly, and may be changed or replaced, if the wellbeing of the child or adolescent so requires.</p>

3.	Uruguay	<p>The National Strategy for Children and Adolescents 2010-2030 and its Plan of Action 2010-2015, which defines universal public policies in support of families as actions for their implementation.</p> <p>There is also the Plan for Centers for the Comprehensive Care of Children and Families (Plan de Centros de Atención Integral a la Infancia y las Familias, or CAIF, in Spanish) as an inter-sectoral public policy of partnership between the State and civil society organizations that helps to ensure the protection and promotion of the rights of children from conception to the age of three.</p> <p>Its objectives are to provide care and learning opportunities, promote the well-being and development of children, strengthen links between adult referrals and children, enhance adult parenting skills, and enable the full participation of children, families and communities.</p>	<p>Ambulatory measures for children and adolescents: the Uruguayan Institute for Children and Adolescents (Instituto del Niño y Adolescente del Uruguay, or INAU, in Spanish) provides protection for their rights through the comprehensive day-care system.</p> <p>Requests for ambulatory medical, psychological, or psychiatric treatment from public or private institutions: the INAU may directly request or apply these measures, when their intervention has been requested by the child, parents or responsible persons, or concerned third parties.</p> <p>Family alternative programs: the judge may place the child or adolescent seriously threatened in his or her right to life or physical integrity or deprived of his or her family environment in the care of a person or marriage selected by INAU, which commits to providing comprehensive protection.</p>
4.	Perú	<p>National Plans of Action for Children and Adolescents 2002-2010 and 2012-2021 establish the strengthening of the family as a guiding principle for the comprehensive development and well-being of children and adolescents..</p>	<p>Temporary protective measures are applied in order to guarantee the right of the child or adolescent under guardianship to develop fully within his or her biological family or, failing this, in an appropriate family environment. The priority of strengthening family and community ties, as well as the treatment of cases as human problems, should be kept in mind for its implementation.</p>
<p>Source: SOS Children's Villages International Latin America and the Caribbean Region. (2016) Analysis, Reflections and Challenges in the Implementation of UN Guidelines for the Alternative Care of Children. Montevideo, Uruguay: Pages 7-27. Link: https://www.aldeasinfantiles.org/getmedia/69048d29-462d-4c77-9a76-ee3c58bf054f/Directrices-assessment-LAAM_ESP.pdf</p>			

Comparative table No. 3: Alternative Care Options

No.	Country	Existing alternative care options
<p><i>The Guidelines consider that alternative care decisions should take into account the desirability of keeping the child as close as possible to his or her residence, in order to facilitate contact with - and possible reintegration into - his or her family of origin. They also note that residential care should be limited to favorable (appropriate, necessary, and constructive) environments that are in the best interests of the child and that States should ensure that there are a range of alternative care options consistent with the general principles of the Guidelines for Emergency Care and Short-term and Long-term Care.</i></p>		
1.	Argentina	<p>Temporary stay in alternative family settings. The measures consist in the search for and identification of persons related to them, through lines of kinship by consanguinity or affinity, or with other members of the extended family or community, according to local custom, in all cases taking into account the views of children and adolescents.</p> <p>Only in an exceptional and subsidiary manner, and for the shortest time possible, can a form of coexistence be used as an alternative to that of the family group. The return of the children and adolescents to their family and community group or environment should be encouraged through rapid and agile mechanisms.</p> <p>Foster care in alternative family settings is seen as a priority option over institutional settings, in order to guarantee the care and development of children and adolescents, while measures are being developed and implemented to overcome constraints, obstacles, or difficulties within their own family. These are exceptional proceedings and/or instances of restrictive use for the reparation and restitution of rights, the focus of which is transitory work and socio-familial work towards overcoming the causes that led to the separation of the family group.</p>
2.	Chile	<p>Foster Families Program: Aimed at providing the child or adolescent whose rights have been violated with a family environment in which to live, through foster families.</p> <p>Simple Foster Families: A program designed to provide the child or adolescent whose rights have been violated with an alternative place to live, since he or she must be separated from his or her family of origin.</p> <p>Specialized foster families: A program designed to provide an alternative group to live in, providing specialized care and support to children and adolescents who must be separated from their families of origin. These are victims of serious violations of their rights, which have had consequences for their social, physical, psychological, affective, sexual, cognitive, and behavioral development. It provides that special attention will be given to victims of commercial sexual exploitation, street situations, drug abuse, and offenders who are not criminally liable.</p> <p>Foster families for children and adolescents with disability: A program designed to provide specialized care and attention to those suffering from some type and degree of disability. In this regard, the law defines the precise category of disability to be addressed, according to whether the disability is serious, discrete or moderate or profound physical/sensory disability.</p>

