



Bulletin 7 **Infancia**

Second Season - June 2019

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The IIN is as Specialized Organization of the Organization of American States (OAS) in childhood and adolescence, which assists the States in the development of public policies to be taken for the benefit of children and adolescents, contributing in the field of their design and implementation in the perspective of the promotion, protection and full respect of the rights of children and adolescents in the region. Special assistance is aimed at the needs of the Member States of the Inter-American System and at the particularities of the regional groups.





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The concepts expressed in this publication are the responsibility of each author. The IIN is pleased to enable this space for exchange and reflection with the region.



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Prologue

Victor Giorgi
Director General - IIN

With the release of this new issue of IINfancia, we provide continuity to an editorial project that aims to make available to our readers a number of contributions related to the topics on the agenda of childhood and adolescence in the Americas. This continuity is possible thanks to the support of a broad network of collaborators that is gradually expanding and diversifying in terms of nationalities, training, fields of work, and issues they address, but in their diversity they preserve a substantive coherence achieved by observing and thinking about the reality of children and adolescents in the region through the lens of their rights.

This new issue coincides with the 92nd anniversary of the founding of the Institute and the third year that Americas Children and Youth Day is celebrated; a day established as such by the Permanent Council of the OAS, on the occasion of the 90th anniversary of the IIN. At the same time, this is the year that we celebrate the 30th anniversary of the adoption of the Convention on the Rights of the Child by the General Assembly of the United Nations.

Far from embedding us in the past, these temporal coordinates are an invitation to take a retrospective look at the progress, difficulties, successes, mistakes and challenges that still persist in the region, and lead to a prospective view that enables us to advance in building a future upon a stage full of opportunities and not without threats.

A number of studies have revealed that the living conditions of children in the region are strongly determined by the cycles of the economy and the alternation of social models that characterize the Americas. In this context, regressive positions have recently prospered, in an attempt to restore the old, but still vigorous adult-centred and patriarchal order. This reappearance of old viewpoints shows that in these past three decades, the perspective of the Convention has taken hold among technicians and some sectors of the political system, but that it has not permeated with all of its transforming power through the whole of society. As we sometimes like to say: this discourse is restricted to *niñólogos* [“child experts”]. We are still far from the goal of building a culture of rights in which the best interest of children and the whole range of their rights become core values in the regulated routine of daily life.

As pointed out with masterly clarity by reference points such as Alexandro Barata and Eduardo Bustelo: it is not enough to provide more and improved services; we must transform the place we assign to children in our societies. Developing such a place requires working more intensively with adults, especially those who deal directly with children: teachers, social workers, health personnel, mothers, fathers, as well as, most particularly, children themselves. We adults should learn how to respect children as full persons; listen to them and take their opinions and points of view into account. It is they who need to be strengthened through knowledge of their rights, they must appropriate them and make their voices heard.

We are facing the paradox of being located in a position of adult power and there we must deconstruct the model of domination, generating an alternative based on the transfer and redistribution of this power, thus opening the way to new forms of cross-generational relations.

When we speak of power, we do not refer to power over others, but to the power of expression, the power of being heard, of breaking the silence that for centuries has operated to reproduce the different forms of abuse, ill-treatment and exploitation.

Ninety-two years after the foundation of the Institute and three decades after the adoption of the Convention, we redouble our commitment to continue working to make this region an area where the rights of children become tangible and concrete facts and, to this end, we must include children themselves as full social stakeholders.

A handwritten signature in black ink, consisting of a stylized, cursive name followed by a long horizontal stroke.



Popular beliefs regarding juvenile delinquency by Catalina Droppelmann

Crime is perhaps one of human behaviours to which beliefs that have no basis in reality are most firmly attached. I would venture to say that there is no one who does not have his or her own theory to explain criminal conduct and how to combat it. However, many of these assumptions are far from being grounded in evidence, and only aggravate the problem of juvenile delinquency by imposing highly punitive and stereotypical social demands. The purpose of this article is to overturn three of the beliefs regarding juvenile delinquency that are currently most entrenched in our society.

A young offender will be an offender for the rest of his/her life

While it is true that an early start in crime is indicative of a longer and more prolific criminal career than a later start (Piquero, 2011), it does not necessarily mean that everyone who commits crimes during their childhood or youth will continue to do so in adulthood. In fact, an analysis of what is known in Criminology as the age-crime curve¹ reveals that about 60 percent of youth offenders do not continue committing crimes in early adulthood, regardless of the age of onset of their criminal behaviour (Loeber and Farrington, 2012).

¹ The age-crime curve shows how criminal behaviour varies with age. It can be estimated by means of cross-sectional and longitudinal methodologies (Bottoms and Shapland 2011; Farrington 1986). In the first case, the prevalence of criminal behaviour is observed by age over a specific period of time. In the second, criminal behaviour is observed over time for a specific group of subjects.

The cause of this natural and marked decrease in crime can usually be explained by key events in the transition from adolescence to adulthood, such as the acquisition of new prosocial roles. Such simple factors as getting a job, having children, developing social relationships and acquiring a sense of identity linked to conventional roles are some of the events most closely associated with this process of change (Giordano et al. 2002). In addition, aspects related to brain maturation can positively affect the decision-making process and decrease risk behaviours at this stage of development (Johnson, Blum and Giedd 2009; Steinberg 2008).

A firm hand is the best way to end juvenile delinquency

This concept is perhaps one of the most deeply rooted and, at the same time, the one which most hinders adopting an adequate approach to resources to address juvenile delinquency. While there is no clarity as to what *a firm hand* represents in the social imaginary, for the purposes of this essay it will be defined as, on the one hand, the use of coercive penalties with high levels of supervision and monitoring; and on the other, the use of imprisonment as opposed to alternative measures.

In the first case, several meta-analyses on the effectiveness of rehabilitation programmes for offenders have shown that interventions based on skills training and counselling are significantly more effective than those based purely on surveillance, coercion and discipline (Lipsey 2009; Smith, Gendreau and Swartz 2009). In fact, the assessment of programmes such as *boot camps*, based on highly structured discipline, or *Scared Straight*, based on deterrence techniques through object lessons, has revealed that these interventions not only fail to reduce recidivism, but may also actually increase criminal behaviour in the long run (Andrews and Bonta 2010; Smith, Gendreau, and Swartz 2009; Gendreau, Smith, and French 2006; Smith 2006).

In the case of confinement, this could have at least two effects on criminal behaviour. On the one hand, it can prevent individuals from committing crimes, by keeping them isolated from society (see Dilulio and Piehl 1991; Clear 1994; Zimring and Hawkins 1995; Mauer 1999; Sabol and Lynch 2000). On the other, it could have a deterrent effect on the population at large and on the future recidivism of those who have undergone imprisonment. However, this latter effect is highly debatable. Firstly, it is based on the idea that committing crimes is a purely rational decision, without considering the evidence about emotional and cultural elements that are associated with juvenile delinquency (Hayward, 2002; Young, 2009; Droppelmann, 2017).

Secondly, research tends to show that rather than dissuade, prison leads to the intensification of criminal behaviour. Although post imprisonment recidivism rates are high in several countries, fluctuating around 60 percent (Langan and Levin, 2002), on its own, this is not sufficient to focus on the negative effects of prison. We need studies that compare recidivism rates after imprisonment and after alternative measures to confinement in cohorts of equivalent subjects. Although the evidence in this regard is limited, owing to various methodological restrictions, several studies and meta-analyses (Nagin, Cullen and Jonson 2009; Bales and Piquero 2011, Lipsey and Cullen 2007) have shown that imprisonment has no effect and, in some cases, effects are criminogenic regarding the prevention of future crime. Moreover, the longer the period of confinement, the more negative does the impact tend to be, since long prison stays usually tend to increase the likelihood of recidivism (Gendreau, Goggin, Cullen, and Andrews, 2000).

The age of criminal liability should be lowered in order to combat juvenile delinquency

It is nothing new that every so often in some Latin American countries, there is a popular outcry in favour of lowering the age of criminal liability. Beyond all of the highly important arguments related to the best interest of the child, there are also certain empirical facts that show that such a strategy would be far from appropriate. The decision-making process linked to risk activities (such as committing a crime, consuming drugs, and so on), involves not only the intellectual capacity, but also executive functions such as planning, problem-solving skills, verbal reasoning, cognitive flexibility, monitoring one's own behaviour, etc. All of this is known as *maturity of judgement*, which reaches its development peak as from the ages of 18 and 19 and does not stabilize until about 25 years of age. The reason for this is that in late adolescence, significant structural changes take place in the adolescent brain: there is an increase in white matter in the prefrontal regions of the brain, enhancing connectivity and the integration of brain activity. Only at this stage of development do young people become more able to forgo immediate gratification (Cauffman and Steinberg, 2000) and improve their ability to learn from punishment in order to anticipate the negative consequences of their behaviour (Crone et al., 2006). Before this stage, young people are too focused on finding immediate incentives and do not adequately consider the costs of their behaviour. Finally, the evidence of longitudinal studies has shown that the prosecution of young offenders tends to increase their future recidivism (McAra and McVie, 2010).

Misconceptions and their implications

It is interesting to note how evidence gathered by contemporary criminology not only invalidates and contradicts popular beliefs regarding juvenile delinquency, but also shows that many of

the measures thought to be effective in combating it have no impact at all and even exacerbate the issue. Unfortunately, criminal policy in this respect continues to confront juvenile delinquency as if it were a chronic, lifelong behaviour, which can only be resolved by means of punitive measures. In this sense, it is no coincidence that among the twenty countries with the highest prison population rates, five are in Latin America.² Nor is it strange that in Chile, for example, 74% of the population believes that the age of criminal liability should be lowered³ and that every time fear of delinquency increases in most of the countries in the region, this is one of the main proposals. Although it is in the field of criminal policy that these beliefs are most evident, it is perhaps more disturbing to see how deeply-rooted they are in society as a whole, since it is in that social setting that rehabilitation would be possible. In fact, it would be short-sighted to think that the prevention of juvenile delinquency only involves enabling young people to incorporate the values and norms of society. Rather, the process is reciprocal; society must in turn accept and believe that it is possible to leave criminal behaviour behind, and foster the social integration of the thousands of young people who are currently experiencing the most extreme forms of social exclusion in Latin America.

