

# Adoption of Guatemalan Children: Impending Changes Under the Hague Convention for Intercountry Adoption



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Guatemala is the second largest source of US-adopted children. Currently, Guatemala is attempting to implement the Hague Convention for Intercountry Adoption. Significant changes will be necessary for Convention compliance. Six areas of change are discussed explicitly: the requirement for

a central authority, the nature of notary adoptions, the practices of adoption facilitators, the practices of birth mother recruiters, regulation of foster homes, and recruitment of Guatemalan families for adoptive placement. Analysis includes US implementation of the Hague Convention as a catalyzing event for Guatemalan child adoption system reform.

## **Introduction**

Guatemala recently became the second largest source of US-adopted children in the world. Most of the children who join families in the United States are infants (“Guatemala’s baby business,” 2000; Lacey, 2006), and it is estimated that 1% of all newborn Guatemalan babies enter the child adoption system in Guatemala, with 98% of adoptions carried out internationally (“Adoptions in Guatemala face US ban,” 2007). From 2002-2006, just under 16,000 Guatemalan children were adopted by United States citizens (United States Department of State [USDOS], n.d.a). Guatemala is particularly popular for intercountry adoption, largely because an infant can be secured in a relatively short time, averaging 5 to 6 months (United States Government Accountability Office [USGAO], 2005). Many infants are relinquished by families living in desperate conditions of extreme poverty (Author, in review). Many of the children are ethnically and genetically Amerindians from one of several dozen different Mayan tribal groups living in Guatemala (Author, and co-authors, in review).

The United Nations (UN) has documented serious human rights violations associated with the current adoption system in Guatemala, including forced and coerced relinquishment of babies, payments in exchange for babies, and exorbitant professional fees collected during adoption transactions (Latin American Institute for Education and Communication [ILPEC], 2000; UN, 2000). The United Nations International Children’s Fund (UNICEF) asserts that intercountry adoption from Guatemala is a \$150 million US dollar industry that operates without regulation (“Adoptions in Guatemala face US ban,” 2007).

## **Background**

International press has decried the human rights abuses related to Guatemalan adoptions, the majority of which are carried out through a private system (ILPEC, 2000; UN, 2000). For example, in 2000 the British Broadcasting Corporation ran a print story entitled “Guatemala’s Baby Business” profiling a birth mother who recounted how her baby was literally stolen by gun wielding men on the streets of Guatemala City (“Guatemala’s baby business,” 2000). More recently in 2006, the New York Times ran a similar story reporting on the trend of couples and individuals rushing to adopt due to fears of a moratorium on adoption from Guatemala associated with the impending US implementation of the Hague Convention on Intercountry Adoption (Lacey, 2006). In this article, the director of the Guatemalan government department that grants final official approval of adoptions acknowledged that

“babies are being sold, and we have to stop it” (p. 3).

The US government has also recognized the irregular nature of adoptions in Guatemala, acknowledging illegal adoption as a form of “child trafficking” (USGAO, 2005). Kapstein (2003), a foreign policy scholar, calls the phenomena a “baby trade” (p. 115). Even with such deterring language, Americans continued to adopt from Guatemala. However, in February 2007 information about Guatemalan adoption on the US Department of State (DOS) website shifted in tone, stating that Americans should proceed with “caution” and “consider their options” (USDOS, n.d. b). Most recently, a manager of the Marriott Hotel in Guatemala City, known as the “baby hotel” because of its popularity with adopting families, has noted a decrease in reservations for rooms furnished with cribs and facilities for young children (“Adoptions in Guatemala face US ban,” 2007). This may indicate a decrease in adoptions in 2007—the actual numbers will not be known until the DOS releases that data at the end of the year.

Guatemala has long been on the human rights watch list (Amnesty International, 2006). Past violations have been related to the 36-year civil war that resulted in the genocide of at least 200,000 people, most of them Indigenous citizens. Guatemala is now in a post-conflict phase in which implementation of the 1996 Peace Accords has been problematic. In the final report analyzing the implementation of the accords, authors stated that in 1998: “there [were] growing signs that the peace process [was] losing momentum because major power holders [did] not see incentives for themselves in the broad process of democratization the Accords call for and require” (Spence, Dye, Worby, Deon-Escribano, Vickers & Lanchin, 1998, p. 7). More recently, with the impending Presidential elections, there has been renewed recognition that Guatemala still has not fully implemented the Peace Accords, even a decade later. Rigoberta Menchu, the Nobel Peace Prize winner known for sharing her Indigenous perspective on the war in Guatemala (Menchu, 1995), is a presidential candidate and her campaign has focused on the continuing issues of peace and reconciliation.