3.	Colombia	<p>Placement in a family of origin or extended family: The placement of the child or adolescent with his or her parents or relatives in accordance with Article 61 of the Civil Code, when they provide the conditions for guaranteeing them the exercise of their rights.</p> <p>The relationship article of the Civil Code defines relatives as “descendants; ascendants, in the absence of descendants; natural father and mother who have voluntarily recognized the child in the absence of descendants or ascendants; and the adoptive father and mother, or the adopted child, in the absence of relatives (...). Legitimate collateral up to the sixth degree, in the absence of relatives (...); natural siblings, in the absence of relatives (...); legitimate kindred members who are within the second degree, in the absence of the blood relatives previously mentioned.”</p> <p>Placement in a halfway home: A temporary measure consisting of the immediate and temporary placement of the child or adolescent with families forming part of the network of halfway homes. It is appropriate when the parents, relatives, or persons responsible for their care and attention do not appear. Its duration may not exceed eight working days, during which time the competent authority must order another protection measure.</p> <p>Placement in a foster home: Placement of the child or adolescent in a family that commits to providing the necessary care and attention in place of the family of origin. It shall be decreed for the shortest time possible, not exceeding six months.</p> <p>Specialized care programs for the restoration of violated rights: This consists of care for comprehensive protection 24 hours a day, 7 days a week, depending on the particular situation of violation. Duration of stay is for six months, considering exceptional situations in which it will be necessary to extend the stay.</p> <p>Location in emergency centers: In cases where placement in halfway homes is not appropriate.</p> <p>Group Home: A 24-hour, 7-day-a-week form of alternative care for children and adolescents (maximum of 12 between the ages of 7 and 18), with priority given to groups of siblings. It is accompanied by adults who assume parental responsibilities in order to bring about coexistence with fraternal relationships. A family environment is promoted in the care process. The stay should be 6 months, considering exceptional situations in which it will be necessary to extend the stay.</p> <p>Boarding school for the diagnosis and reception of children aged 0 to 8 (institutions authorized for the development of the adoption program): Residential care for children between the ages of 0 and 8 declared eligible for adoption. It is estimated that there will be a stay of one year, considering that the stay may be extended in exceptional situations.</p> <p>Residence for people with disabilities: Specialized 24-hour care services 7 days a week for children or adults over 18 years of age (when they have been admitted as minors) with disabilities in a condition of non-respect, threat, or violation of rights. The length of stay is 1 year and can be extended in exceptional situations for as long as necessary.</p> <p>Residence for people with psychosocial mental disabilities: Provide care 24 hours a day, 7 days a week for children, adolescents, and persons over 18 years of age, with a declaration of violation or eligibility for adoption. Placement of 1 year, with prolongation considered in exceptional circumstances.</p>
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4.	Paraguay	<p>Regulations on Alternative Care for Children and Adolescents in Foster Care Programs and Shelters (Art. 25-34)</p> <p>Foster care: a=A child or adolescent, deprived of his or her family unit by court order, may be temporarily taken in by a family through care, guardianship, or definitively by adoption.</p> <p>Formal foster care: Alternative care provided by the extended family or by third parties who are not relatives accredited as specialized foster families, or who have judicial custody of the child or adolescent without the purpose of adoption.</p> <p>Extended family: Members of the child or adolescent’s extended family provide foster care. Persons with kinship ties up to the fourth degree of consanguinity, or the second degree of affinity of the child or adolescent may provide extended family foster care, as well as persons who are proven to be part of the close emotional environment of the child or young person.</p> <p>Specialized foster family: Foster care carried out by persons who are part of a specialized, public, or private foster care program, which is duly accredited by the National Secretariat for Children and Adolescents.</p> <p>Temporary foster families: Families who are responsible for the care of children and adolescents, while maintaining ties with their families of origin in order to determine their possibilities for family reintegration, their incorporation into an adoptive family, or the implementation of another protective measure.</p> <p>Long-term foster families: Families who take care of a child or adolescent for long periods of time, which may last for years; even until he or she reaches adulthood. This modality should be thought of only for those who could not be reintegrated into families of origin, and who, having been declared in a state of adoption, could not be placed in an adoptive family either.</p> <p>Residential care or shelter: The alternative care taken by an entity for the protection of small groups of children or adolescents, in a model of personalized care in terms of its dynamics and infrastructure. This modality refers to a model of care in small groups, in which a person is specifically hired to develop the role of an effective care and protection referent for a maximum number of 8 children and adolescents per residential unit.</p>
5.	Peru	<p>Foster care: A measure of temporary protection applied to children and adolescents who are in a situation of abandonment or lack of family protection in order to be integrated into their extended family or into a previously assessed or selected non-consanguineous family.</p> <p>In addition, it establishes that the extended family or third parties with emotional ties or affinity may apply for foster care in situations of family vulnerability or risk, the threat or violation of their rights, or when parents are unable to fulfil their parental obligations due to serious or exceptional circumstances.</p> <p>Foster care in the extended family: Considers grandparents and relatives up to the fourth degree of consanguinity and the second degree of affinity, for the purpose of temporarily replacing their family nucleus and assuming guardianship responsibilities in accordance with the law.</p> <p>Foster care in a non-consanguineous family: This occurs when the child or adolescent is taken in by family referrals or other suitable persons who, without being related to him or her, constitute</p>

		<p>a positive and appropriate environment for the protection of the holder of the measure. The family shall also assume guardianship responsibilities in accordance with the law.</p> <p>Residential Care Center (Centro de Atención Residencial, or CAR, in Spanish): Defined as the physical space administered by a public, private, mixed, or communal institution where children and adolescents in situations of abandonment or risk live, providing them with the protection and comprehensive care they require, according to their particular situation, in an atmosphere of good treatment and security, with the main objective of promoting their family and social reintegration or promoting their adoption.</p>
6.	Uruguay	<p>Foster families: Families with a strong social commitment, a sense of solidarity, and complementarity. They provide a temporary space in their homes to children and adolescents who are going through complex family or life situations until their situation is resolved and they can return to their families of origin or become part of a new family through adoption, if conditions of adaptability exist.</p> <p>Provisional internment: <i>This is a last resort when the best interests of the child or adolescent so require, as they are exceptional circumstances.</i></p> <p>With the exception of provisional internment, the child or adolescent's physical care may not exceed the time limit of <i>45 days for children under two years of age and 90 days for those over that age.</i></p>
<p>Source: SOS Children's Villages International Latin America and the Caribbean Region. (2016) Analysis, Reflections and Challenges in the Implementation of UN Guidelines for the Alternative Care of Children. Montevideo, Uruguay: Pages 7-27. Link: https://www.aldeasinfantiles.org/getmedia/69048d29-462d-4c77-9a76-ee3c58bf054f/Directrices-assessment-LAAM_ESP.pdf</p>		