² See World Prison Brief 2019 in <http://www.prisonstudies.org/>

³ A study conducted by the UC's Department of Social Surveys and the Justice and Society Study Centre for Chile's Public Defender's Office.

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Sex tourism or commercial sexual exploitation¹ of children and adolescents in tourist activities? The creation of GARA:² reflections and experiences. by Maribel Piedra

Many reports are published relating to the illegal activity of sex tourism, both in conventional and in digital media. Their existence sheds light on a social issue which is, at present, addressed by a broad coalition of regional, State, institutional and social fronts. The issue inspires heated public repudiation throughout the world, from multiple civil societies that still consider human dignity³ to be an asset that must be safeguarded. This ethical repudiation is heightened or becomes more clearly evident when the exploited beings treated as sex objects are children or teenagers.

1 Commercial sexual exploitation of children: an aggravated form of violence involving an adult who makes use of a child or teenager, and including payment in cash or in kind to the child or teenager, or to one or more third parties, in exchange for sexual activity. This is unlike sexual exploitation, which is any activity that involves a person making use of another person's body on the basis of a power relationship, for the first person's own benefit, or for financial and/or sexual benefit. (Moreno, D., and Varese, M., 2013, p. 4)

2 Regional Action Group of the Americas (GARA, for its acronym in Spanish) for the prevention of child sexual exploitation (PCSE) in travel and tourism. New countries have now joined the signatories of the first document signed in 2005. By May 2019, the delegations of tourism institutions that make up the group are: Argentina, Uruguay, Paraguay, Brazil, Bolivia, Chile, Peru, Ecuador, Colombia, Costa Rica, Nicaragua, Honduras, Guatemala and Mexico. GARA's current Executive Secretariat coordinator is Uruguay's Ministry of Tourism.

3 Arturo Roig (as cited in Aldana, 2016) defined human dignity as (...) the primary need, the form par excellence of every human need that gives meaning and introduces a criterion for the evaluation of the universe of needs and the variegated ways that humankind has devised to satisfy them. It is a full 'human dignity' which, therefore, must be national and continental (...) 'Dignity' is, to us, a word full of hope, deeply rooted in our culture (Roig, 2002, p. 115).

For the tourism industry in our hemisphere, the legal term used for this offence involves quite a challenge, which must be met, in view of the fact that tourism promoted in this part of the world seeks to distinguish clearly between what is being promoted or sold, and what must be protected:

tourist destinations are promoted; access to decent, respectful and mindful services is sold, thus enabling the full enjoyment of diversity [of our countries] (...), [but] No tourist activity can be directly or indirectly linked to these types of crimes, which are considered forms of modern slavery: sexual or labour exploitation, begging and others. (Ministry of Tourism of Ecuador and GARA, 2012, p. 4, p. 11).

Tourism is a lawful activity, related to pleasure and the acknowledgement of the value of life, which in no way seeks to foster any criminal activity that infringes upon human rights or human dignity.

Because of this, in 2005, the first declaration of ministers and high-level tourism authorities was signed, for the prevention of crime.⁴ Its signature gave rise to the establishment of the Regional Action Group of the Americas (GARA) for the prevention of child sexual exploitation (PCSE) in travel and tourism. This group, which is still active, was instituted under the aegis of the ethical code of the World Tourism Organization; WTO (2001) and states that:

The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with international law, it should be

4 Ministry of Tourism of the Federal Government of Brazil. (2005, 26 October). *Final Declaration of the 1st Meeting of Ministers and High-Level Tourism Authorities of South America, for the prevention of commercial sexual exploitation of children in tourism.*

energetically combated with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad; (Article 2, paragraph 3)⁵

After taking this first step, the signatories proceeded to assign institutional coordination responsibilities within the Executive Secretariat of GARA. This structure facilitated the organization of a venue⁶ in which countries would be able, on the one hand, to share their knowledge, plan, manage and align regional actions and, on the other, to discuss actions and good practices undertaken within each country, as well as policy and implementation challenges they face regularly, with the purpose of seeking solutions together, or simply viewing those challenges in different ways. At the same time, as well as the designated institutional staff, also included in coordination activities, as observers, were representatives of civil society organizations and non-governmental international and inter-State organizations related to tourism and/or the defence of human rights, with an emphasis on child protection.

Over time, some of these agencies and organizations⁷ have been changing. However, they have all maintained, in common with GARA's institutional delegations, an undeniable

⁵ World Tourism Organization (2001, 21 December) *Global Code of Ethics for Tourism*.

⁶ This venue is virtual rather than physical: face-to-face meetings of the whole group take place once a year; while more operational meetings are held through online platforms.

⁷ The agencies and organizations that supported the development of and/or the strengthening of the actions taken by GARA, whether regionally or within the various countries that are part of the group deserve a special mention. Witnesses of the establishment of the group were: UNICEF and the World Tourism Organization (WTO). As collaborators: a special thanks for all the support they have always provided should go to the International Organization for Migration (IOM), the Inter-American Tourism Commission (CITUR), an OAS Specialized Organization, the International Federation of Executive Women in Travel (FIASEET) and the respective national and international NGOs, federations, chambers or associations of tourist companies in each country that assume joint responsibility in the process of raising awareness on preventing and reporting these offences. Finally, and without belittling in any way the importance of the above, we wish to express our immeasurable gratitude to the Inter-American Children's Institute (IIN), an OAS Specialized Organization for children's issues, and ECPAT International, which stands for End Child Sexual Exploitation, Child Pornography and Trafficking of Children for Sexual Purposes, for their ongoing participation as observers and their valuable technical contributions to these issues, as well as their commitment to this group's advancement, continuous learning and evolution.



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desire to help tourists and visitors,⁸ as well as business people who work in tourism in the region's destinations, to develop, build and strengthen preventive and reporting capacity when confronted with possible cases of sexual exploitation or trafficking in persons,⁹ as part of their joint responsibility in safeguarding and protecting children and teenagers.

These development steps have eventually evolved into

8 In *International Recommendations for Tourism Statistics* (as cited in UNWTO, 2019) A visitor is a traveller taking a trip to a main destination outside his/her usual environment, for less than a year, for any main purpose (business, leisure or other personal purpose) other than to be employed by a resident entity in the country or place visited. A visitor (domestic, inbound or outbound) is classified as a tourist (or overnight visitor) if his/her trip includes an overnight stay, or as a same-day visitor (or excursionist) otherwise (IRTS, 2008).

9 Kofi Annan (as cited in Montiel, 2010, p.11, in Spanish) has stated that: The problem of trafficking in persons and the range of human rights violations it implies constitute some of the most difficult and pressing issues on the international human rights calendar. The complexity of the problem is due to the different political contexts and geographical dimensions in which it arises; the ideological and conceptual differences of approach; the mobility and adaptability of smugglers; the different situations and needs of the victims of smuggling; the lack of an adequate legal framework; and to insufficient research and coordination by the actors involved, at national, regional and international levels (Annan, 2005, no page number). Disclaimer: the mistranslation (from English to Spanish) of the term 'human trafficking' may lead to the use of *tráfico* and *tráfico* victims in Spanish, rather than *trata* and *trata* victims, the correct translation of trafficking/traffickers. However, since the illegal smuggling of migrants is also a problem which in many cases is linked to that of trafficking in persons, I consider the quotation worth keeping.

agreements, work plans, regulations, communication campaigns, awareness-raising and training, commemorations, codes of conduct for the industry's businesses and activities, specific controls at tourist destinations, items included or amended in national laws and in inter-State tourism proceedings.¹⁰

Similarly, regional ministerial positions presented at international meetings between States expressly and openly reject the criminal offence of sexual exploitation in tourism and express the importance of countering its effects, with particular attention when it is children and teenagers who are affected in travel and tourism.

However, at this point in history, we should ask ourselves: How did the persons appointed, both government staff and GARA observers, learn how to uphold and have an impact on, from their technical and country-based positions, such a complex human rights issue, as Kofi Annan rightly referred to it, within an industry that has presented itself as clearly responsible for its own production and not necessarily or directly with any social responsibility?

Their first lessons emerged from a recognition of the importance of the issue. This was thanks to these individuals' personal and professional/ethical commitment and the presence of a favourable political situation, despite the fact that their institutional mandates did not indicate any direct responsibility in confronting this criminal offence. There was, however, a recognition of joint responsibility in the task, based on a sense of social responsibility and empathy with the pain of the victims of exploitation. Tourism must quintessentially view the beauty of the world, the importance of preserving life, of creating, rather than destroying. The issue entrusted to them by their State authorities was the complete antithesis of what the industry essentially promotes and defends.

¹⁰ Regional Action Group for the Americas – GARA (2019). Downloaded from: <https://www.facebook.com/GrupodeAccionRegionaldelasAmericas/>

On this basis, their willingness to act was channelled towards seeking to understand the problem. Thus, social and tourism-related aspects entered into an alliance in order to incorporate the human rights approach and, more specifically, the rights of children in language and activities related to tourism. The next step was to investigate and immerse themselves in data and information that would enable them to understand the seriousness of the situation, how criminals operate in tourist destinations, the places where they operate, and to begin wondering why these crimes take place. How are they facilitated? How can they be confronted without the mandate of institutions that investigate or punish this type of criminal offence?

A thousand questions began to emerge, over the years, through awareness-raising and personal training in communities, with children, and with people in the tourist industry or institutional personnel in charge of the sector. And the more we learned about modern-day slavery, sexual exploitation, children and teenagers, trafficking in persons, the purposes of trafficking, rights holders, joint responsibility with the State, etc., the more evident it became that this work required strong intra and cross-institutional coordination links, in the form of networks, committees or commissions, in order to achieve coordinated intervention in the territories.

