



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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10 March 2005

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Guatemala: Penal provisions for child abduction; existence of a Guatemalan ancillary to sections 281, 282 and 283 of the Canadian Criminal Code; consequences of child abduction in Guatemala; copy of section 88 of the Penal Code; copy of section 7 of the Law to Prevent, Punish and Eliminate Family Violence in Guatemala (2001-2005)

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In Guatemala, child abduction is often linked to international adoption (Council on Foreign Relations Nov.-Dec. 2003).

### Penal provisions for child abduction

According to a report of the Special Rapporteur on the sale of children, child prostitution and child pornography, "[t]rafficking of children is not even typified as a crime under the law. It is reported that a stiffer penalty is imposed for the theft of a car than for the theft of a child" (United Nations 27 Jan. 2000, para. 19). However, two sources indicate that abducting a child under 12 years of age is punishable by death (IACHR 9 Oct. 2002; AI 9 May 1997). In 1995 the Guatemalan Congress approved Decree 14-95, "extending the death penalty to cover anyone convicted of kidnapping, including accomplices and those attempting to conceal such crimes" (ibid.). However, "[t]he status of this legislation remains unclear, since the former President Ramiro de Leon Carpio neither ratified nor vetoed the law" (ibid.). In July 1995, Decree 48-95 was introduced, which extends the death penalty to cover perpetrators "when the victim, as a consequence of forced disappearance, suffers serious injury, permanent psychological trauma or death" (ibid.). No additional recent information on penal provisions for child abduction or on Decrees 14-95 and 48-95 could be found by the Research Directorate within the time constraints of this Response.

### International adoption

An article from the Council on Foreign Relations states that Guatemala is a major supplier for international adoption, which has a negative impact on children in a number of ways, including "the buying and selling of children, the falsifying of documents, the kidnapping of children, and the housing of [these] babies awaiting private adoption" (Nov.-Dec. 2003; see also Rainbow Kids 1 Oct. 2003). A black market in babies and toddlers exists in Guatemala, involving "thieves, corrupt doctors, nurses, lawyers, civil registrars and foster-home mothers enticed by the millions of dollars pumped into the country by international adoptions" (*Chicago Tribune* 28 Sept. 2003). According to one source, adoption brings over \$45 million into Guatemala (ibid.). Moreover, mothers are apparently often tricked into giving up their babies (One World.net 2 Feb. 2004). There have also been cases of "employers forcing their domestic servants to surrender newborns and even villagers kidnapping their neighbours' children from the local playground" (*Chicago Tribune* 28 Sept. 2003). One source states that "[t]he illegal trade has provoked rumours and paranoia about 'baby stealing' in Guatemalan villages, where foreigners have been beaten after trying to take photos of children" (ibid.; see also HRW 2001).

### Government response to international adoption

"In response to growing domestic and international concern, the Guatemalan government also began implementing the Hague Convention, which, among other steps, eliminates private adoptions in order to curb abuses" (One World.net 2 Feb. 2004; see also *Chicago Tribune* 28 Sept. 2003). According to UNICEF, in 2002, "the country acceded to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption" (UNICEF 1 Nov. 2004). However, the legislative changes required to implement the convention were blocked in September 2003 by the Guatemalan Constitutional Court (ibid.). As a result, since September 2003, "traditional adoption procedures have resumed, pending legislation that can align national law with the Convention on the Rights of the Child and The Hague Convention" (ibid.). Members of civil society organizations working for children's rights, as well as the United Nations Committee on the Rights of the Child and the Special Representative of the Secretary-General for Children and Armed Conflict want The Hague Convention to acquire the force of law (One World.net 2 Feb. 2004; United Nations 25 Sept. 2002; ibid. 9 July 2001, para. 35).

### **Other types of child abduction**

Child abduction was common during the civil war, which ended after 36 years in 1996 (BBC News 8 Aug. 2000). According to a BBC News article, during the war, "[t]he army [was] blamed for more than 90% of the kidnappings, while left-wing guerrillas that fought to overthrow the government [were] blamed for only 2%" (ibid.). In 2001, the Committee on the Rights of the Child recommended that the Guatemalan government investigate the forced disappearance of children during the civil war (United Nations 25 Sept. 2002; ibid. 9 July 2001, para. 49).

Attached is a French translation of section 88 from the Penal Code and of section 7 of the Law to Prevent, Punish and Eliminate Family Violence in Guatemala.

No information on the existence of a Guatemalan ancillary to sections 281, 282 and 283 of the Canadian Criminal Code could be found by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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#### Additional Sources Consulted

**Internet sites, including:** Amnesty International, *Country Reports on Human Rights Practices* , Hieros Gamos, Human Rights Watch, Integrated Regional Information Networks (IRIN), International Crisis Group, Save the Children Guatemala, World Organisation Against Torture.

**Oral sources:** Casa Alianza Guatemala, Embassy of the Republic of Guatemala in Ottawa.

#### Attachments

Guatemala. 28 November 1996. Law to Prevent, Punish and Eliminate Family Violence in Guatemala, section 7 (*Ley para prevenir, sancionar y erradicar la violencia intrafamiliar* ). Translated from Spanish to French by the Multilingual Translation Directorate, Translation Bureau, Public Works and Government Services Canada, 3 pp.

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