As can be seen from the table above, some countries with family care alternatives have different approaches to meeting different needs. For example, we see cases such as Paraguay where, within the authorized *foster families*, the child or adolescent may stay for years. This is an option for children and adolescents who could not be reintegrated with their family of origin. There is also the *specialized family*, consisting of persons specifically assessed for the care of children with certain characteristics or *temporary foster families*, which foster a child or adolescent while carrying out the process of maintaining the bond with his or her family of origin, which allows determining the possibilities of reintegration, application of another measure, or adoption.

The Systems for the Protection of Children and Adolescents must regulate a variety of alternative family care options, with different placement periods, for special care situations such as disability, for responding to adolescents who can no longer be reintegrated with their biological or extended family, or when adoption is not an alternative for them.

Based on the normative analysis carried out, both of national legislation and of the Convention on the Rights of the Child, and based on the recommendations of the Guidelines on Alternative Care for Children and the valuable information provided by the institutions mentioned in this study, the following conclusions and recommendations are presented.

III. Conclusions and Recommendations

3.1 Conclusions

1. Due to structural deficiencies, the Guatemalan State does not have an articulated system of social protection that provides children and adolescents with services and sufficient quality care for the well-being of families, preventing the unnecessary separation of children and adolescents from their families. These services include food and nutritional care, health care, employability, day-care centers, parental education, and others, which in many cases results in the institutionalization of children and adolescents. Some non-governmental organizations offer their services in different areas free of charge, but they have limited resources.
2. The legislation establishes that poverty cannot alone be a sufficient reason for institutionalization. However, the results of the latest census of children and adolescents in temporary protection homes reveals that many of the causes are linked to poverty, given the lack of basic subsistence services such as food, access to health, education, or social programs to support families.
3. Orphanages (*hogares de protección*) are viewed as an immediate solution to the lack of social development services. However, they ultimately constitute a palliative measure, which is detrimental to the comprehensive development of children and adolescents, especially when separation from the family and community environment is prolonged. In some cases, officials of the System for the Protection of Children and Adolescents also find institutionalization to be an alternative to these problems.
4. The concepts behind the meaning of the causes of institutionalization are not unified; that is, within the category of social risk, many situations can be encompassed with a discretionary approach, such as living in red zones. Red zones are those taken by gangs that forcibly recruit children and adolescents under threat of death, so that families, having no resources to move from their homes, go to the courts to request that their children be placed in an orphanage because they fear for their lives. The term is also often used to refer to extreme conditions of poverty.
5. Efforts to have a unified data registry in the System for the Protection of Children and Adolescents are not new. However, each institution safeguards its information without sharing it, even with institutions of the same system, in many cases because of the fear that the data might be misused. However, case management becomes extremely difficult from the lack of accurate statistical data, and the fact that a lot of time is spent looking for qualitative information which contributes to an adequate approach, making it impossible to have more agile interventions.
6. To date, there is substantial information and data showing the number of years that certain children and adolescents have been living in orphanages, noting that in some cases they have been in orphanages practically all their lives, without state institutions being able to restore, in the best possible way, all the rights that have been violated.
7. The PGN's case management system through the Office of the Procurator for Children and Adolescents makes it possible to determine whether the case merits prosecution or whether it can be resolved through an administrative procedure, referring the case to ambulatory care services with areas of health, education, and special protection, such as non-residential SBS programs, which have helped to reduce the

number of institutionalized children and adolescents by a large percentage. This is a major step forward in restoring the rights of children and adolescents who fall into the System for the Protection of Children and Adolescents. The importance of this mechanism in controlling the entry of cases into the System should be recognized. The current challenge remains in taking this approach to all Regional Delegations and to be able to count on sufficient specialized staff to respond to the volume of cases that are addressed every day.