This approach would subsequently translate into good practices or challenges to be analysed and shared regionally in order to find solutions among institutional peers and between organizations with the ability to look at the processes developing in the territories at a macro level, thus achieving together an approach that brings together both a tourism-related perspective that promotes the welfare of destinations, and one that watches over the protection of rights with an emphasis on children.

This accordion-like vision¹¹ eventually became a strategy to build a preventive system that aims to contribute to reducing the occurrence of this criminal offence and to strengthening means of reporting within tourist destinations. This outlook that has developed into a strategy still exists and continues to develop, though not without difficulties: it is activated on the basis of territorial interventions within countries, under technical, national or federal protection or incentives; synchronizing, when possible, with the multiple State agencies whose mandate it is to intervene to protect from, investigate and punish sexual exploitation or trafficking in persons for that purpose.¹² Finally, everything that has been learned, as well as everything that has been achieved,¹³ is shared regionally, as indicated in this paper's opening paragraphs. All of the knowledge acquired will nourish regional strategic planning with all of the experience learned during the implementation processes in the countries by GARA delegations and observers. It will become an instrument that will prove, over time, to their respective authorities, how political and ethical power (as expressed on 26 October 2005) can blossom, grow, persevere and evolve, when each of its interacting parts (political, technical and social) assume joint responsibility and provide

11 An analogy borrowed to illustrate the ever-present movement and interaction between the multiple stakeholders involved in local territories, countries and regions. If they are able to generate the appropriate synergy they will bring well-being to the tourist destination and reduce the level of vulnerability of children and teenagers in their territories. Accordions are: a family of box-shaped musical instruments of the bellows-driven free-reed aerophone type, [...]. The instrument is played by compressing or expanding the bellows while pressing buttons or keys, causing pallets to open, which allow air to flow across strips of brass or steel, called reeds. [...] The performer normally plays the melody on buttons or keys on the right-hand manual, and the accompaniment, consisting of bass and pre-set chord buttons, on the left-hand manual. Downloaded from: <https://en.wikipedia.org/wiki/Accordion>

12 Depending on the type of networks, commissions or committees present in each country, synchronization can include civil society organizations, national, international or inter-State non-governmental organizations, or be exclusively governmental.

13 Regarding progress and setbacks in each country according to its own rhythms and organizational rationale relating to: public policies, human and economic resources, time management, political moment, stability of public positions or of the territory, and other aspects. The multiplicity of outcomes, some more, some less, shared in the region will provide, on the one hand, the appropriate framework in which to analyse, reflect upon and establish future lines of action as a group; and, on the other, will give rise to a side effect in which delegates will feel motivated and understood regarding their daily challenges and more aware of their ability to move forward when scaling their country actions to the width of a region. Thus, their resilience and resistance is strengthened, so they can learn, if possible, patiently, from errors, times of standstill and energizing successes.

feedback to each other through their committed and mutual support. This joint responsibility and support have made it possible for the tourism productive sector in our region to be able to express, by 2019, its deep conviction that: Business people who use their companies or enterprises to exploit children or teenagers sexually are not tourist operators, but criminal offenders. People who arrive at a tourist destination and violate the rights of children or teenagers are not tourists or visitors, but criminal offenders. On the basis of this statement, no business person or entrepreneur, and no tourist or visitor is offended or can take offence; on the contrary, they clearly know themselves to be jointly responsible for the celebration, prosperity and protection of life that their presence affords to every tourist destination.

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On safe return in ICA cases: reflections on the scope of this concept by Lic. Patricia L. Minetti

Day-to-day practice in a team specializing in the field of international child abduction (ICA) and repatriation causes us to delve into theoretical and practical aspects that prove challenging from the point of view of ethics. This violation of rights is serious and frequent in our current globalized times; there are international conventions governing ICA matters, as well as legislation in each State; regional and international meetings are held to discuss the implementation of agreements, and so on. These children or adolescents should be safeguarded beyond the scope of concluded proceedings or the ruling that has been complied with, assessing how each case has been handled in subjective terms.

The concept of safe return implies that after children have been abducted by one of their parents, and have been removed or retained unlawfully in another State, they can return safely to their country of habitual residence and re-establish the focus of their lives there.

So what is a return to the requesting State understood to mean? The crossing of borders? Appearing before the local Central Authority for matters involving international restitution? The child being received by the injured parent who was deprived of exercising his or her parental function owing to the unlawful removal? Appearing before a judge in the place of habitual residence, who will rule on custody? We shall see that “safe return” exceeds any affirmative answers to these questions. There are tools, measures and procedures to be followed in

keeping with existing protocols, recommendations made by good practices guides and case law on the basis of which to initiate a return. Throughout the entire court process, the parties will be encouraged to reach an agreement in order to attempt a voluntary return; the peaceful settlement of the conflict, where both parents are able to reflect and review the decisions they have made so far would be the ideal outcome.

Even when this does occur, the failures and flaws involved in these practices are a warning of the complexity of the subject and drive us to sharpen our vision in each situation. ICA is the result of a complex chain of events taking place in the bond between a couple; it is exceptional for it to be resolved by putting one measure in place, even though it may have been decided by the highest court in the country. Determining how the law operates for each individual, what statute applies to him or her by law, and what is enabled by a pact between persons are key to understanding this intricate resolution. Forced separation is a form of violence that fosters subsequent violence, and results in children becoming trapped in a circuit of harm. Safe return should be the result of complying with a ruling which, while being applied, takes into consideration any harmful effects on the individual, in order to better determine the custody issue to be resolved in the country of habitual residence. Something in the nature of repair should be brought into play in this instance.

As a body dealing with children we are required to intervene in repatriations and we respond to any requests for follow-up, although this is not a request that is systematic in all cases of international restitution. Nevertheless, experience has shown us the appropriateness and relevance of this step.

As noted by some authors, it should be considered that children in the process of subjectivation have experienced the abrupt interruption of the daily contacts that involve their relationship with the adults who influence the development of

their identity. One of their parents is alive and has disappeared for the child, as a consequence of the barriers to contact. That parent becomes the object of fantasy and thought, without there being a discontinuity of libidinal ties through the mere absence of the parent; the child is not required to overcome the parent's death, nor his or her definitive loss.¹ This presence/absence tends to be experienced by the abductor, as well as by the child, as if the other parent were lurking in the shadows and could also appear unexpectedly, which leads to desire and fear at the same time. The child becomes ensnared in a clandestine situation that will certainly have its effects.

Young children who are abducted by one of their parents and prevented from having contact with the other, are clearly attached to a single version of their background. If the time involved is prolonged, if it has not been possible to meet the deadlines established in the treaties (what the treaties stipulate is far from being the norm), if delays have been excessive and linked to inappropriate appeals used to defer court rulings, we should be aware that in most cases, the abductor will wield the "serious risk" argument to avoid return, whatever the truth behind the situation may be. Any delays benefit the abducting parent, who gains the chance to exert a strong influence on the version of events that his or her child may develop.

In our experience, therefore, when the case involves children who have spent years of their lives under the exclusive guardianship of the abducting parent, all measures of safe return must be stepped up in order to generate opportunities to process what has occurred. Violent, untimely restitution again puts the individual at risk of possible trauma, added to that which may have been caused by the abduction and only reinforces the harm caused; it should never be an appropriate measure. We have intervened with children who were induced to engage in an escape, leading to aggressive conduct towards

1 Iñda, Norberto. "El hijo desvinculado y el duelo imposible" in <https://www.pagina12.com.ar/diario/psicologia/9-18616-2003-04-13.html>

others or themselves, who suffered subjective meltdowns with serious consequences for their mental health.

What is, then, the result of a forced return? What becomes of the bond with parents who carry the delay of the process to its final consequences, even when they are aware of the effects on their children? For how long has consideration of the best interest as proclaimed by the Convention on the Rights of the Child been ignored? Bearing this in mind should not imply the triumph of the abductor and his or her strategies, but sometimes compulsive returns lead to the defeat of the process intended to restore children to their violated rights. Children who have been heard, according to their age and level of maturity, can give their opinions regarding events that directly affect them and to that end, conditions should be provided so that they are able to form their own opinions. Having their own opinions requires and implies knowing all versions of events, with the appropriate support, and challenging the ideas they have formed over long years of unilateral coexistence, with the consequent anxiety that this entails, owing to the loyalties that are brought into play.

Expecting that the ideas and wishes expressed by children should be the result of their full autonomy and freedom of thought is to ignore their families' involvement in the constitution of their subjectivity. Hence, it is not just a question of time, and a great deal of professional and interdisciplinary listening is necessary in order to weigh what is at stake adequately. Existing treaties determine that sixteen is the age limit for international restitution. This limit is a device that should be weighed against children's capacity for self-determination before they reach any decision regarding their place of residence.²

Both parents can be both victim and victimizer at the same time when positions are inflexible and they insist upon all of

² Herrera, Marisa, *Manual de Derecho de las Familias*, 1st edition, Abeledo Perrot, 2015, p. 606

their arguments and all of their rights, putting their claims above the rights of their children, to their detriment. Forced return, which has in some circumstances occurred, requiring the intervention of the police, is clearly an exceptional situation which should occur only when there is no other alternative and when children are at serious risk and would lack protection if they were to remain in the requested country. It is not a question of ignoring the relevance of a legally transacted restitution process, nor of delaying or preventing the

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application of the ruling when appropriate, but of underscoring the fact that the return must be safe; of thinking about how to avoid revictimization, and avoid causing children to totally reject the measure. We must consider how to reduce risk, inasmuch as harm is undeniable and inevitable in all of these processes in which a claim of this nature must be complied with. It should be a priority for all operators to introduce the law where there was only caprice and arbitrariness. This will have effects on the subjective composition of individuals, as long as they are able to see and hear, understand and accept. It is on the basis of these undesirable consequences that we infer the importance of respecting the deadlines established by the treaties. Belatedly, all that is left is to think about how to turn this new experience caused by the return into a situation that the psychic apparatus of the child in question is able to metabolize. We should consider who will be travelling with the returning child. If it is the abductor who is accompanying the child on his or her return, we might deduce, although it is not always the rule, that the abductor has acknowledged the law he or she has contravened and the consequences of his or her unlawful action.

