

Committee on the Rights of the Child

Day of General Discussion
State Violence Against Children

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CASA ALIANZA/COVENANT HOUSE

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**Presentation to the United Nation's Committee
on the Rights of the Child**

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“State Violence Against Children”

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Casa Alianza is the Latin American program of Covenant House, an ECOSOC member. For almost 20 years, Casa Alianza has provided both residential and non residential programs for street children in Mexico, Guatemala, Honduras and Nicaragua. The agency's regional office for Latin America is located in Costa Rica. The agency serves close to 9,000 street boys and girls each year.

The presentation for the General Day of Discussion, "State Violence Against Children" will focus on both State sponsored and State condoned violence against street children by the authorities of several Latin American countries. Below is a list of the principal Articles from the UN Convention of the Rights of the Child (UNCRC) that, from Casa Alianza's perspective, have been continually violated by the respective States. The page number listed alongside each article refers to the page of the presentation where the violation is illustrated.

List of Violated Articles

Article 6: "1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child."
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Article 8: "1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interfere.
2. Where a child is deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity."
Principle Violations: Illegal Adoptions in Guatemala.....

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Article 9: "1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall

further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.
Principle Violations: Illegal Adoptions in Guatemala.....

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Article 11: “1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.”

Principle Violations: Illegal Adoptions in Guatemala.....

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Article 19: “1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse neglect of negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should as appropriate, include effective procedures for the establishment of social I programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

Principle Violations: Extrajudicial executions in Honduras.....

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Article 20:) “1. A child temporarily or permanently deprived of his or her family environment, or

in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, Kafala of Islamic law, adoption,

or if necessary

4. placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic religious, cultural and linguistic background.”

Principle Violations: Illegal adoptions in Guatemala.....

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Article 21: “States Parties which recognize and/or permit the system of adoption shall ensure

that the best interests of the child shall be the paramount consideration and they

shall:

a. ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child’s status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;

b. Recognized that intercountry adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;

- c. Ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- d. Take all appropriate measures to ensure that, in intercountry adoptions, the placement does not result in improper financial gain for those involved in it;
- e. Promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Principle Violations: Illegal Adoptions in Guatemala.....

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Article 24: 1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures;

- a. to diminish infant and child mortality
- b. to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- c. to combat disease and malnutrition including within the framework of primary health care, through inter alia the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking not consideration the dangers and risks of environmental pollution,
- d. to ensure appropriate pre- and post-natal health care for expectant mothers.
- e. To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of, basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents,
- f. To develop preventive health care, guidance for parents, and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving professionally the full realization of the right recognized in this article. In this regard, particular amount shall be taken of the needs of developing countries.

Principle Violations: Drug addiction in Costa Rica, Nicaragua, Guatemala and Honduras.....

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Article 33: “States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Principle Violations: Drug addiction in Costa Rica, Nicaragua, Guatemala and Honduras.....

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Article 34: State Parties undertake to protect the child form all forms of sexual exploitation and sexual abuse. For these purposes States Parties shall in particular take all appropriate

national, bilateral and multilateral measures to prevent:

- a. the inducement or coercion of a child to engage in any unlawful sexual activity;
- b. the exploitative use of children in prostitution or other unlawful sexual practices;
- c. the exploitative use of children in pornographic performances and materials.”

Principle Violations: Sexual exploitation in Costa Rica.....

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Article 37: “States Parties shall ensure that:

- a. No child shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment. . . .
- b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. . .
- c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. . .

Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.”

Principle Violations: Torture in Guatemala, Costa Rica and Honduras..... 6

Article 40: “State parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's re-integration and the child's assuming a constructive role in society. . . “

Principle Violations: Illegal Detentions in Honduras and Nicaragua..... .17

Rights of the Child

Violence against children in the context of “law and public order” concerns:

“Poverty is another form of dictatorship.”ⁱ Costa Rican, Nicaraguan, Guatemalan, Honduran and Mexican governments all then impose a “dictatorial” regime of economic violence upon street children and, in doing so, violate the Convention on the Rights of the Child (CRC).