8. Through strategic alliances with non-governmental entities and civil society, the SBS succeeded in expanding the Temporary Foster Families Program by increasing by approximately 50 per cent the number of foster families certified to temporarily accommodate a child or adolescent. However, there is a lack of decentralized procedures and strategies for following up on families. The new model of Temporary Family Foster Care rightly envisages that children and adolescents should not lose touch with their families of origin and that a solution should be worked with them to eliminate the reasons why children and adolescents were separated from their families in the first place.
9. It is also important to point out that, over the years, there has been a considerable number of informal placements within communities in Guatemala. Although they fulfil the objective of providing children and adolescents without parental care with a family environment with persons within the same community or known persons, the problem is that since such placements are not formally accredited, there is no state institution ensuring that children and adolescents actually enjoy their rights with these persons.
10. The factors behind the lack of protection that lead to the separation of children and adolescents from their family environment are often due to structural social causes and a lack of essential services that require a family approach of more than six months. By placing a time limit in internal agreements and regulations, the Supreme Court of Justice, the SBS, and the CAN generate an interpretation that is not consistent with the principles of necessity, the appropriateness, and the impact of the guidelines on alternative care for children and adolescents. As a result, the protection measures are amended even if the variation is not in the best interests of the child. On the other hand, the deadline is not met due to the lack of capacity of the state institutions that guarantee protection. However, it is necessary for the institutions to have human, financial, and technical resources to provide coverage within the scope of their competence.
11. Regulations are currently in place to deal with past irregularities in the adoption process and with bad practices involving foster care. However, ten years later, it is appropriate to review this regulation, since children's rights must be dynamic and constantly updated, defining legal parameters tailored to their best interests and needs, without compromising objectivity, security, and transparency in the processes.
12. This policy review also implies advocating the right of the child to have his or her best interests taken as a primary consideration in all actions or decisions that profoundly affect them, such as the selection of a final measure like adoption.
13. Foster families are, in principle, a temporary solution. However, when placement in the foster family has been extended over time, a deep bond occurs and that foster family becomes the family of the child or adolescent. The child or adolescent should have the right to have his or her emotional stability and emotional bond considered in the selection of his or her permanent family, considering the possibility that the institution responsible for adoption may allow the child or adolescent to remain in the family where they have been placed, when so advised by their best interests.

14. In addition, according to the Adoptions Law, which is the highest law in the matter of restitution of the right to a family, the CNA's Multidisciplinary team should assess the suitability and feasibility of adoption by the foster family on a case-by-case basis, in accordance with the established legal parameters, as well as the psychosocial and cultural context.
15. It is important to highlight the fact that Decree-Law 106 of the Republic of Guatemala Civil Code provides for an assessment of social and family relations in the lives of persons, in this case children and adolescents, and provides a legal solution, such as the declaration of notorious possession of status, to not leave them unprotected. This considers that they grew up in a family environment other than their family of origin or in informal situations that can be officially considered formal foster care, always taking care of institutionalism, minimum guarantees, and transparency.
16. The Guidelines for the Alternative Care of Children is an international instrument that guides State Parties in directing and framing policies and actions related to children and adolescents, framed and adapted to each national legislation, under the principles of necessity and convenience, always seeking to make the best decision for children and adolescents in an individual and specialized manner. As proposed in the Guidelines, it is important to have a range of alternative family care options in Guatemala that respond to different needs on a case-by-case basis, to achieve an assessment based on the best interests of the child, and to place him or her in an environment that best corresponds to his or her reality and well-being.
17. In accordance with the aforementioned legal instrument, mechanisms for the inclusion of existing informal care should be implemented and the necessary mechanisms should be sought to make them part of existing legislation, always making a preliminary analysis that considers best practices, and discarding those that are considered harmful to the restitution of the rights of children and adolescents.
18. At the time of the present study, the SBS Temporary Foster Department has a team of eight persons to provide follow-up in the field throughout the Republic of Guatemala for children and adolescents in temporary foster families, which limits proper follow-up through an orderly case management process.
19. The SBS has 16 departmental offices that decentralize the services and programs of the institution. However, with regard to the Temporary Foster Families Program, they are making incipient efforts to effectively decentralize the program, but this has not materialized.
20. Of all the applicant families assessed by the SBS to become Foster Families in 2019, only 19.67% were eligible to be certified to receive a child or adolescent.

3.2 Recommendations

1. After clarifying that *poverty is indeed a cause of institutionalization in Guatemala*, the State must urgently take action on existing public policies that generate adequate conditions for families to develop together, as well as access to family strengthening programs and basic services. This would enable parents and legal representatives of children and adolescents to remain with their children and children and adolescents to develop within their family and community environment.
2. Based on the best practices implemented in other countries that were analyzed in the present study, it is recommended that the SBS evaluate the creation of a whole spectrum of alternative family care, according to the method of measurement and the particular needs and special conditions of children and adolescents, incorporating them into the SBS Temporary Foster Care Regulations.
3. A necessary and positive alternative that was identified is the transformation of services currently provided by some of the private orphanages to provide care on an ambulatory basis. Most of these have not yet made this transition. The provision of services on an ambulatory basis refers to the fact that children and adolescents whose human rights are violated can find their restitution through access to services that could be provided by orphanages without the need for them to be separated from their families or having to stay in the care facilities. For example, they may receive psychosocial, medical or educational care on a weekly basis, but return home with their parents or caregivers.
4. The institutions of the System for the Protection of Children and Adolescents must reach a consensus that only when there is no other measure that can resolve the violation equally or better, should the child or adolescent be separated from his or her family environment.
5. With a view to ensuring adequate follow-up and monitoring mechanisms for the restoration of the rights of children and adolescents that respond to their best interests, it is imperative to have a single registry between the Judicial Branch (OJ), special protection (SBS), representatives of children and adolescents (PGN), and the central adoptions agency in charge of supervising public and private orphanages, as well as the registry of institutionalized children and adolescents (CNA).
6. As a matter of urgency and priority, it is recommended that the institutions establish a plan to strengthen human resources and tools for the effective decentralization of functions at the national level. The PGN, for instance, should recruit dedicated personnel to deal with cases of children and adolescents. The SBS should focus on the decentralization of protection and prevention programs through the departmental headquarters, especially the temporary foster care program. The Judicial Branch should consider the separation of the specialized justice for the special protection due to human rights violations from the specialized justice for adolescents in conflict with the law, since there are courts that hear both cases.
7. It is important to note that, if there are capacity constraints in the metropolitan area, this is aggravated at the national level where there are the greatest conditions of vulnerability, and it is not recommended that teams from the metropolitan area attend to all problems and cases at the national level. This is because decisions must be culturally sensitive and include a gender-based focus. This requires specialization, achieved through the training and education of all personnel dedicated to prevention and protection at the national level.