If the court authority issuing the restitution ruling summons the children involved and explains personally the reasons behind the measure being taken and the safeguards that they can be offered in order to ease their return, it might make it more likely for the abductor to comply with the ruling, acknowledge his or her transgression, be willing to open avenues of negotiation with the other parent, internalize the beneficial consequences that no longer being a fugitive will have for the child, etc.³ If, however, professional assessment shows that these conditions are not in place, that children are treated as appendages of the adults and as objects used to take revenge on a former partner, if the marital conflict causes

3 Minetti, Patricia and Arias, Julieta “Las revinculaciones en los procesos de restitución internacional de niños” in *Derecho de Familia: Revista de doctrina y jurisprudencia* N°86 (Doctrines and Jurisprudence Journal), Ed Abeledo Perrot, Buenos Aires, September 2018, p. 102.

parental responsibilities to blur, alternative means of travel, with another member of the family, should be considered. It might even be possible to consider separating children temporarily from their abductors and, with a view to increasing security, facilitate a reconnection with the parent from whom children were removed in a less adverse context.

Proceedings in the sheltering country end once the restitution ruling has been complied with, and another process starts in the country where children resided before the wrongful act was committed, whether removal or retention. We understand clearly that this is not about concluding an intervention, or assuming that the process has finished. It is one action, no doubt essential, but not the only one, or the final one. Leaving the country where children were being sheltered and returning to the country of habitual residence must be synchronized with the support of the local rights protection agency. Involving this agency, requesting and demanding its help and intervention in its relevant responsibilities, is one of the tasks incumbent on the Central Authority for execution of the measure and the competent court ruling in the case. The children have already experienced the violation of their rights and, therefore, efforts should focus on facilitating the gradual restoration of bonds with the parent with whom contact was interrupted. Bonds with the extended family and other significant persons should be restored and children must rejoin the education and health systems. The matter of who is assigned to work with these parents often poses a dilemma; it sometimes turns out that a gap occurs in this area. When resources are available, usually the parents cooperate as long as they feel that they are being heard in their demands and that these demands are registered by the intervention team. When these practitioners minimize any of their requests or contrast them to the rights of the children, hostility results and parents are seen to advocate more for their own interests than those of their children, so it is necessary to urge them to refocus.⁴ Safe return also implies

4 Peusner, Pablo, "El Otro y el niño: Ensayo", Edit. Letra Viva. Buenos Aires, 2011, chap.

that until the natural judge rules on custody, the children and both parents should be supported by an interdisciplinary team in the settlement that they must engage in. Attempts shall be made to ensure that contact is fluid through the mediation of a third party. In this regard, it is not possible to establish accurately how much time an intervention will take and questions arise about the training of the agents operating in these processes and the availability of services and resources.

Once children recover their life focus, our reading and our experience show us that this “has been” their habitual residence and that they must probably undergo a new process until they are able to achieve a definitive reintroduction. How can we perceive temporality in children, inasmuch as they are in the process of constructing their psyche? What traces will these vicissitudes leave in them? Material time, how long children have actually spent in the country of refuge becomes a fact to be considered, depending on the context in which this stage occurred, their age at the time of exile, the defences they may have built up in order to face it, the language that is a part of them, their ties to their previous history; whether these have been respected or interrupted.

We are not in favour of the State’s over-intervention in family life, but we do advocate for respectful and timely professional support that is limited in time and aims to promote the recovery of emotional attachments between parents and children, which were hampered by the lack of contact, and to establish a new dynamic in parent-child relations.

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Sexual diversity in girls, boys and youth: vulnerabilities, legal frameworks and approaches in Costa Rica during the early years of the 21st century

Milton Ariel Brenes Rodríguez¹



Introduction

In this paper we shall reflect on the sexual diversity of girls, boys and youth in Costa Rica, during the early years of the 21st century. The discussion will focus on vulnerabilities, legal frameworks and approaches related to these persons. The paper is the result of the author's work in coordinating the Interdisciplinary Studies and Social Action Programme on Child Rights (the PRIDENA Programme, for its acronym in Spanish) of the University of Costa Rica (UCR). It continues the work engaged in by the PRIDENA Programme in 2018, with statements published and forums organized, as well as in 2019, with symposia organized jointly with a number of University of Costa Rica's bodies.

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The paper is composed of five basic sub-sections which will help us approach the discussion of the issues at hand. The first sub-section is this introduction. It is followed by a second sub-section, in which there is an analytical description, in broad terms, of the economic, political and cultural changes experienced by Costa Rica in the 21st century. The third sub-section deals with the situation of sexual diversity in the country, in particular as related to its evolution in the public eye and how it is approached by the State. The fourth addresses girls, boys and youth who are sexually diverse, on the basis of their vulnerabilities, of legal frameworks and approaches. Finally, the principal conclusions are summarized under a fifth sub-section.

New scenarios in Costa Rica in the 21st century

Transformation is a permanent part of society; the changes that Costa Rica experienced towards the end of the 20th century and early 21st were varied: economic, political and cultural, but they certainly determined the special features of the country's recent history. Towards 1980, the Costa Rican government prompted changes in its economic and social policy, in response to the international crisis, which is how a neo-liberal rationale became entrenched in State affairs. As a result, people's living conditions deteriorated and changes in the world of work contributed to that detriment, as did a social policy designed on the basis of a targeted approach.

At the same time, we were also able to witness in that context the emergence of a number of regulations related to the rights of specific populations such as children, youth, women, persons with disabilities and sexual diversity. These demands were met as a result of the activity of organizations in civil and political sectors in the case of children and youth, of feminist social movements in the case of reinforcing women's rights, or of sexual diversity-related movements and their claims in this area.

Complex and varied cultural changes have been experienced as a consequence of this process. Closer international relations of various kinds, as a result of globalization, reinforced the country's connections with the world, leading to the influx of consumption habits and of a variety of lifestyles, as well as a rise in the use of information and communication technologies.

According to the census of 2011, Costa Rica had 4,301,712 inhabitants at that time. In this demographic context, it is possible to observe a decrease in traditional nuclear family units, especially in the number of their members. In 1980, 41% of the population lived in households composed of seven or more members, but by 2011, that figure had dropped to 4.5%. The decline of Catholic matches in comparison to civil unions is a further change to bear in mind. In the 1980s, 60% of marriages were celebrated by the Catholic Church, but in 2011, 71.4% were celebrated via civil proceedings (UNDP, 2013). This also reflects the fact that the Catholic clergy has lost ground in Costa Rican society, despite the current Political Constitution, in its Article 75, stating that the Catholic religion is the official religion of the State. However, rather than becoming more secular, religious practices have, to some extent, shifted towards Evangelical denominations (Araya, 2018).

Similarly, other transformations we have seen affect relationships, and one of the foremost is women joining the labour market, as well as taking on new roles in society. This is, however, a slow incorporation, leading to informality and lack of job security, added to the fact that the new roles do not entail breaking with previous roles (such as motherhood), resulting in excessively long working days (UNDP, 2013). Relations with children and youth have also undergone changes as regards aspects such as the legal prohibition of physical and verbal aggression as a parenting practice, or of sexual/emotional relationships with adults. Despite this, the

irregular situation perspective (the welfare approach and viewing these individuals as objects) remains rooted in Costa Rican culture (EDNA, 2015).

The rise of sexual diversity in Costa Rica, its special features in the 21st century

With the purpose of providing a brief background to the principal aspects related to sexual diversity on the Costa Rican public stage, we can begin by pointing to the decriminalization of homosexuality in 1972, as one of the main reference points. However, this did not lead to changes in the relationship between society and sexual diversity during the remainder of the 20th century, since in the eighties and early nineties, persecution, moralizing and control of these populations were still pervasive. Nonetheless, it did provide various groups with a way to institutionally channel their demands, which resulted in visibilization policies (Bolaños, 2017). A trigger factor was the HIV-AIDS epidemic, which led to the enactment in 1998 of legislation for the care of related situations, although the Act contained biases typical of the period in question.

In this sense, and related to all of this, but focusing particularly on the 21st century, we should mention that penalties for what was regarded as sodomy, a burden carried over from Catholic religiosity that was still present in Costa Rican law, were removed from the Criminal Code in 2002 (UNDP, 2013). In 2003, an action of unconstitutionality was brought, owing to the refusal of the courts of law to institute same-sex civil marriage. This was eventually turned down in 2006, but still represented a gain in terms of the public light that was shed upon demands in this area (Bolaños, 2017). In 2008, as a result of activities carried out by the Centre for Research and Promotion of Human Rights in Central America (CIPAC, for its acronym in Spanish), an executive decree was signed by the government administration of Arias Sánchez (2006-2010),

which declared 17 May as National Day against Homo-, Lesbo- and Transphobia. In line with related regulatory aspects in the early years of the 21st century, we should also note the referendum proposal of 2010, organized by Catholic and Evangelical religious sectors regarding same-sex marriage, but which was ultimately rejected by the Constitutional Chamber, since it would have entailed the use of consultation mechanisms for issues pertaining to human rights (BBC, 2010).

As regards public demonstrations and demands in the country's recent history, the first gay pride parade was held in Costa Rica in 2003, which over the years was joined by a number of different actors (public institutions, civil society, private enterprises and others) (Bolaños, 2017). Meanwhile, the March of the Invisibles was organized in 2011, as a response to hate speech engaged in by evangelical members of the Legislative Assembly (La Nación, 2012). In 2013, the March of the Incurables was held as a way to respond to the Government of the Republic's validation (by declaring it of public interest) of an international symposium with presentations on curing homosexuality (La Nación, 2013). Similarly, we should mention the creation of bodies to organize and intervene in these matters, such as CIPAC, mentioned above, founded in 1999, or the Front for Equal Rights (FDI, for its acronym in Spanish) in 2013, which was to incorporate a number of different organizations working to achieve common aims.