Poverty forces the estimated 40 million street children in Latin Americaⁱⁱ beyond desperation and compels them to take desperate actions for mere survival. These children are thus forced to prostitute themselves, like the more than 2,000 child sex workers in San Joseⁱⁱⁱ or enter into other physically hazardous work, like the 5,000 children in Guatemala City that construct fireworks.^{iv} This desperation furthermore leads approximately 90% of all Latin American street children to resort to inhalant drug use.^v Predictably, these actions create an avalanche of problems of often overwhelming proportions. Such a situation cannot be, in the words of CRC Article 3, in “the best interests of the child.”

A child living in the streets is a child living in danger. The dangers known to street children consist of three principal components. The first danger is the government’s direct physical harm to street children by public officials. A second danger is the creation of an environment of impunity by a government’s inability to conduct proper investigations. A final danger is the societal indifference and inaction. A few examples of these dangers will be discussed in the context of specific human rights violations within different countries. Each individual discussion will be followed by a small explanation of how Casa Alianza is addressing the problems and an additional section of recommendations.

I. TORTURE:

Guatemala, the 6th country in the world to ratify the UNCRC, is guilty of condoning, both through state action and inaction, violence against street children. As a result, both central governments are guilty of violating the Convention on the Rights of the Child. **Article 37** states:

States Parties shall ensure that:

- a. No child shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment. . . .
- b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. . .
- c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. . .

Indeed, “street children are stigmatized by society and are victimized by the police. They are beaten, tortured and often assassinated in the cruelest way possible to serve as a ‘warning’ for other children”^{vi}

In December of 1999, the Inter American Court on Human Rights found the State of Guatemala responsible for the torture and murder of five street children. Four of these children were brutally tortured prior to their execution. Their eyes were burned out, their tongues and ears were severed, and some had boiling liquid poured over their bodies. All had been shot through the head. The court also found that the same state actors – two policemen - fatally shot a fifth child in the same geographic location.^{vii}

Although ten years have passed since this incident, statistics indicate that Guatemala continues to actively participate in the violence against street children and continues to permit this violence. For example, of the 392 criminal cases brought by Casa Alianza's Legal Aid Office between March 1990 and September 1998 in which street children were victims, security forces constituted 220 of the 574 charged individuals, thus accounting for 39% of the alleged aggressors. However, the actual total amount of security force involvement could be significantly higher as an additional 37% of the aggressors in these cases remain unknown.^{viii}

Additionally, Guatemala has also created an environment of impunity that implicitly condones violence and torture against street children. Again, returning to the 392 cases brought during the 1990 – 1998, only 17 have been concluded^{ix}, 15 of which were found for the victims – which is perhaps the principal reason why the State of Guatemala does not want to give us our day in court.^x As a result of this failure to prosecute, 90% of the security forces involved in human rights violations against children remain without a sentence for their dreadful acts.^{xi} Furthermore, even international pressure has not always been able to aid Guatemalan street children. That is, of the 16 incidents of torture and murder of street children in Guatemala reported by Amnesty International's Worldwide Urgent Action messages between 1990 and 1999, only four attackers in two cases have been brought to justice. Such a climate of impunity even led one Guatemalan officer, according to Amnesty International, to declare in response to an accusation of killing a street child, “and so what, I am from the DIC” (Guatemalan Department of Criminal Investigations).^{xii}

In the past several years, two street youth have been tortured and murdered whilst in police detention in Costa Rica.

In Honduras, street children illegally detained in adult jails have been tortured by prison staff (see page 16 of this report), plus a 16 year old youth was beaten to death in police custody. In neither case have those uniformed authorities responsible been prosecuted.

ACTION BY CASA ALIANZA: Casa Alianza, together with CEJIL (Center for Justice and International Law), brought the first case involving street children to the Inter-American Court on Human Rights in Costa Rica. The court ruled in favor of the victims and their families. Furthermore, Casa Alianza applauds the Guatemalan government's decision to allow Casa Alianza to train the national police force regarding the human rights of street children. Casa Alianza is confident that this training, as recommended by the United Nations Committee

against Torture, will help end the on-going torture. The program's effectiveness of deterring human rights violations will be aided since street children now have a greater awareness of their rights. Due to Casa Alianza's efforts, street children are no longer tolerating abuse, and as a result are reporting violations of these rights.