Indigenous peoples still suffer from racism and violence (“UN in Guatemala ‘racism’ warning”, 2006) and the country is recognized by Amnesty International as a dangerous environment for many of its citizens, especially women. Both rape and homicide of women are not uncommon in Guatemala, and such incidents often occur with impunity (Amnesty International, 2006). This environment, which is the result of inadequate laws and other protections for citizens, has resulted in inadequate social protection and welfare systems. One of these results has been little regulation of the privately run Guatemalan intercountry adoption system (Gresham, Nackerud, & Risler, 2003; Author, in review; Author, and co-authors in review).

### **The Hague Convention: Past, Present, and Future in Guatemala**

The 1993 Hague Convention for Intercountry Adoption is an international agreement which directly pertains to intercountry child adoption. The Convention prohibits the selling and trafficking children and sets international standards for the transactions and agencies involved in intercountry adoptions. The US, Guatemala, and 69 other nations have agreed to enforce the Convention (The Hague, 2003); the US is currently in the process of implementing the Hague Convention, and Guatemala is in the very early stages of implementation.

Implementation in all signatory countries is based on the following key principles: “1) Ensuring that intercountry adoptions take place in the best interests of children; and 2) Preventing the abduction, exploitation, sale, or trafficking of children” (USDOS, 2006b), which is further addressed by the requirement that only reasonable professional fees may be charged for the transaction (The Hague, 2003).

The United States intends to ratify and enforce the Hague Adoption Convention by the end of 2007 or in early 2008 (USDOS, 2006a). After the Convention is enacted, all intercountry adoptions between the US and countries who are parties to the Convention must comply with

its procedural requirements (USDOS, 2006a). If Guatemala fails to truly implement the Convention, the US DOS will cease to issue visas for children adopted from Guatemala, as have other Hague signatory countries, such as Canada and some European nations (Canadian Ministry of Children and Family Development, n.d.)

The implications of the Hague Convention are significant for Guatemala. This is primarily based on two factors: difficulties of reforming a corrupt system (ILPEC, 2000; Author, and coauthors, in review; UN, 2000) and the fact that implementation of the required provisions has been stalled due to legal challenges to the Convention from Guatemala's Constitutional Court (Author, and co-authors, in review). However, after years of legal challenges and the insistence of Presidente Óscar Berger's administration (Rodríguez, 2006), the "nation's Constitutional Court ruled definitively in 2006 that the country must abide by it (the Hague Convention for Intercountry Adoption)" (Lacey, 2006, p. 4). This decision coincides with a September 2006 statement by the US Department of State (DOS) confirming that after the Convention requirements are in force in the US, the DOS "will not be willing to approve adoptions from Guatemala unless the nation's adoption process is changed to comply with the Hague standards" (USDOS, 2006c).

In September 2006, several Guatemalan governmental agencies, including the Attorney General's Office (Procuraduría General de la Nación) and the Secretary of Social Welfare of the President of the Republic, developed a Protocol of Good Practices for National and International Adoptions in Guatemala, which outlines a protocol which responds to the "absence of procedures and practices" with respect to adoption, and which "prepares State authorities for the beginning of a Law specifically for Adoptions and the imminent use of the Hague Convention" (Protocolo de buenas prácticas de adopciones nacionales e internacionales en Guatemala, 2003, p. 1). As recently as February 2007, Guatemalan officials were meeting to further refine the Protocols of Good Practice (Rodríguez, 2007) and to create a "Manual of Good Practice of Local and International Adoptions in Guatemala," which was released that same month (Asociación Defensores de la Adopción, n.d.). While such efforts are a step towards Convention implementation in Guatemala, such a document is the product of a process that has been contentious in nature. Not all lawmakers, adoption attorneys, and others involved in Guatemalan child adoption are in agreement with the new practices and requirements, especially the standards for judicial oversight (Asociación Defensores de la Adopción, n. d.; Families without Borders, 2003). It remains to be seen if the government of Guatemala will be able to organize itself in order to pass the necessary laws and implement the necessary practices to successfully comply with either its own protocol or those of the Hague Convention (Author, and co-authors, in review).