With respect to the State's lines of action, in 2012, during the administration of Chinchilla Miranda (2010-2014), pilot plans were conducted for emotional health and sexuality programmes for high school students, by the Ministry of Public Education (MEP). However, under pressure from religious groups and due to the legal disputes they promoted, it was decided that these programmes should be optional (FDI, 2018). Another of the State's actions in this line was the 2012 to 2021 Sexuality Policy, based on the assumption of defending sexual diversity by means of social agreements

to educate against homophobia and discrimination and to promote respect for diversity (FDI, 2018). In short, through the action of the State, in 2014 the Board of Directors of the Costa Rican Social Security Fund (CCSS for its acronym in Spanish) endorsed access to family insurance for same-sex persons (CCSS, 2015). In 2015, during the administration of Solís Rivera (2014-2018), the MEP declared schools to be areas free of discrimination due to sexual orientation and gender identity (MEP, 2015). As part of this, locally, 32 cantons were declared free of discrimination by 2017 (FDI, 2018).

Meanwhile, in January 2018, in answer to an enquiry made in 2016 by the Government of Costa Rica to the Inter-American Court of Human Rights (IACtHR), this supra-national body ordered the adoption of same-sex marriage, as well as a number of actions related to gender identity (Gallardo, 2018). When this enquiry was brought before the Constitutional Chamber of Costa Rica, this body's position was to request the Legislature to regulate on the matter, but if it failed to do so within a specified period, the provisions in the IACtHR's advisory opinion would enter into force. This sparked polarized positions in the country, added to the fact that the IACtHR's advisory opinion ventured into an electoral context, thus stoking political feeling. Finally, the ruling party continued at the head of the State's administration, but the process gave rise to public demonstrations and organized groups currently still active against sexual diversity (Gallardo, 2018).

In this regard, during the electoral period that elapsed between January and March, the FDI registered 27 cases of violence due to sexual diversity (Semanao Universidad, 2018), in addition to a challenge to the Ministry of Public Education's Education for Emotional Health and Sexuality Programmes. With regard to violence against sexually diverse populations, according to a paper on the rights of LGBTI persons in Costa Rica (FDI, 2018), it is transgender and intersex persons whose rights are most seriously violated in the country. Similarly, when it comes to

violence against these populations, it is important to note that according to the report on Violence against LGBTI Persons in the Americas, prepared by the Inter-American Commission on Human Rights (2015), persecution and aggression against these persons are evident in Central America, with forced migration for this reason to Costa Rica.

For its part, the Government of Alvarado Quesada (2018-2022) appointed an LGBTI Commissioner in 2018 to act as liaison between civil society and the government (The Republic, 2018). By the close of that same year, the Board of the CCSS approved the granting of hormonal treatment for transgender people (Delfino, 2018). Meanwhile, in 2019 the Ministry of Public Education issued a protocol for addressing situations involving harassment against sexually diverse populations in schools (MEP, 2019).

In order to position the subject under consideration, we should highlight that the struggle on behalf of the rights of sexually diverse populations has been led by adults, focusing, as far as the 21st century is concerned, on access to civil rights related to identity, most especially on same-sex marriage. However, in view of the advisory opinion of the Inter-American Court of Human Rights (2017), as well as the resolution of the Constitutional Chamber (2018), we might expect the agenda of these populations to be rearranged so that girls, boys and youth are able to take their place in it. In this respect, we shall now proceed to focus on aspects related to sexual diversity in Costa Rican children and youth.

Sexual diversity in girls, boys and youth in Costa Rica

According to national projections carried out by the National Statistics and Census Institute (INEC, for its acronym in Spanish), for 2018, the girls, boys and youth population falls into the following age ranges, by number of children: from 0

to 4 years of age, 369,764; from 5 to 9, 371,857; from 10 to 14, 370,067, and from 15 to 19, 394,328. Thus, the number of children and youth in the territory amounts to approximately 1,500,000 persons.

In this regard, we shall, firstly, proceed to indicate the vulnerabilities that sexually diverse girls, boys and youth are exposed to. Quoting from UNICEF (2014), the IACtHR (2015) states that some of the principal vulnerabilities that lead to violence towards these populations include isolation from their peers in their schools, homes or communities, their marginalization from essential services such as education and social security, family neglect, school bullying, as well as sexual violations intended to “correct” their sexuality (IACtHR, 2015). The report in question notes that it is in families and schools in particular that sexually diverse children and youth are mainly subjected to violence.

With regard to the situation in schools, according to UNESCO, 51.1% of the student population in the sixth grade of primary education in 16 Latin American countries report that they have been subjected to insults, threats, beatings or theft as a result of their sexual preference. Costa Rica is one of five Latin American countries with the highest rates of physical violence (UNESCO, 2013). In this respect, the National Youth Survey conducted in Costa in 2013, among 400 schoolchildren in San José and Heredia, showed that 53.7% of respondents considered that attraction between people of the same sex was a mental illness. There was also evidence of repression against sexually diverse couples on the part of students, teachers and administrative staff in schools (COSECODENI, 2018).

In relation to families as a possible area of protection, but which sometimes become an arena for vulnerability, IACtHR’s study (2015) points out that this population is often expelled from or abused in their homes after revealing their sexuality. As this matter is mentioned as an international trend, it has not

been possible to gather specific information registering how often this occurs in Costa Rica. Such situations can result in commercial sexual exploitation and drug abuse (COSECODENI, 2018).

With regard to health and its protection, but tending towards vulnerability, we should refer to issues affecting the mental health and psycho-emotional stability of these populations (COSECODENI, 2018). A further matter of interest is connected with surgical procedures that take place in cases showing intersex features, procedures that are prescribed by the persons in charge, and medical centre staff, regardless of any physical or emotional impact, but with the desire to normalize children's sexuality (MULABI, 2011). A survey conducted by CIPAC in 2009 in the primary health care system in the country showed evidence of attitudes that tended to violate the rights of sexually diverse girls, boys and youth. Similarly, initiating sexual life at increasingly younger ages is considered to be a risk factor for the population, added to the fact that access to methods of protection and testing is difficult (COSECODENI, 2018).

In relation to this, and secondly, we should mention that a legal framework operates in Costa Rica for the protection of girls, boys and youth, with an emphasis on sexual diversity. In this regard, the Convention on the Rights of the Child (1989) refers, in its Article 2, to the non-discrimination of children; in its Article 55, the Children's Statute (1998) proposes promoting programmes for preventive, sexual and reproductive health, and in its Article 58, it refers to the promotion of programmes for sexual education, reproduction, teenage pregnancy, gender violence and other issues. For its part, the Ibero-American Youth Convention (2005), in its Article 5, refers to the non-discrimination principle, as it does in Article 14, in which it refers to the right to individual identity and personality. In that sense, the Young Persons Act (2002), in its Article 1, raises the need to promote policies to achieve the full development of young people (FDI, 2018).

Thirdly, in relation to the government's actions to confront the violence we have mentioned, and to the existing legal framework, we should underscore the MEP's activities in 2012, with its Emotional Health and Sexuality Programmes; in 2015, with its declaration of areas free of discrimination based on sexual orientation and gender identity; as well as, in 2019, its Protocol to address the bullying of sexually diverse populations in schools.

On the basis of all this, one might assume that in order to deal with violence and the educational deficiencies that sexually diverse children and youth must face, the MEP has taken action, in a long list of outstanding issues to be resolved in this line, in order to address the needs of this population. In contrast, however, when it comes to their protection, it is not necessarily possible to identify any clear action taken by the State to address situations of this kind.

The Child Welfare Agency (PANI, for its acronym in Spanish) is clearly not serving children and youth specifically with regard to their protection. When sexually diverse children and youth are in shelters, the agency has encountered obstacles in locating and caring for them when they suffer aggression from their peers (COSECODENI, 2018). This is complicated by the fact that families tend to expel these children when they reveal their sexual identity, as demonstrated by UNICEF at an international level (IACtHR, 2015). In relation to this, a significant number of organizations do target this population, but with a religious and conservative perspective. They attempt to reverse their sexual orientation or gender identity in order to make them conform to the heteronormative paradigm, doing so with a total lack of scientific support (COSECODENI, 2018, p. 75).

This entails a violation of the rights of sexually diverse girls, boys and youth, since when they are sheltered in venues that override their identities on the basis of religious ideas, or without taking the rights-based approach into consideration,

they are being discriminated against in their right to their own identity, and exposed to emotionally violent environments. One of the few bodies we have identified whose procedures are in keeping with the rights-based approach and the recognition of sexual diversity is the Casa Rara organization.

With regard to possible disorders, particularly as related to sexually transmitted diseases, we have found that access to health services, accurate information or treatment according to the rights-based approach is difficult (COSECODENI, 2018). Meanwhile, although the Inappropriate Relations Act currently in force in the country applies indistinctly to the sexuality of girls, boys and youth, the law has heterosexual connotations and is grounded on the avoidance of teenage pregnancy, so it does not necessarily recognize inappropriate sexual and affectionate relations between persons of the same sex. Similarly, advertising campaigns in this area do not contemplate age factors in links between sexually diverse people that entail possible inappropriate relations.

In relation to the process of adoption by a sexually diverse person, we should note that an infant or an adolescent can be adopted by such a person, but when it is a same-sex couple wanting to adopt legally, then it cannot be done. This deficiency must be remedied, in keeping with the Advisory Opinion of the Inter-American Court of Human Rights (2017), as well as the resolution of the Constitutional Chamber (2018). There was a well-known case involving the granting of custody and upbringing of a child to a sexually diverse person: Luis Gerardo Mairena, who took his demand to raise a child to court, and was eventually successful (Florez-Estrada, 2017).

Similarly, in view of the current context in Costa Rica, as a result of the Advisory Opinion of the Inter-American Court of Human Rights (2017), as well as the resolution of the Constitutional Chamber (2018), it is possible to identify the shaping of the agenda of sexually diverse populations in which girls, boys and

youth have their own place. In this sense, circumstances are such that sectors working with children and adolescents can bring forward a number of needs arising from this population.