RECOMMENDATIONS:

- Casa Alianza calls upon the Guatemalan government to publicly announce the implementation of Article 20 of the United Nations Convention against Torture. Although Casa Alianza originally made this request more than two years ago to the UN Committee Against Torture (UNCAT), due to the secretive nature of the approval process, it is unclear whether the UNCAT has implemented this provision.
- The State of Guatemala MUST bring to justice the hundreds of uniformed and civilian perpetrators of cruel and inhumane treatment against hundreds of street children over the past ten years. Pending cases of torture and mistreatment of street children presented by Casa Alianza MUST be investigated and those found responsible sentenced accordingly.
- The State of Honduras must investigate and prosecute those State employees found responsible for the torture of children illegally detained in State centers.

II. *EXTRAJUDICIAL EXECUTIONS:*

Honduras ratified the U.N. Convention on the Rights of the Child in 1990 and therefore has the responsibility under Articles 6 and 19 to stop the extrajudicial execution of street children. **Article 6** of the Convention states, "1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child." Furthermore, **Article 19** specifies, "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse neglect of negligent treatment, maltreatment or exploitation including sexual abuse."

The definition of an extrajudicial execution is the killing of an individual outside the scope of judicial punishment. These executions occur without process of the law and without regard for human life. Sadly, most of the individuals who have actively murdered Honduran street children and youth have not faced any consequences.

In Honduras 317 children and youth have been murdered from 1 January 1998 to 10 July 2000. This astonishing number of executions amounted to the murder of 10.23 children and youth each month, of whom 56% were under the age of eighteen.^{xiii} There are 239 murders (75.39%) which have not been investigated sufficiently to determine the identity of the assassin.^{xiv} As a result, the murderers of close to 240 children remain unaccountable for their actions. One half of the identified murderers of street children are police agents of the State of Honduras.

Gerson Edgardo Nuñez Calix (16); Esteban Varela (16) and Gabriela Bonilla (13), were all shot, by a policeman, three blocks from the police station in El Progreso, Honduras on August 28, 1999. The killings came 30 minutes after the three youth were released after having been illegally detained in the police station for 24 hours.”^{xv} Like so many other killers, the uniformed culprit still has not faced justice. Such a failure to prosecute these homicides implicitly condones this State condoned violence. When a state conducts violence against a particular social group, the state commits social cleansing. Such is the case in Honduras. As a result of such violence against this specific social group, even the US Immigration Service has given asylum to two Honduran street children who managed to make it to Texas.

ACTION BY CASA ALIANZA: Casa Alianza is actively combating Honduran extrajudicial executions with three specific actions. First, our Legal Aid Office is documenting the deaths of Honduran children and youth (see attached documentation) and prosecuting the perpetrators. Casa Alianza fears that if it had not taken this action, then most of the children’s deaths would have gone unnoticed and thus perpetuate violence against street children. Second, Bruce Harris has pleaded to the Office of the UN High Commissioner for Human Rights to support Casa Alianza in requesting that Honduras, together with the United Nations, conduct an investigation into these extrajudicial executions and end the Honduran social cleansing. Third, Casa Alianza maintains a web page with current statistical information and other relevant documentation in an effort to increase international awareness of the atrocities occurring in Honduras. (<http://www.casa-alianza.org>).

RECOMMENDATIONS: Casa Alianza recommends **immediate** investigations and prosecution of the murderers of street children and youth by the State of Honduras. The State must hold those criminally liable for their illegal actions whether they are uniformed or not. In addition, street children should be protected, encouraged to get off the streets, and supported in that process.

III. ILLEGAL ADOPTIONS:

In Guatemala there are two types of adoptions: private adoptions and court adoptions. The former, which accounts for close to 99% of all adoptions, solely requires a mother to go to a notary public and agree to give up her child. The latter, are adoptions monitored by the courts for children who have been declared in abandonment.

Guatemala fails to comply with **Article 20** of the UN Convention on the Rights of the Child which states: “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” The violation of Article 20 by the State of Guatemala occurs during many of the adoptions.