8. Another recommendation is that the SBS review the criteria for the certification of foster families, considering that in 2019, of the families that were evaluated only 19.67% were certified to become temporary foster families. It is important to have diagnostic information on families that were not suitable to establish a differentiated strategy focusing on the myths or particular situations that families face in order to become suitable for temporary foster care.
9. Strengthen the departmental offices of the SBS to promote effective decentralization of the Temporary Foster Care Program in all processes such as the promotion and contextualization of the cultural and specific needs of each department, as well as the assessment of families and follow-up when reunification takes place. The latter is important both in the development and in preparation of families and children and adolescents, providing them with the necessary support to encourage a renewal of ties with the family of origin or extended family if possible, with the ultimate aim of promoting early and timely reunification.
10. It is recommended that the institutions linked to the System for the Protection of Children and Adolescents promote the revision of Agreement 40-2010 of the Supreme Court of Justice, in line with international standards, to enable judges to decide on the human rights restitution plan according to the particular circumstances of each case. This does not imply that, at the end of the prescribed period, the protection measure should vary to the detriment of the best interests of the children and adolescents. The monitoring of the time limit should in turn consider the findings of administrative follow-up to determine whether the prolongation is due to inactivity of the persons responsible for taking action, overseeing the corresponding administrative consequences for non-compliance.

References

- Aldeas Infantiles SOS Internacional Región América Latina y el Caribe. (2016). Análisis, Reflexiones y Desafíos en la Implementación de las Directrices sobre Modalidades Alternativas del Cuidado de los Niños. Montevideo, Uruguay: Aldeas Infantiles SOS Internacional Región América Latina y el Caribe. (*SOS Children's Villages International LAC Region. Analysis, Reflections and Challenges in the Implementation of UN Guidelines for the Alternative Care of Children*)
- Alvarez, A. M. (2019, octubre 25). Integrante de la Junta Directiva de la Conferencia de Religiosas y Religiosos de Guatemala (CONFREGUA). (*Board Member, Guatemala Conference of Religious Peoples*) (M. J. Ortiz, Interviewer)
- Baquiáx, O. (2019, agosto 21). Juez de primera instancia de Niñez y Adolescencia y Adolescentes en Conflicto con la Ley Penal del departamento de Quetzaltenango (*Judge, First Instance Court for Children and Adolescents and Adolescents in Conflict with the Law of the department of Quetzaltenango*) (C. Archila, Interviewer)
- Bradford, B. (2019, Julio 30). Directora Técnica de la Iniciativa *Changing the Way We Care* (*Technical Director, Changing the Way We Care Initiative*) (C. Archila, Interviewer)
- Buckner. (2019, Agosto 23). Buckner, Foster Care and Adoption Ministry. Retrieved from <https://www.buckner.org>
- Calderón, J. O. (2019, Julio 19). Juez Cuarto de Primera Instancia de Niñez y Adolescencia del Área Metropolitana (*Fourth Judge, Metropolitan Area First Instance Court for Children and Adolescents*) (C. Archila, Interviewer)
- Celada, G. (2019, Julio 17). Coordinadora del Área de Recepción y Análisis de Denuncias de la Procuraduría de la Niñez y Adolescencia de la Procuraduría General de la Nación (*Coordinator, Area for the Reception and Analysis of Complaints of the Attorney General's Office for Children and Adolescents*). (C. Archila, Interviewer)
- Cid Gallup. (2019). Estudio de opinión sobre conocimientos, actitudes y prácticas sobre la separación familiar, hogares de protección y cuidado alternativo de niños, niñas y adolescentes a nivel institucional (*Opinion Study on knowledge, attitudes, and practices on family separation, orphanages, and alternative care of children and adolescents at the institutional level*). Guatemala.
- Código Civil, Decreto Ley 106 (Congreso de la República de Guatemala, octubre 07, 1963). (*Civil Code, Decree-Law 106, Congress of the Republic of Guatemala*)
- Comisión Internacional Contra la Impunidad en Guatemala. (2010). Informe sobre actores involucrados en el proceso de adopciones irregulares en Guatemala a partir de la entrada en vigor de la Ley de Adopciones. Guatemala: CICIG. (*International Commission against Impunity in Guatemala. Report on actors involved in the irregular adoption process in Guatemala upon the enactment of the Adoptions Law*)
- Constitución Política de la República de Guatemala (Asamblea Nacional Constituyente mayo 31, 1985). (*Political Constitution of the Republic of Guatemala*)