Conclusions

This brief account shows that Costa Rica has been facing a number of social, political and cultural changes since the late 20th and early 21st centuries. Among these transformations we can identify the rise of sexual diversity.

In view of the existence of stereotypes, the prevalence of conservative sectors, particularly among religious groups, and the lack of forceful State action, sexually diverse girls, boys and youth constitute highly vulnerable populations in Costa Rica.

In conclusion, then, we can maintain that there is a culture of rights advocacy in the country, but that it is implemented in the face of challenges, resistance and, in some specific cases, setbacks. In this regard, in the last twelve years, as from the declaration of National Day against Homo-, Lesbo- and Transphobia, and in particular in the last seven years, with the implementation of the MEP's Emotional Health and Sexuality Programmes, we can identify a number of State actions in promoting rights in these areas. We should note that in Central America, Costa Rica is one of the main places providing asylum for persons who undertake forced migration due to their sexual identity.

Specifically with regard to sexually diverse girls, boys and youth, their greatest vulnerability lies in the areas of protection, health care and schools. In relation to the latter, we should highlight the MEP's efforts to address sex education, transform schools into areas free from violence and issue a protocol to address harassment arising from people's sexual identity. In this respect, we can attest that in comparison to

other institutions that deal with children and adolescents, the MEP is one of the institutions that has made most progress in the area of sexually diverse children and youth.

However, one of the greatest challenges still seems to reside in the area of intervention for protection. One of the principal signs of this is the Constitutional Chamber's vote in favour of designating children's and youth's legal representatives as being ultimately responsible for their participation in education venues within the education system, which gives credence to the idea that sex education is subject to the wishes of families, thus infringing upon opportunities of obtaining free and accurate information and turns families from areas of protection to areas of risk. We have already mentioned, too, that it is impossible for same-sex couples to adopt.

In line with what occurs in the field of protection, while there are, officially, no sexual conversion therapies in existence, informally, girls, boys and youth are encouraged to attend religious centres in order to address their situations, with little margin for independence and the right to make their own decisions. As a result, they have few opportunities of gaining access to public social services or services provided by civil society, in which they could find support with regard to their sexual identity. In relation to access to health services, prompt access is not necessarily available.

The lack of information systems related to this population and particularly to sexual diversity, makes it difficult to shed light on the vulnerability and risk which they face. Proof of this is, for example, the lack of data regarding the homeless condition of many of these persons, as a result of having been expelled from their homes due to their sexual identity, as reflected in other countries in Latin America and the United States. Nor is it possible to obtain figures regarding inappropriate relations taking place between sexually diverse persons.

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The right to live in a family. A perspective from the Plurinational State of Bolivia

by Ximena Miriam Fajardo Navarro

After the Convention on the Rights of the Child came into effect (1990), significant transformations took place, intended to incorporate the status of children as holders of rights and subjects of protection, with their special needs and vulnerability. The result of these transformations has been to generate new domestic regulations and specific public policies, which appear in the public agendas of most of the countries in the region.

Notwithstanding which, soon after commemorating the thirtieth anniversary of the Convention, restrictions to its application still exist, giving rise to gaps between what is recognized internationally and domestically and what is, in fact, implemented. As regards this aspect, the Inter-American Commission on Human Rights (henceforth, IACHR), has recognized that “(...) difficulties and challenges persist, in translating to reality the principles of international law on human rights of children and adolescents, recognized in legal frameworks”¹.

In this scenario, it should be recognized that there is a *Corpus Juris* dealing specifically with the human rights of children,

¹ Inter-American Commission on Human Rights, “The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas, OEA/Ser.L/V/II Doc. 54/13, 17 October 2013. Page 5.

composed of a range of core standards that: i) safeguard their human rights; ii) stipulate the duties of the States, and iii) provide for special and reinforced protection as due to their stage of development.

Among other aspects, this body of law incorporates as an essential perspective a recognition of the family, understood as a right and a core element of protection, based on the interpersonal relationships necessary for a person's cognitive, emotional and social development. This right is enshrined, basically, in Article 9 of the Convention on the Rights of the Child; Articles 11.2 and 17.1 of the American Convention on Human Rights; Article 15 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; Article 16.3 of the Universal Declaration of Human Rights; Article 23.1 of the International Covenant on Civil and Political Rights and Article 10 of the International Covenant on Economic, Social and Cultural Rights.

The Corpus Juris recognizes that boys and girls have the right to live with a family, particularly their biological family, and that the State has a duty to strengthen the family unit through a national rights protection system that includes specific policies to support and assist families. To this end, the Inter-American Court of Human Rights (henceforth, IACtHR) has ruled that the State "(...) is under the obligation not only to decide and directly implement measures to protect children, but also to favour, in the broadest manner, development and strengthening of the family nucleus. In this regard, '[r]ecognition of the family as a natural and fundamental component of society', with the right to 'protection by society and the State', is a fundamental principle of International Human Rights Law" (...) ²

Moreover, safeguarding the right to family protection extends to the State's obligation to design and implement special measures for temporary protection involving the separation of children from their families and alternative care in cases where the duty of care is not met adequately, or when children remaining with their families contravenes their best interest. This obligation is provided for in Article 9 of the Convention on the Rights of the Child, in Observation N^o 14 of the relevant Committee and in the Guidelines for the Alternative Care of Children.³

² Inter-American Court of Human Rights. Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, of 28 August 2002.

³ The Guidelines for the Alternative Care of Children were adopted by Resolution of the United Nations General Assembly on 24 February 2010, A/Res/64/142.



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These guidelines underscore the fact that separating children from their families is a measure of last resort and, if possible, should be temporary and for the shortest possible time. Therefore, there should be measures in place to restore children's right to live with a family, on the basis of foster care or adoption.

In greater detail, in keeping with the international standards mentioned above and, specifically, with those adopted by the IACHR,⁴ special measures of protection for children who are

⁴ Inter-American Commission on Human Rights, "The Right of Boys and Girls to a Family, Alternative Care. Ending Institutionalization in the Americas, OEA/Ser.L/V/II Doc. 54/13, 17 October 2013.

without appropriate parental care or who are at risk of losing it, should be taken according to the following principles:

- i) Necessity and appropriateness; that is, a measure of protection which is justified and documented in a timely manner, with technical evaluations performed by professional and multidisciplinary teams.
- ii) Exceptionality and temporariness; such measures should be taken after every effort is made to support and assist the family in providing adequate child care, protection and upbringing, and comprise plans and programmes to ensure children's safety and well-being, as well as to attempt to overcome the causes of the need for special protection.
- iii) Legality and legitimacy; the grounds, causes and procedural safeguards of the persons involved must be duly established by law.
- iv) Exceptional diligence; as regards special protection for the family unit and best interest, authorities must act with special diligence throughout, including the analysis of the circumstances affecting the child, the evaluation of special measures, justification of decisions, promptness and the timely review of the measures taken.
- v) Specialization and professionalism; underpinned by the duty of special protection to which children are entitled. Specialized institutions with appropriately trained staff in order to ensure that their intervention will be suitable are indispensable.

Within the framework of this international context, and on the basis of a constitutional process that resulted in a pioneering constitutional text, in 2009, the Plurinational State of Bolivia enshrined the right to family life, stipulating at the highest regulatory level that every boy, girl and adolescent "(...) has the right to live and grow within their family of origin or adoptive family. When this is not possible, or is contrary to their best

interest, they shall be entitled to a substitute family, in accordance with the law". In addition, this acknowledgement also incorporated the right, principle and safeguard of the best interest and the duty of protection of families as the fundamental unit of society.

Given this constitutional process, a specific regulatory reform was introduced in 2014, which resulted in Law Nº 548, which stipulates that children and adolescents "(...) have the right to live, evolve and be educated in an atmosphere of affection and security in their family of origin or, exceptionally, when this is not possible or is contrary to their best interest, in a substitute family that will provide them with family and community life". This provision also establishes the priority that must be given to reintegration to the family of origin and to regular coordination between the relevant bodies, with the purpose of recommending to the judicial authority the best means of restoring children's right to a family.

In this sense, Bolivia's constitutional and regulatory development has given rise to an appropriate environment in which to achieve protection of the family unit and, when necessary, and always subject to the principle of the best interest of the child, the taking of exceptional and temporary measures that, in keeping with legally stipulated judicial proceedings, may lead to circumstantial foster care and, finally, to adoption, also regulated by law.

Regarding the implementation of the obligations emerging from the Corpus Juris, Bolivia now has a Plurinational System for Comprehensive Child Protection (SIPPROINA, for its acronym in Spanish), a synchronized range of institutions and services to ensure the full enjoyment of rights for this population. A further positive step is the design of the Plurinational Plan for Children and Adolescents 2016-2020, which includes among its indicators actions related to restoring the right to a family, such as placement with substitute families through

foster care, guardianship, national adoption and international adoption, as well as reducing stays in care centres by 20% as compared to the period from 2013 to 2016. Commendably, there are now international and national adoption protocols in place,⁵ which, although they were adopted three years after the specific regulations came into force, are instruments that promote guidance, synchronization and inter-agency and interdisciplinary work for the effective enjoyment of the right to a family.

Regarding the application of the principles necessary for the establishment of special measures for children and adolescents who need to leave their family unit, we wish to make some specific observations in relation to certain aspects, without neglecting others, and with a view to contributing to the improvement of State actions to safeguard the right to live with a family.

Regarding the principle of legality and legitimacy, we should note that Law Nº 548 and its Regulatory Decree Nº 2377 regulate legal parenthood, the suspension of paternal or maternal authority, the termination thereof, circumstantial foster care and adoptions, in both their administrative and judicial phases. However, deficiencies still exist, inasmuch as while there are nine Departmental Autonomous Governments in the country, by 2018, only two (La Paz and Santa Cruz) had developed specific regulations for the accreditation of care centres,⁶ with a worrying percentage of non-accredited centres, which, therefore are unregulated and unsupervised. This could lead to violations of the rights of those who live there, in addition to involving a breach of the duty of special protection to which they are subject.