The government has also failed to exercise “special protection and assistance” to ensure that the child’s best interests be the “paramount consideration” in the adoption process, as required by CRC **Article 21**. Although Article 21 suggests that international adoptions are to be used as an “alternative means of a child’s care” when intra-national adoptions are not available, Guatemala permits a situation that encourages adoption lawyers to prefer international adoptions to intra-national adoptions. Lawyers charge as much as US\$ 25,000 per child for an international adoption, but are only able to charge around US\$ 300 per child for intra-national adoptions.^{xvi} Indeed, the UN Special Rapporteur on the Sale of Child, Child Pornography and Child Prostitution, Ofelia Calcetas, acknowledged that 95% of all adoptions in Guatemala are international.^{xvii} To quantify this percentage, a UNICEF report recently stated that “between 1,000 and 1,500 babies and children are 'trafficked' every year”.^{xviii} As a result of such statistics, the United Nations Special Rapporteur stated that “the best interest of the child is totally ignored, and the adoption becomes purely a business transaction.”^{xix}

Guatemala also fails to protect children’s identities, thereby violating **Article 8** by failing to provide mechanisms to ensure the preservation of adopted children’s cultural identities. Article 8 stipulates that individual states have a responsibility to “respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference . . .” Indeed, the 1995 Committee of the CRC that reviewed Guatemala’s first country report noted that there were deficiencies in the birth registration system and as a result children may not be recognized as persons, may be denied an education and health services. These children also fail to receive protection from illegal adoptions and trafficking of children. The Special Rapporteur echoed these same concerns in her January 2000 report.^{xx} To exemplify the registration problem, the Special Rapporteur was told of a woman who, within a two and a half year period, “legally” gave birth to 33 children.^{xxi} Such flagrant violations of this Article also raise serious doubts as to whether Guatemala is fulfilling its responsibilities under Article 8, Paragraph 2. This clause stipulates that, “where a child is illegally deprived of some or all of the elements of his or her identity, State Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity”.

Guatemala also fails to ensure that children are not separated from his or her parents against their will”, as required by **Article 9**. The UN Special Rapporteur noted that some illiterate pregnant women are drugged or tricked into providing a thumbprint on a blank piece of paper that is subsequently made into legally binding papers that become authorization for adoption.^{xxii} Additionally, the UN Special Rapporteur also reported that child traffickers will

threaten mothers or literally steal children. For example, the Special Rapporteur was told of a pregnant prostitute who was threatened with death by “the owner of the bar, who worked with a midwife in child trafficking, where she worked if she did not give up her baby for adoption.” Additionally, the Special Rapporteur added that hospital employees are sometimes involved in baby-stealing. That is, the Rapporteur noted that because poor mothers cannot return daily to the hospital, hospital staff sometimes declares children abandoned as part of a child trafficking scheme.^{xxiii}

In spite of the fact that Guatemala’s 1995 country report regarding the CRC acknowledged the creation of illegal adoption operations in the country, Guatemala still has not implemented legislation nor ratified the Hague Convention to stem this problem. As a result, Guatemala violates **Article 11** that holds, “State Parties shall take measure to combat the illicit transfer and non-return of children abroad.” For example, the Child and Adolescent's Code, which the Special Rapporteur described as “the most important draft legislation in Guatemala concerning children,” has been bogged down in Congress since 1996.^{xxiv}

Despite the new code being approved by the Guatemalan Congress four years ago, it’s implementation has been continually suspended. The right wing FRG party – which assumed the Presidency of Guatemala and the majority in Congress in January of this year – permanently suspended the new Children and Adolescent's Code in early 2000. Current Guatemalan legislation does not typify the trafficking of children as a crime, therefore reducing the risk of baby traffickers to zero. We can only accuse the traffickers of the theft of a baby, which has different legal implications. Shamefully, in Guatemala you go to jail for a longer period of time for stealing a car than for stealing a baby!

The new Children's code requires judges to begin each adoption case from the basic “principle that the interests of the child are best served by keeping [the child] with its own family and in his or her own country.”^{xxv} The main opponents of the Code, according to the Special Rapporteur are “people involved in intercountry adoptions who feared that greater protection could interfere with their economic interests.”^{xxvi} With the introduction of the new Child and Adolescent Code in Guatemala, trafficking of children is typified as a crime and carries a 6 year sentence.