- Convención sobre los Derechos del Niño (Asamblea General de las Naciones Unidas Noviembre 20, 1989). (*UN Convention on the Rights of the Child*)
- Directrices sobre las modalidades alternativas del cuidado de los niños, Resolución 64/142 (Asamblea General de Naciones Unidas febrero 24, 2010). (*UN Guidelines for the Alternative Care of Children*)
- Dukes, C., Herrera Donis, F., & Cabrera, C. (2019, Julio 18). Hogar Vida para Niños. (C. Archila, Interviewer)
- Española, A. d. (2019, Julio 22). Real Academia Española. Retrieved from <https://www.rae.es/>
- GIZ. (2015). Guía Metodológica de transversalización del enfoque de interculturalidad en programas y proyectos del sector Gobernabilidad. Lima: GIZ. (*Methodological Guide for the Transversalization of the intercultural approach in government programs and projects*)
- Instituto Centroamericano de Estudios Fiscales (ICEFI). (2016). Pobreza multidimensional infantil y adolescente en Guatemala. Privaciones a superar. Guatemala: ICEFI y UNICEF. (*Central American Institute for Fiscal Studies. Multidimensional child and adolescent poverty in Guatemala*)
- Instituto Nacional de Estadística. (2018). XII Censo Nacional de Población y VII de Vivienda. Guatemala: INE y UNFPA. (*National Statistics Institute. XII National Population Census and VII Housing Census*)
- Judicial, P. G. (2019). Plan de Desinstitucionalización de Niños, Niñas y Adolescentes desde los Hogares Privados de Guatemala. Guatemala. (*Plan for the Deinstitutionalization of Children and Adolescents in Guatemalan Orphanages*)
- Kapustiansky, F. E. (n.d.). Acogimiento Familiar, Guía de Estándares para las Prácticas. RELAF, UNICEF. (*Family Foster Care, Standard Practice Guide*)
- Ley de Adopciones, Decreto número 77-2007 (Congreso de la República de Guatemala, diciembre 20, 2007). (*Adoptions Law, Decree No. 77-2007, Congress of Guatemala*)
- Ley de Protección Integral de la Niñez y la Adolescencia, Decreto Número 27-2003 (El Congreso de la República de Guatemala, junio 4, 2003). (*Law for the Comprehensive Protection of Children and Adolescents, Decree 27-2003, Congress of Guatemala*)
- Lineamientos Técnicos que establecen la participación de la Familia Sustituta y Hogar Temporal, Acuerdo interno No. CNA-CD-010-2010 (Consejo Nacional de Adopciones, agosto 17, 2010). (*Technical Guidelines establishing the participation of the Foster Family and Home, Internal Agreement No. CNA-CD-010-2010, National Adoptions Council*)
- Luna, M. (2018). Modelo de Cuidados Alternativos Aplicables en la República de Guatemala. Guatemala: USAID. (*Alternative Care Models Applicable in Guatemala*)
- Mayorga, M. (2019, Agosto 21). Asesora Legal de la Iniciativa Changing the Way We Care (*Legal Advisor, Changing the Way We Care Initiative*). (C. Archila, Interviewer)
- Mayorga, M. (2019). Informe sobre área de demostración. Guatemala: Changing the Way We Care. (*Report on demonstration area*)

- Mazariegos, A. (2019, Julio 12). Secretaría de Protección para la Niñez y Adolescencia y Justicia Penal Juvenil del Organismo Judicial (*Judicial Branch Secretariat for the Protection of Children and Adolescents and Juvenile Criminal Justice*). (C. Archila, Interviewer)
- Medrano, G. A. (2019, Julio 19). Ex Presidente de la Corte Suprema de Justicia y del Organismo Judicial, período 2009-2014 (*Former Supreme Court and Judicial Branch President, 2009-2014*). (C. Archila, Interviewer)
- Mejía, F. (2019, 07 22). Sub Coordinadora de la Unidad de Familia Biológica, Consejo Nacional de Adopciones (*Biological Family Unit Sub-Coordinator, National Adoptions Council*). (C. Archila, Interviewer)
- Mencos, M. d. (2019, Julio 17). Coordinadora del Área Interinstitucional de la Procuraduría de la niñez y la Adolescencia de la Procuraduría General de la Nación (*Inter-institutional Area Coordinator for the Office for Children and Adolescents, Attorney General's Office*). (C. Archila, Interviewer)
- Morales, B. (2015). Peritaje Cultural sobre el Acogimiento Familiar Informal de Niños, Niñas y Adolescentes en Comunidades Indígenas. Guatemala. (*Cultural Expertise on the Informal Foster Care of Children and Adolescents in Indigenous Communities*)
- Muñoz, D. A. (2019, Julio 18). Oficial de Protección de UNICEF (*UNICEF Protection Officer*). (C. Archila, Interviewer)
- Naciones Unidas, D. H. (2018). Las Víctimas del Hogar Seguro Virgen de la Asunción. Un camino hacia la dignidad. Guatemala. (*OHCHR. The Victims of Virgen de la Asunción Orphanage. A path to dignity*).
- Observación General No. 14: sobre el derecho del niño a que su interés superior sea una consideración primordial, CRC/C/GC/14 (Comité de los Derechos del Niño mayo 29, 2013). (*General Comment 14: on the right of the child to have his or her best interests as a primary consideration*)
- Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos. (2006). Preguntas Frecuentes Sobre el Enfoque de Derechos Humanos en la Cooperación para el Desarrollo. New York y Ginebra: Naciones Unidas. (*OHCHR, Frequently Asked Questions about the Human Rights Approach in Development Cooperation*)
- Ramírez, L. (2019, Julio 17). Especialista Institucional del Proyecto Justicia, Juventud y Género de Chemonics (*Institutional Specialist, Justice, Youth and Gender Project*). (C. Archila, Interviewer)
- Reglamento de la Procuraduría de la Niñez y Adolescencia de la Procuraduría General de la Nación, Acuerdo 056-2018 (*Regulation of the Office for Children and Adolescents of the Attorney General's Office, Agreement 056-2018*) (Procurador General de la Nación, mayo 8, 2018).
- Reglamento para la Aplicación de Medidas de Protección a Niños Privados de su Medio Familiar por parte de juzgados que ejercen competencia en materia de Niñez y Adolescencia Amenazada o Violada en sus DDHH, Acuerdo Número 40-2010 (Corte Suprema de Justicia, septiembre 10, 2010). (*Regulations for the Application of Protective Measures for Children Deprived of their Family Environment by courts that exercise jurisdiction in matters of Children and Adolescents whose Human Rights are Threatened or Violated, Agreement 40-2010*)
- Reyna, M. B. (2019, July 19). Juez Sexto de Primera Instancia de Niñez y Adolescencia del Área Metropolitana. (*Sixth Judge, Metropolitan Area First Instance Court for Children and Adolescents*) (C. Archila, Interviewer)