### **Major Changes Required for Hague Convention Implementation**

There are at least six major changes that must take place in Guatemala in order to implement the Hague Convention. First and foremost, the government of Guatemala must develop a central authority to regulate both domestic and international adoptions. That authority would then regulate practices, specifically approving Guatemalan organizations who work in the adoption sector, an important requirement of the Hague Convention. The approved organizations will be required total transparency in client fee schedules; specifically, they will be required to present formal organizational budget documentation. The other five areas of concern would also be regulated by the central authority:

- the current private system of notary adoptions which takes place outside the presence of judicial oversight;
- the current system of "adoption facilitation";
- the birth mother recruiting process by jaladoras;

- the current system of foster homes, called hogars;
- active recruitment of Guatemalan families for adoption placement.

Each of those will be discussed, focusing on current practices and requirements of Hague Convention implementation.



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## **1. Notary Adoptions**

Currently, essentially all international adoptions are carried out in an extrajudiciary process (Gresham, et al., 2003; ILPEC, 2000; UN, 2003), based on a notary system in which adoption is implemented by an attorney as the lead professional. “This [notary] process, which apparently only takes place in Guatemala, is performed before a Notary, based on Regulatory Law of Notary Procedures in Matters of Voluntary Jurisdiction” (ILPEC, 2000, p. 6; D. Guisti of UNICEF Guatemala, personal communication, July 11, 2006). The adoption process is typically carried out in a private attorney’s office. It is termed a notarial adoption because a notary and an adoption agent must participate, both of whom must be attorneys at law. In the majority of cases, the same attorney acts in both roles as notary and agent (ILPEC, 2000; UN, 2000), a process that does not safeguard children or birth mothers because impartiality can not be guaranteed.

“The only other professional who may safeguard the process is a social worker who officially

verifies the circumstances of abandonment or makes a socio-economic assessment of the birth family for relinquishment purposes” (ILPEC, 2000, p. 6). “Adoption through this route needs no resolution from a competent judge. The Family Court’s only action is that of soliciting the social worker, under oath, to execute the respective socioeconomic investigation of the family” (International Social Service, 2000, p. 6). This means that an impartial judge has no means to directly question the grounds under which a parent has relinquished a child. Also, there are cases of unethical practices by social workers, some of whom are rewarded with gifts and money for the birth family report (ILPEC, 2000; UN, 2000).

Under the Hague Convention, attorneys will no longer be able to work as sole representatives in the adoption process. Adoptions will require the involvement of approved agencies and judicial oversight and approval from the established central authority.

## **2. Adoption Facilitation**

The adoption facilitator is the individual who negotiates the multiple steps in the adoption process on the Guatemalan side of the equation. Quite often, the facilitator is American and he or she negotiates and navigates the system. The facilitator actively communicates with the US adoption agency, waiting families, attorneys, Guatemalan bureaucrats involved in the adoption process, and foster homes. One may think of this role as a “middle man” straddling the borders of both countries because they carry out their facilitation in both the US and Guatemala. Under the current system, these facilitators are typically fee-for-service workers who work for multiple adoption agencies as independent consultants rather than employees.

Under this system, a variety of problems can manifest. For instance, a facilitator may find themselves in a position where they are expected to bribe a government employee in order to expedite paperwork. In Guatemala, one of the most corrupt countries in this hemisphere (United States Agency for International Development [USAID], 2006), bribery is not an uncommon practice, resulting in questionable processes and potentially falsified paperwork. For example, in early 2007, a facilitator was arrested by US Marshalls in Florida (her home of residence) on US immigration violations related to illegal transportation of a child out of Guatemala and into the US—with charges related to falsified documents (Facilitator’s arrest puzzles adoptive families, 2007). It is not clear if she used bribery or paid others to participate in her alleged crime, but questions remain about the motivations of the Guatemalans who may be implicated in the incident.

Under the Hague Convention, not only is bribery a violation, but adoption facilitators working with US agencies are considered as working under the direct supervision of that agency (USDOS, 2006b). As a result, US adoption agencies are held accountable for the practices of their facilitators, making them liable for legal and ethical violations.