Additionally, Guatemala has also failed its international responsibility to ratify the Hague Convention on Inter-country Adoptions, telling the UN Special Rapporteur that this was “because the government did not have a certified copy of the Convention”.^{xxvii}

Guatemala implicitly endorses child trafficking by its lack of oversight regarding private extrajudicial adoptions. Extrajudicial adoptions only require approval by a court appointed social worker and the Attorney General’s Office. These social workers, however, are not subject to court supervision and are often involved in some illegal activity with the lawyer handling the adoption case. Additionally, the Office of the Attorney General also fails to serve as a

safeguard for children because the office simply reviews adoption documents presented to it rather than looking into how the papers were obtained.^{xxviii} Therefore, because these extrajudicial adoptions constitute 99% of all Guatemalan adoptions^{xxix} such a lack of supervision serves as an implicit government endorsement of child trafficking. Indeed, the Special Rapporteur's report highlights this point in stating that "in the majority of cases, international adoption involves . . . criminal offences including the buying and selling of children, the falsifying of documents, the kidnapping of children, and the housing of babies awaiting private adoption in homes and nurseries set up for that purpose."^{xxx}

ACTION BY CASA ALIANZA: Casa Alianza is taking positive strides to combat illegal adoptions. First, the organization is currently involved in legal action against 18 lawyers – including a juvenile judge and the wife of the former President of the Supreme Court for participating in anomalies in the adoption process and in child trafficking rings.

Casa Alianza's Legal Aid Office in Guatemala has also helped many mothers, including Elivia Ramírez Caño in their successful legal battles to "recover" their children after they were tricked into authorizing their child's adoption.^{xxxi} Additionally, Casa Alianza is raising international awareness by providing information on its website (<http://www.casa-alianza.org>) concerning the vast problem of illegal adoptions in Guatemala.

RECOMMENDATIONS:

- Casa Alianza echoes the Special Rapporteur's recommendation that Guatemala ensure that international adoptions be used as a last resort to intra-national adoptions rather than constitute the norm. In pursuit of this goal, Casa Alianza endorses Ms. Calcetas-Santos' suggestion as UN Special Rapporteur that Guatemala pass long-delayed laws regulating adoptions – including the Children and Adolescent's Code - and ensure the elimination of private adoptions.
- Additionally, Casa Alianza urges Guatemala to ratify the Hague Convention on Inter-Country Adoptions.
- Casa Alianza pleads to the Guatemalan state to require DNA testing of all children to be adopted along with the mother giving up the child to an adoption agency during international adoptions. This would ensure that the biological mother is indeed the individual giving up her real baby for adoption.

IV. *SEXUAL EXPLOITATION:*

During the last three years, Central America has become a new destination for the so called "sex tourists" – people, mostly male, who travel to sexually abuse the children in those countries. This has happened as both legal and societal pressures have been brought to bear

on countries such as the Phillipines and Thailand, two of the “traditional” countries for sex tourism.

Costa Rica, which ratified the CRC in 1995, has only recently implemented somewhat adequate legislation aimed at curbing sexual abuse and exploitation, but has failed to allocate sufficient resources to enforcement agencies to uphold the codified sexual offences, and has permitted the judicial system to create impunity for sexual offenders through corruption and inefficiency.

Article 34 of the convention states, “The State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.” Costa Rica has failed to fully comply with the article. Although Costa Rica established the Código de la Niñez y de la Adolescencia (Child and Adolescent Code) in February of 1998^{xxxii}, the problem of sexual exploitation not only persists, but as evidenced by the growing number of complaints, is growing dramatically.

First, Costa Rica has failed to fully fund the Patronato Nacional de la Infancia (PANI). PANI is an organization created by Costa Rica to help children and was founded 1929. This organization is responsible for the care of the children such as providing food, shelter, education, protection and all other social services. The national law requires Costa Rica to distribute seven percent of the taxes collected to PANI. The national law dictates that “[the State can not invoke limitations that would disregard the obligations now established.”^{xxxiii} The State cannot by law withhold funds designated for distribution to benefit the children of the State. However, PANI has not received the required tax funding and as a result PANI is not able to fulfill the required obligation to help the Costa Rican children, including those who are sexually exploited. Therefore, Casa Alianza filed a claim in the Constitutional Court against the government, petitioning it to follow the national law and allocate the required funds to the PANI.