Sentencia Ramírez Escobar y otros vs Guatemala, (Corte Interamericana de Derechos Humanos March 9, 2018)
(*Ramírez Escobar et. al vs Guatemala, Sentencing, Interamerican Court of Human Rights*).

Villalobos, A. (2019, July 18). Jefe del departamento de Acogimiento Familiar de la Secretaría de Bienestar Social de la Presidencia de la República de Guatemala (*Head of the SBS Foster Family Department*). (C. Archila, Interviewer)

ANNEXES

Annex I: A study on existing and new options for alternative family care for children and adolescents, aimed at creating legal mechanisms for their implementation within the System for the Protection of Children and Adolescents.

Based on the work plan for the consultancy “A study on existing and new options for alternative family care for children and adolescents, aimed at creating legal mechanisms for their implementation within the System for the Protection of Children and Adolescents,” phase 2 consisted in the preparation and approval of research tools to obtain the necessary information from the institutions that comprise the System for the Protection of Children and thus achieve its objectives.

Below are three working tools: an Interview Guide aimed at key Protection System stakeholders, both governmental and non-governmental, a Matrix for determining the application of the UN Guidelines for the Alternative Care of Children in the internal regulations, both of ordinary laws and of Internal Agreements of governmental institutions and national and international jurisprudence in matters regarding children, and finally, the preliminary Index of this Study.

Interview guide:

Metropolitan Area First Instance Judges for Children and Adolescents, and First Instance Judges for Children, Adolescents, and Adolescents in Conflict with the Law in other departments.

- **Metropolitan Children's Court: Lic. Juan Orlando Calderón / Licda. María Belén Reyna / Lic. Máximo Ruiz**
 - **First Instance Children’s Court in Suchitepéquez**
1. How long have you been a Children’s Court judge?
 2. How has your experience in this judiciary been?
 3. What advances and setbacks have you been able to observe in the time you have been in that judiciary?
Progress and setbacks.
 4. What obstacles do you face every day in fulfilling your functions?
 5. What do you think of institutionalization? What actions have you taken to reduce this measure?
 6. What do you think of alternative family care?
 7. How do the programs of the Secretariat for Social Welfare help you in restoring rights?
 8. How have you interacted with private non-governmental organizations for the resolution of cases?
 9. Do you think they have been helpful?
 10. What do you think of the work carried out by the Attorney General's Office regarding the fulfillment of its functions?
 11. Of Agreement 40-2010 of the Supreme Court of Justice needing changes: do you think it has a Human Rights focus? What changes would you propose to the Agreement?
 12. What do you think of the transition from residential to ambulatory services within children’s orphanages and safe homes?

Supreme Court of Justice

- **Dr. Gabriel Medrano: President of the Supreme Court of Justice and the Judicial Branch 2012-2013 / Supreme Court of Justice 2009-2014**
 1. Could you explain the context in which Agreement 40-2010 of the Supreme Court of Justice was created?

Attorney General's Office:

- **Licda. Lucrecia Prera: Judicial Protection Area Coordinator**
- **Licda. María Mencos: Inter-institutional Area Coordinator**
- **Licda. Gabriela Celada: Coordinator, Area for the Reception and Analysis of Complaints**
 1. What position do you hold in the institution?
 2. How long have you held this position?
 3. What is its role within the Protection System?
 4. What is your role in the position you hold?
 5. What obstacles do you face in fulfilling your duties?
 6. What role does the Attorney General's Office play when deciding what protection measures will be decided in processes involving children?
 7. What actions have you taken to reduce the institutionalization of children?
 8. What is your opinion on alternative family care?
 9. What changes do you propose to improve the Protection processes?
 - Changes to legislation
 - State support / economic or human resource

Presidential Secretariat for Social Welfare

Lic. Marwin Bautista, Undersecretary for Protection

1. What position do you hold in the institution?
2. How long have you held this position?
3. What is its role within the Protection System?
4. What obstacles do you face in fulfilling your duties?
5. What actions has the SBS taken to reduce institutionalization? Are there policies and programs for these purposes?
6. What changes have been implemented to the Foster Care Program?
7. What obstacles must it face to fulfill its functions?
8. What role does the SBS play when deciding what protection measures will be decided in processes involving children?
9. What is your opinion on alternative family care?
10. What do you think of the transition from residential to ambulatory services within children's orphanages and safe homes?

Temporary Foster Care Program:

Licda. Angie Villalobos: Head of the Temporary Foster Care Department, Foster Families

1. Requirements and number of families that are currently certified.
2. What actions have you taken to increase the number of families that want to become certified in the Program? Challenges, advances and obstacles.
3. What characteristics do you look for in families so they are considered suitable for certification?
4. What tools do you have to measure the benefit that a child receives from the moment he or she is received by a foster family?
5. What is the average time that the children stay with the foster family?
6. Are there actions to keep the child in contact with his / her biological / extended family?
7. Are there currently adolescents in foster care?
8. What happens when you come of age in a foster family?
9. How do you determine if a child or adolescent can benefit from this measure?