5 The National Adoption Protocol was adopted by Ministerial Resolution Nº 049/2017 of 3 April 2017.

6 "Advocacy Report: The Status of Children and Adolescents in Care Centres in Bolivia", La Paz, Bolivia, 2017. Page 184.

Encouragingly, we note the recent enactment on 12 April 2019 of the Expedited Proceedings Act, which safeguards the restitution of the human right to a family to children and adolescents. It establishes deadlines in order to shorten family proceedings and encourage promptness, the best interest and absolute priority. This Act will come into force as from August 2019.

As for the principles of exceptionality and temporariness, as in other countries in the region, the number of institutionalized children continues to be a source of concern. In Bolivia, according to the latest official report for the period 2013 to 2014, there were 196 care centres, which provided shelter to 8369 children and adolescents.⁷ In addition, the study revealed that out of a sample, 60% of the centres defined themselves as being “permanent”, a situation that affects the comprehensive development of children, who have often been placed in these centres as a result of violence, sexual abuse or neglect, to which is added the risk of undergoing institutional violence. This ongoing issue emphasizes the need to establish effective mechanisms to achieve deinstitutionalization in the country.

In relation to the principles of necessity and appropriateness, as associated with specialization and professionalism, Bolivian legislation stipulates that all institutions are obliged to have specialized staff, and to this end, must provide training, specialization and updating programmes. However, it should be pointed out as an issue that although the staff of Children’s Advocates Offices (municipal bodies that provide public defence services) include multi-disciplinary teams composed of lawyers, social workers and psychologists, in some departments (Oruro, Cochabamba, Potosí, Beni and Tarija), their coverage is insufficient.⁸ This problem is aggravated by a failure to require specialization and an excess of children

7 Ministry of Justice, A Study on Children in Institutional Care; an approach to the situation of children and adolescents living in care centres in Bolivia, La Paz, 2015. Page 41.

8 “Advocacy Report: The Status of Children and Adolescents in Care Centres in Bolivia”, La Paz, Bolivia, 2017. Page 195

that must be provided with care by those in charge of girls and boys in care centres – known as “mummies” – who in some cases take on the care of 45 children on a permanent basis.⁹

Cross-cutting the principle of exceptional diligence and the other principles, Bolivian legislation provides for the creation of a register and for monitoring the operations of departmental public services, as well as for a national Information System on Children. These measures have not been implemented, since a register does not yet exist of children in alternative care, and the number, length of time and specific situation of children residing in each care centre is unknown. This issue gives rise to weak or deficient inter-agency coordination between the relevant bodies, as well as making it impossible to carry out programmes, policies or services that could be delivered at the various levels of care in order to comply with children’s right to live with a family.

In view of this, while we should highlight the significant constitutional and legal developments achieved in order to safeguard children’s right to live with a family in the Plurinational State of Bolivia, progress that is reflected in the design of framework public policies, public information shows evidence of the shortcomings and limitations of the different levels of State in the application of the specific body of law. There are deficiencies in the effective implementation of the principles of alternative care, which according to the duty of special protection, should receive the priority focus of the State.

In relation to the State’s obligations, as emerging from the Corpus Juris, these circumstances involve a major challenge for the relevant institutions. At the very least, they should develop measures to introduce a new approach to the right to family life in society as a whole. And in public institutions, they should devise specific actions involving all yearly operational

⁹ “Advocacy Report: The Status of Children and Adolescents in Care Centres in Bolivia”, La Paz, Bolivia, 2017. Page 192.

programming, as well as allocate and implement a budget that is sufficient to reflect the State's protection of the family unit and the reinforced protection of children in alternative care.

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Public investment in children and adolescents and the Sustainable Development Goals as relating to children: the case of Guatemala

by ICEFI

The Context

Guatemala is a country of great contrasts in its economic and social indicators. Despite being listed as an upper-middle-income country,¹ its levels of inequality and poverty are among the highest in the Central American region. The positive performance of per capita income and economic activity have not translated into improved living standards for the population, since there is still a high level of income concentration, to such an extent, that Guatemala is one of the most unequal countries in Latin America, with a Gini index which, while decreasing over the last three five-year terms, continues to reach worrying levels (0.53).²

In the case of poverty, efforts have not borne fruit; far from diminishing, it has increased (according to the National Statistics Institute, 51.0% of the population was living in poverty in 2006, a figure that increased to 59.3% in 2014). Children and adolescents were in a worse condition, with monetary poverty at 68.2%; from a multidimensional perspective the situation is no different when it comes to children and adolescents, since 54.8% of them were living in multidimensional poverty

1 See: <https://blogs.worldbank.org/opendata/new-country-classifications-income-lev-el-2018-2019>

2 According to the estimates of the National Statistics Institute (INE, for its acronym in Spanish) based on information from the National Survey of Living Conditions 2014.

by 2014, which not only implies monetary deprivation in their homes, but also the deprivation of rights (Icefi/Unicef, 2016).

In social terms, the prevalence of chronic malnutrition poses huge challenges, since approximately 46.5%³ of boys and girls younger than five suffer from this scourge, which is even more serious in households in the lowest quintiles (65.9% in the first quintile), in rural areas (53.0%) and among children of indigenous mothers (61.2%) (Icefi/Unicef, 2019).

As regards education, exclusion is a phenomenon affecting a great many children and adolescents and greatly hinders their chances of increasing their capacity and being able to gain access to that human right. Ministry of Education figures show us the magnitude of this problem. In 2018, out of a total of 5.9 million Guatemalan children and adolescents between the ages of 3 and 17, one third had no possibility of gaining access to the education system. In absolute terms, this means that for this age group, it is estimated that 1.9 million are excluded from the education system. However, exclusion varies over the whole of that age group, depending on socio-economic status, area (rural vs urban), sex, and other factors (Icefi/Unicef, 2019).

Public investment in children (PIC)

In order to comply with, promote and safeguard the rights of 7.0 million children (about 40.9% of the total population in 2019),⁴ the fundamental role of the State is to lay the foundations in order to increase their capacity and freedoms. Helping to make their rights a reality necessarily entails ensuring that sufficient and sustainable budget allocations are in place. However, a national overview shows that investments targeting children and adolescents are still insufficient to overcome the challenges that children are facing. If Guatemala does not invest promptly in children, the country will definitely lose the

³ According to the VI National Maternal and Child Health Survey 2014-2015

⁴ According to population estimates by INE/CELADE(2015).

opportunity that the current demographic bonus represents, as regards both contributing to economic growth and making the dreams and hopes of children come true.

In recent years, Guatemala has invested very small sums in children, which must be evaluated in light of the great challenges posed by the care due to this population group. In 2019, public investment in children to address the rights and freedoms of children and adolescents – direct public investment in children⁵ – will be close to 3.6% of GDP, equivalent to Q8.90 (USD1.20) per day for each child. This amount is mainly taken up by the Ministry of Education (more than 70%), to the detriment of the provision of other public goods and services needed to safeguard the full enjoyment of the rights of children and adolescents. The high concentration of resources available to be applied in a single area shows a lack of comprehensive plans, policies and public actions to seek a greater level of well-being for the children in the country (Icefi/Unicef, 2019).

⁵ According to the method proposed, this corresponds to expenditure comprising all spending on activities or projects with a direct or specific effect on children and adolescents.

Table 1. Central government: PIC indicators (2015-2019)

Indicator	2015	2016	2017	2018	2019*
In millions of quetzales per year	15,132.5	15,606.3	17,060.1	18,986.3	22,737.1
In millions of quetzales for 2015	15,132.5	14,972.9	15,488.0	16,847.5	19,399.8
In millions of dollars	1,982.7	2,074.7	2,322.7	2,454.0	3,056.8
As a percentage of GDP	3.1	3.0	3.1	3.2	3.6
As a percentage of public expenditure	25.3	24.7	25.4	26.1	27.1
Overall social spending targeting index (greater than 100: bias in favour of childhood; less than one hundred: bias in favour of adults)	99.69	99.58	104.08	109.58	113.45
Annual direct investment per capita (quetzales each year)	2,156.88	2,219.82	2,425.22	2,701.89	3,244.26
Annual direct investment per capita (quetzales for 2015)	2,156.88	2,129.73	2,201.74	2,397.53	2,768.08
Annual direct investment per capita (dollars)	282.60	295.11	330.20	349.22	436.16
Daily direct investment per capita (quetzales each year)	5.91	6.08	6.64	7.40	8.89
Daily direct investment per capita (quetzales for 2015)	5.91	5.83	6.03	6.57	7.58
Daily direct investment per capita (dollars)	0.77	0.81	0.90	0.96	1.19

Source: Icefi/UNICEF, based on information from the Integrated Accounting System (Sicoín, for its acronym in Spanish)

* Approved

Guatemala has one of the lowest public budgets in Latin America (equivalent to 13.2% of GDP for 2019), stagnant and with a time lag of decades. With its limited fiscal revenues,⁶ reflected in a severely restricted tax collection, this entails minimal social investment, and, as a result, the gap that needs to be closed is still too wide for the seven million children and adolescents in Guatemala to be able to achieve their life projects and, therefore, the full enjoyment of their rights.

A further relevant element is PIC's heavy reliance on funding derived from taxes, mainly indirect taxes, as for 2019, more than 95.6% of resources will be obtained from current income and IVA-Paz (Value Added Tax for Peace). It is also pertinent to refer to the fact that the weakening of the management model of the Tax Administration Superintendency (SAT, for its acronym in Spanish), Guatemala's tax collecting agency, as evidenced by the underutilization of recent positive changes involving its organic law, high levels of VAT and income tax evasion, and a great deal of smuggling and informality, has played an adverse role by failing to reverse the worrying trend of the tax burden. To this we must add a high degree of rigidity,⁷ which for 2019 translates into 70.6% of public expenditure already being committed, leaving the government with not much wiggle room, since although resource allocations in priority areas of expenditure are ensured in the short term, in the medium and long terms, expenditure allocations are mechanized and affect the implementation of public policies to address longer term issues and needs. In this sense, the State's determined political will to address children and adolescents has not translated into financial terms (in budget allocations) and therefore has failed to focus on serious structural flaws, such as:

6 For 2019, it is predicted that tax revenues will continue to drop. Although an estimated tax burden of 10.1% was approved, the current path shows that collection could amount to about 9.7% of GDP (the lowest in the last two decades, when it amounted to 9.7% in 1996).