Similarly, the National Commission Against the Commercial Sexual Exploitation of Boys, Girls and Adolescents in Costa Rica, has been ineffective in aiding the plight of street children because the Commission has no funding; has had an ineffective leadership and a highly politicized posture towards this issue.^{xxxiv}

Furthermore, Costa Rica also violates Article 34 of the CRC by failing to enact effective legislation to prevent the inducement of child sexual activity and the use of child pornographic material. It is not a crime in Costa Rica to be found in possession of digital pornographic images of children.^{xxxv} Indeed, the Commission for the Defense of Human Rights in Central America (CODEHUCA) reported that “there is an absence of legislation in Costa Rica which would help combat this problem [of child sexual exploitation].”^{xxxvi} The significance of failing to create an effective deterrent is evident in the fact that according to the Director of the Costa Rican Judicial Investigation Unit at least 5,000 hard core sexual exploiters of children visited Costa Rica in 1998 as “sex tourists.”^{xxxvii}

Furthermore, even when police are competent and committed they are often not provided adequate institutional support. For example, although a former president of the Costa Rican government's child welfare agency blamed the increase in child sex tourism on the promotion of Costa Rica as a sex haven on the internet, neither the special public prosecutor of sex crimes nor her police investigators have a computer with internet access. Additionally, this office only has a staff of six investigators to cover the entire country and these investigators do not have vehicles, a budget to travel outside the city, nor video cameras to collect evidence.^{xxxviii}

Lastly, even when sexual abuse laws are codified and police officials competently fulfil their responsibilities, the Costa Rican judicial system often creates impunity for sex offenders. For example, the case against two Americans, who were arrested in Quepos, Costa Rica for allegedly drugging and sexually abusing three dozen underage girls, has not gone to trial in more than 19 months because the judiciary has not formed a criminal court in Quepos to hear the case. The girls have not received any form of emotional support or counselling as a result of the abuse they have suffered. Also, indicative of this implicit impunity is the fact that out of the hundreds of complaints regarding foreign nationals sexually abusing Costa Rica's children, only three have been convicted and jailed.^{xxxix}

Significant strides in United States federal law and other nation's extraterritorial laws might pose additional incentive for Americans and foreigners in general to refrain from travelling to other countries for the purpose of sexually exploiting children. Under US Federal Statute Title 18, Section 2423, Americans who travel abroad with the intent to sexually exploit children will face a sentence of up to 10 years in prison and a fine as high as US\$ 250,000.^{xi} The first perpetrator charged under this law is a Florida professor, Marvin Hersch, who received a prison sentence of one hundred and five years.^{xii} Unfortunately, this law only applies to tourists. Therefore, if the violator can prove that he or she travelled for any other reason, such as for business or to study, then the law cannot apply. Also, the law does not apply if the violator can prove that he/she is a resident of the State where the violations occurred.

ACTION: Casa Alianza together with CEJIL (Center for Justice and International Law) petitioned the Inter-American Commission for Human Rights to investigate the situation of sexual exploitation of children in Costa Rica. Casa Alianza had the opportunity to disclose the desperate situation experienced by Costa Rican children and to share how the Government passively tolerates sexual exploitation. Additionally, Casa Alianza filed a claim in the Costa Rican courts to order the government to provide the seven percent tax funding to PANI required by law.

RECOMMENDATIONS:

- Casa Alianza urges the government of Costa Rica to comply with its own laws. The State should provide the required seven percent of the taxes and distribute the funds to PANI so that the organization can provide for the basic needs of the children.
- Costa Rica should fulfil its obligations under Article 34 of the CRC and protect children from sexual exploitation. Also, the number of the investigators for the prosecutor's office should be increased to at least fifteen investigators. The state must also provide proper tools such as vehicles, computers, and supplies. Additionally, the government has created commissions and projects against the sexual exploitation of children, but there has not been proper funding for these endeavours. Without the financial support of the government, the children will continue to suffer.
- If Costa Rica is serious about protecting the child against sexual exploitation, then the State should ratify the optional protocol on the sale of children, child prostitution and child pornography.