National Adoptions Council (Consejo Nacional de Adoptions, CNA, in Spanish)

Licda. Flor Mejía: Biological Family Unit Sub-Coordinator

1. What actions does the CNA implement to prioritize the biological family over the adoptive family?
2. Does the CAN's Biological Family Unit have the support of other institutions to achieve its objectives?
3. What challenges do you face in fulfilling your duties?
4. In your experience, what are the main reasons mothers decide to give their children up for adoption?

UNICEF

Dora Alicia Muñoz: Child Protection Expert

1. What is your opinion of Agreement 40-2010 of the Supreme Court of Justice and how does its implementation currently benefit the best interests of the child or deinstitutionalization?
2. What should be understood by "permanent family"?
3. What do you think of the permanent family?
4. What do you think of the foster family being considered for the adoption of the child or adolescent?

SOS Children's Villages

Licda. Suselly Cruz: Coordinator

1. How have you participated in the SBS's Foster Family program?
2. Have you accomplished your goal? What obstacles have you encountered throughout the process?
3. What actions have you taken to contribute to the deinstitutionalization of children in Guatemala?

Buckner

Roberto Tejada: Director for Buckner Guatemala

1. How have you participated in the SBS's Foster Family program?
2. Have you accomplished your goal? What obstacles have you encountered throughout the process?
3. What actions have you taken to contribute to the deinstitutionalization of children in Guatemala?

Refugio para la Niñez (Shelter for Children)

Sandra López, Program Coordinator

1. How have you participated in the SBS's Foster Family program?
2. Have you accomplished your goal? What obstacles have you encountered throughout the process?
3. What actions have you taken to contribute to the deinstitutionalization of children in Guatemala?

Viva para Niños

Floralma Herrera

1. How have you participated in the SBS's Foster Family program?
2. Have you accomplished your goal? What obstacles have you encountered throughout the process?
3. What actions have you taken to contribute to the deinstitutionalization of children in Guatemala?

Chemonics (Justice, Youth, and Gender Project)

Licda. Lorena Ramírez, Institutional Specialist

1. What is the nature of the entity and what are its purposes?
2. Do you have programs in favor of deinstitutionalization?
3. Who have you worked with for this purpose?
4. If you work with the SBS, in which programs do you work and what type of training have you received from this entity?

Timeline

Month/Year	Day	Name	Position / Institution
Julio 2019	17	Lucrecia Prera	Judicial Protection Area / Attorney General's Office
		María Mencos	Inter-institutional Area Coordinator / Attorney General's Office
		Gabriela Celada	Coordinator, Area for the Reception and Analysis of Complaints, Attorney General's Office
		Licda. Lorena Ramírez	Institutional Specialist / Chemonics
	18	Angie Contreras	Head of the Temporary Foster Care Department, foster families / Secretariat for Social Welfare
		Marwin Bautista	Undersecretary for Protection / Secretariat for Social Welfare
		Angie Villalobos	Head of the Temporary Foster Care Department, foster families / Secretariat for Social Welfare
		Licda. Flor Mejía	Biological Family Unit Sub-coordinator / National Adoptions Council
	19	Lic. Juan Calderón	First Instance Judge for Children and Adolescents in the metropolitan area / Judicial Branch
		Licda. María Belén Reyna	First Instance Judge for Children and Adolescents in the metropolitan area / Judicial Branch
		Lic. Máximo Ruiz	First Instance Judge for Children and Adolescents in the metropolitan area / Judicial Branch
		Dr. Gabriel Medrano	President of the Supreme Court of Justice 2012-2013
	22	Licda. Dora Alicia Muñoz	Child Protection Expert / UNICEF
		Floralma Herrera	Viva para Niños
		Roberto Tejada	Director / Buckner Guatemala
		Licda. Sandra López	Program Coordinator/ Refugio para la Niñez (Shelter for Children)
23	Licda. Susselly Cruz	Coordinator / SOS Children's Villages	
24	Kelley Bunkers	Experience in alternative care in Kenya	

Annex II: Matrix

Implementation of the United Nations Guidelines for the Alternative Care of Children

REGULATION	YES	NO	PRINCIPLE APPLIED / GUIDELINE
Law for the Comprehensive Protection of Children and Adolescents			
Adoptions Law and its Regulations			
Supreme Court of Justice Agreement 40-2010			
National Adoptions Council Agreement DS-010-2010			
Regulation of the Attorney General's Office of the Procurator for Children and Adolescents			
Temporary Foster Care Department Regulation, Presidential Secretariat for Social Welfare			
Constitutional Court Rulings			
Case 3722-2011			
Case 3939-2012			
Case 1987-2012			
Case 1601-2011			
Case 1652-2017			
Case 5683-2016			
Case 4530-2015			
Case 2443-2014			
Case 214-2018			
Case 1042-97			

Child and Adolescent Court Resolutions			Resolutions will be requested during the interviews
Comparative law			
Colombia Ruling T-520A / 09			
Colombia Ruling C-041/94			
Colombia Ruling t-907/04			
Colombia Ruling T-094/13			
Costa Rica vote 112-2013 Family Courts			
Mexico Thesis 1ª./J.25/2012			
Case of Atala Riffo and Girls v. Chile			

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