7 These fiscal rigidities refer to the proportion of budgetary resources that have a specific objective and therefore involve commitments that restrict the capacity to modify the level and structure of public expenditure (IcEFI/Unicef, 2018).

- PIC is insufficient, which shows the lack of political will to ensure that the best interest of children prevails.
- Excessive concentration in terms of institutions and PIC, which leaves little room to comprehensively address the rights of Guatemalan children and adolescents.
- Excessive concentration of PIC funding sources, resulting in an “automatic” cut-back of resources for this area in times of crisis.

Public investment in Sustainable Development Goals for girls and boys

In addition, Icefi carried out an estimate of the State’s investment to meet the commitments of Agenda 2030 and the Sustainable Development Goals (SDGs), as relating to protecting, safeguarding and promoting the rights of children and adolescents. Pursuant to the results-based budgeting (RBB) approach adopted by Guatemala in 2012; the Strategy for Synchronization of the Sustainable Development Goals Agenda with the Plan and National Development Policy K’atun Our Guatemala 2032, through which, in 2016, the country’s development goals were brought into line with the SDG Agenda⁸ and the 50 indicators which, according to UNICEF,⁹ are directly related to children. Icefi conducted an exercise in order to link the 50 SDG child-related indicators to the synchronization of the national development targets and the SDG Agenda, and, on that basis, establish budget linkages. This exercise makes it possible to follow up on child-related SDG indicators physically and financially.

Results show that for 2019, the allocation of resources for the funding of the Agenda amounts to Q22,908.5 million (3.6% of GDP), with over 85% focusing on four objectives: zero hunger

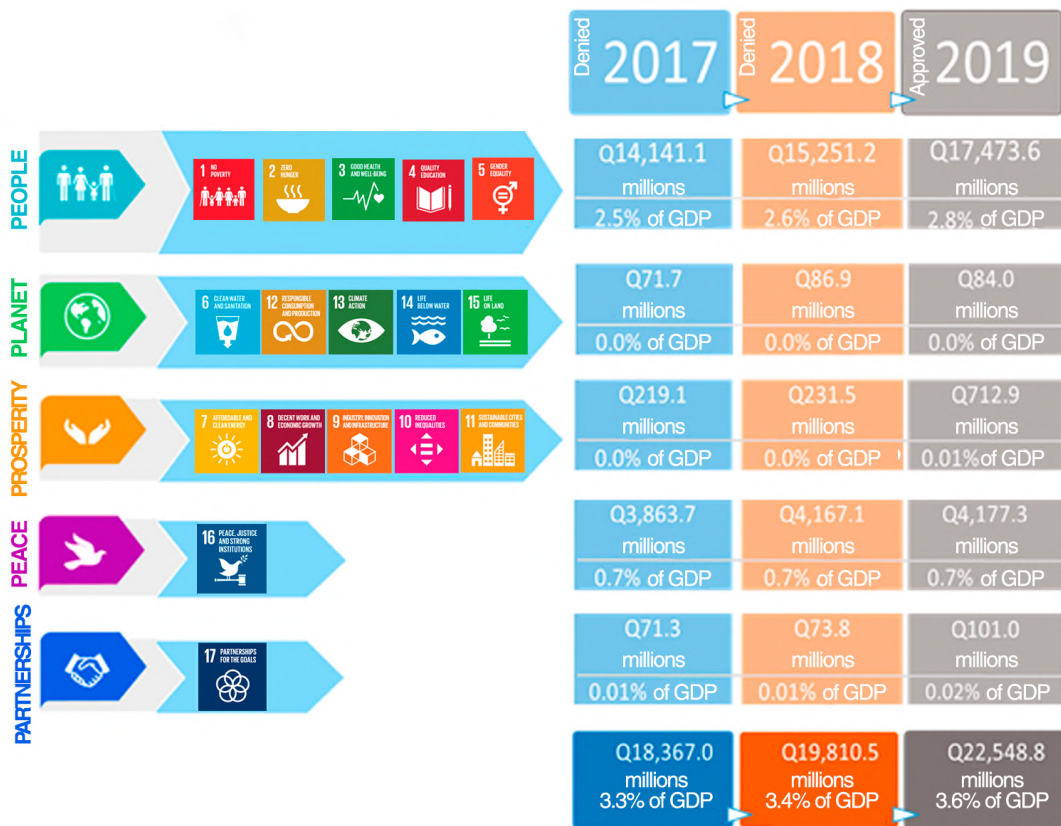
8 See: <https://www.segeplan.gob.gt/nportal/index.php/ods>

9 See: <https://data.unicef.org/children-sustainable-development-goals/>

(SDG number 2); good health and well-being (SDG number 3); quality education (SDG number 4); and peace, justice and strong institutions (SDG number 16), without these resources achieving any significant outcomes (Icefi/Unicef, 2019). This approach also makes it possible to note the lack of interest in other key objectives in the achievement of Agenda 2030, such as goal 5 (gender equality), when girls in Guatemala are at a clear disadvantage as compared to boys, or SDG 10, reducing inequality, which is key to being more efficient in the fight against poverty, which, as we have seen, is, together with chronic malnutrition, one of the main scourges that Guatemalan children are facing.

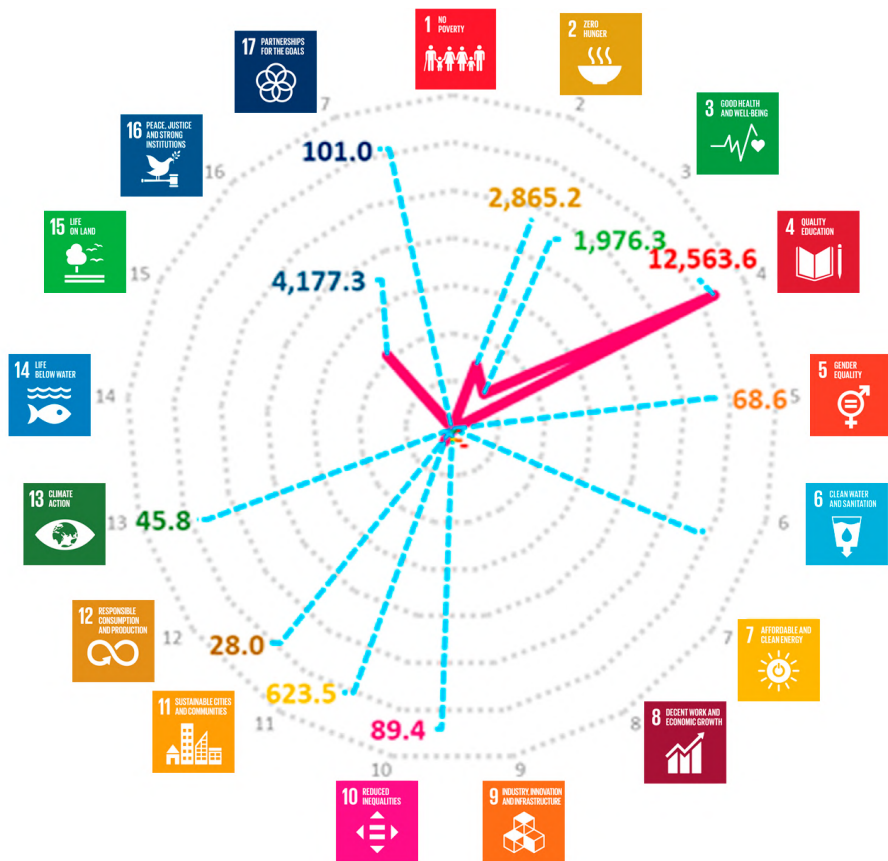
Figure 1. Funding the SDGs relating to children, period covering 2017-2019

(in millions of quetzales and percentages of GDP)



Source: Icefi/UNICEF (2019)

**Chart 1 Public investment in SDGs for children
(millions of quetzales)
2019***



Source: Icefi/UNICEF, based on information from the Integrated Accounting System (Sicoín, for its acronym in Spanish)

* Approved

As in the case of PIC, resources allocated are insufficient, which is already a symptom of failure as far as children are concerned. In addition, focusing on at least four objectives reveals the neglect of the other goals contained in the Agenda as a whole. This implies that Agenda 2030's commitment of "leaving no one behind", in particular the most neglected and vulnerable groups in Guatemalan society, among whom children and youth should be highlighted, lacks a sounding board in terms of operationalizing this commitment through the provision of public resources.



Central American Institute for Fiscal Studies

The Central American Institute for Fiscal Studies (Icefi, for its acronym in Spanish) is a regional think tank specializing in fiscal policy, independent of governments, political parties and other civil society organizations. The Institute produces studies, research and technical analysis on topics relating to fiscal policy in Central America, within three institutional strategies: knowledge-building by means of rigorous study and academic and scientific analysis; communication and political action; and partnerships with other civil society organizations.

Founded in 2005, Icefi promotes improvements in fiscal policy, supporting democratic debate and agreements that contribute to the social effort of building more egalitarian, democratic and prosperous States in Central America. Its headquarters are in Guatemala and it has opened offices in El Salvador and Honduras, with a presence in the rest of the region.

The series of publications, ¡Contamos! (We Count!), whose aim is to make visible, analyse and promote public investment for the benefit of Guatemalan children and youth, has been produced since 2009, in cooperation with the United Nations Children's Fund (UNICEF) in Guatemala, and with the coordination and leadership of the Department of Public Budget and Human Rights.

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