V. ADDICTION:

Given that 90% of all Latin American street children are estimated to be everyday users of inhalants, above all shoemakers' glue^{xiii}, drug abuse among street children has reached region-wide epidemic proportions.

The inaction of the Costa Rican, Nicaraguan, Honduran, and Guatemalan governments demonstrates a violation of CRC **Article 33**. In regards to production and trafficking of narcotic drugs and psychotropic substances, the article states:

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Costa Rica violates article 33 by failing to take legislative and administrative action to prohibit toxic solvent-based glue sales. Notably, Costa Rica recently rejected a decree presented by the Costa Rican Ministry of Health to control the use of "toluene, cyclohexane, and other solvents in the same chemical family which are used in products known to be abused by children."^{xliii}

Additionally, Nicaragua and Honduras are not effectively enforcing their respective laws to prevent the sale of glue and other drugs to children, as is evidenced in the high number of drug users. For example, a Casa Alianza survey of 520 street youths in Nicaragua indicated that 504 of the children admitted to consuming drugs. Of these 504 individuals, all said that they abused glue and a high percentage stated that they also used other types of drugs.^{xliv} Also quite alarmingly, an estimated 95 percent of street children in Tegucigalpa and Comayaguela (Honduras) are glue abusers.^{xlv}

Furthermore, Honduran children continue to be exploited by drug dealers violating Article 33's assurance that children be protected from participating in drug trafficking. That is, according to Canadian police there are approximately 250 Honduran children between the ages of 12 and 18 who have been trafficked from Honduras to Canada and who are working in "entrenched" drug organizations in the Vancouver region. Alarming, Canadian officials also reported that this problem is worsening.^{xlvi}

For failing to prevent child drug use, the states also fail to ensure **Article 24's** guarantee of the "highest attainable standard of health." That is, inhalants may affect chronic users' thinking ability, memory, ability to learn, or cause permanent hearing loss, irreversible nerve damage, or liver failure.^{xlvii}

ACTIONS BY CASA ALIANZA:

Casa Alianza's Legal Aid Offices for Street Children in both Guatemala and Honduras have been successful in prosecuting adults who sell toxic shoe glue to street children as a drug. More than ten adults have been sentenced to jail terms in the last two years. Implementing such legal measures is an important component to help focus society's attention regarding inhalant abuse.^{xlviii}

Casa Alianza applauds the Guatemalan judicial system for the conviction of two drug dealers, accused of selling glue to street children in Guatemala, and their sentencing to prison for 12 years and imposition of a 50,000 quetzal (US\$ 6500) fine. In so ruling, the court importantly found solvent based glues to be a drug, which had been contested before the ruling.^{xlix}

Similarly, Casa Alianza also proudly notes that the Health Ministry in Nicaragua and prohibit the importation, exportation, distribution and sale of toluene.¹ Casa Alianza is confident that measures such as these actions will promote deterrence and help end the illegal supply of sniffing glue to children.

RECOMMENDATIONS:

- Casa Alianza implores Costa Rica to reverse its rejection of a decree presented by the Costa Rican Ministry of Health to control the use of toluene, cyclohexane, and other solvents in the same chemical family which are used in products known to be abused by children. By failing to implement this decree, Costa Rica permits other glue manufacturers to sell glue abused by children.
- Casa Alianza encourages Nicaragua and Guatemala to continue legally pursuing individuals who provide glue to children.

VI. ILLEGAL DETENTION:

Guatemala has failed to treat children according to their “dignity and worth” while incarcerated. As a result, the state has violated **Article 40**, which states:

State parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s re-integration and the child’s assuming a constructive role in society. . .

The violation of this article is evident through Guatemala’s failure to provide adequate medical attention to incarcerated children and the methods used when detaining children. For instance, despite the fact that Francisco Javier Espinoza was bleeding badly and had severe and visible head wounds upon his arrest, he died on January 28, 2000 due to the lack of timely medical attention while under police custody.ⁱⁱ Additionally, a United Nations report noted that “the rights of children are often violated at rehabilitation centers where there have been incidents of mistreatment, prolonged isolated detention, [and] isolation with sick children.”ⁱⁱⁱ These reports and Francisco Javier Espinoza’s detention indicate that Guatemala is failing to provide special assistance to children while detained and temporarily depriving the children of their parents.

ACTIONS BY CASA ALIANZA: Casa Alianza’s Legal Aid Office has presented criminal charges against employees of the Guatemalan government’s juvenile detention centers, accusing several employees of the torture and cruel and inhumane treatment of juvenile offenders. Casa Alianza is also increasing awareness regarding the illegal detention of children in Honduras by providing information on its website (<http://www.casa-alianza.org>).

During the past three years, Casa Alianza also won a legal battle against the State of Honduras which was illegally detaining children together with adults in the same overcrowded prison cells. Many children were both physically and sexually abused. Several boys were tortured by a prison Director and one boy, Carlos Jaco (16), was murdered by another inmate. Casa Alianza took the State of Honduras to the Inter American Commission on Human Rights where, after two years of legal wrangling, the State of Honduras was ordered to pay financial compensation to each of the minors illegally detained plus take legal actions against the judges responsible for illegally detaining the children together with adults. This was a first in the history of children’s human rights in Honduras. The positive outcome is that children are no longer jailed with adults in Honduras.

There is a significant problem in Nicaragua as the country does not possess a closed rehabilitation center for children under the age of 16. Also, minors above 15 years of age are jailed in the Tipitapa adult jail, which recently resulted in a 16 year old youth committing suicide inside the adult prison. As a result of the lack of a closed rehabilitation center, the juvenile

judges have to set children free even when they have committed a major infraction. The reaction of the police is to detain the children in an extra official manner in closed police cells, often mixing the children with adults. There are estimates of up to 2,000 children in this situation in the capital, Managua, alone.

RECOMMENDATIONS:

- Casa Alianza supports the recommendations made by IACHR that recommends the prosecution of Honduran judges, including Supreme Court Magistrates, who ordered the incarceration of minors in adult institutions.^{liii} Furthermore, in accordance to the IACHR, Honduras should also ensure that when a judge becomes aware of a minor incarcerated in an adult institution, the judge will take the necessary action to place the child in a facility for children and that the individuals who imprison children with adults or allow or tolerate physical violence against children while in prison should be investigated and sanctioned. Casa Alianza also supports the IACHR's recommendation that compensation be paid to minors who were held with adults.^{liv}
- Casa Alianza requests a formal investigation into the illegal detention of children in police cells in Nicaragua.
- Casa Alianza also requests an immediate investigation into the violation of children's rights in the juvenile detention facilities in Guatemala.

CONCLUSION:

As can be seen, violations of the UN Convention on the Rights of the Child permeate Central America and strike at some of the most disadvantaged children in the hemisphere—street children. Unfortunately, the violations discussed above do not appear to represent single isolated incidents erroneously committed. Rather, in total they indicate a continuing, apparently region-wide, refusal to uphold the principles of the UN Convention.

Alarming, societal indifference regarding these violations has likely been interpreted as implicit approval. This indifference has thus also supported an environment of impunity that does not hold individuals accountable for violations. The governments hence fail to uphold their international commitments and guarantees to children. However, as members of the international community, let us unequivocally demand that governments uphold CRC principles and in doing so uphold their responsibilities to children.

More than three years ago, Casa Alianza put forward the idea of a UN Special Rapporteur on Street Children. These children are at the bottom of the totem pole in regards to even the most basic children's rights. Apart from being abandoned, they are exploited, hunted down by the uniformed officials who are supposed to protect them, and are killed by society's indifference. They deserve a Special Rapporteur to protect them and to defend them in a world

that seems set to create them and then condemn them to try and survive in the most infra human conditions.

As a single, imperative motion at this Day of General Discussion, Casa Alianza would like to move that a Special Rapporteur for Street Children be implemented in the UN system in an effort to take a step forward to protect the most excluded children of all.

Thank you.

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