Required practices are regulated based on the Hague stipulation that all placement agencies be approved as accredited service providers. The US began agency accreditation in 2007 (COA, n.d.). Part of the accreditation process requires the US adoption agency to have policies and procedures in place to comprehensively supervise facilitators. If irregularities are discovered or reported to the agency, the adoption agency must respond appropriately, including documenting problems and related complaints in personnel records and process improvement documents (USDOS, 2006b).

## **3. Birth Mother Recruiting**

Birth mother recruiters, known in Guatemala as jaladoras, are unregulated workers under the current notary system of adoption (Author, in review; Author, and co-authors, in review). The jaladora, or baby broker (Lacey, 2006), works in collusion with the attorney (notary) without any judicial or social agency oversight in order to recruit pregnant women for baby relinquishment (UN, 2000). In some cases, medical providers, hospitals, social workers and midwives are also involved in this criminal activity. Under this recruitment system, it is not

surprising that coercive relinquishments and questionable child abandonments have occurred. Cases of forced relinquishments have been documented, further underscoring the reality of emotional duress and fear that underlies some decisions to terminate parental rights. Alternatively, there are other cases of relinquishments being made while the mother is incapacitated by drugs used for pain during delivery; in some cases the mother is later told that the child died when she wakes from sedation (Gresham, et al., 2003; ILPEC, 2000; UN, 2000).

The use of the term *jaladora* is quite telling in and of itself. The term is derived from the verb *jalar* which means to haul or pull. In Guatemala it is also used in expressions like “*jalar gente*” to indicate the recruitment of people, such as the recruitment of people to a community meeting (M. Brown, personal communication, January, 2007). The emergence of this term used to indicate a particular worker role further underscores that birth mother recruitment has become a part of an adoption industry which is supplying the “baby trade” (Kapstein, 2003). Currently *jaladoras* work with Guatemalan adoption attorneys, most of them operating on a fee-for-service basis. However, under the Hague Convention the recruiters will fall under the same criteria as the adoption facilitators and will require supervision. They will no longer be able to operate independently or as contractors with adoption attorneys, but will be required to work with an approved or accredited organization. Consequently, under the Convention requirements, approved placement providers (agencies) will be held accountable for the behavior and practices of the *jaladoras* with whom they choose to work.

#### **4. Foster Homes: Hogars**

Foster homes and children’s homes are unregulated in Guatemala. Under the current system, it is impossible to know how many homes actually exist or the number of infants and children awaiting adoption placement at any one time. This is problematic on many levels, including not only the state’s ability to account for children living in substitute care, but also the regulation of medical, nutritional and sanitation standards of such facilities. There are mixed reviews of these homes, some negative (ILPEC, 2000; UN, 2000) and others more positive (Bunkers, 2005).

On the whole, foster homes are viewed as superior to orphanages where it is not uncommon for children to lack stimulation and long for human affection. For example, some children who were adopted from Romania in the late 1980s languished in orphanages prior to their adoption. Some of these children have suffered from attachment disorder and have exhibited a lack of ability to make a close personal bond, and others have anti-social behavior characteristics (Groza, Ileana, & Irwin, 1999; Howe, 1995).

The Hague Convention will require that any child care organization serving as housing for children who are awaiting placement be regulated. Standards of child care practice, such as health care and nutrition, must be defined and regulated. Additionally, financial transparency will also be required.

#### **5. Recruitment of Guatemalan Families for Adoption Placement**

Another requirement of the Hague Convention involves actively seeking adoptive placements for children within their country of origin. Currently, only about 2% of all adopted Guatemalan children are placed with Guatemalan families (ILPEC, 2000; UN, 2000). While this placement data is very low, it is important to note that Guatemala is a traditional society. As a result, many of the children are not adopted ‘formally’ as defined by the standards of an industrial country. This informal system of adoption is not documented or reflected in national figures (Author, and co-authors, in review).

For example, there are cases when a child is abandoned with the district health nurse, midwife, or other trusted community leader. It is not uncommon for this individual who receives the baby to then seek a willing and able family to take in and care for the child. The

receiving parent(s) may go to the local municipality to have a birth certificate issued with their family name indicating the adoptive parents as birth parents. A child may never be told that this transaction took place (S. Solis, personal communication, Spring 2000). This process of paperwork alteration would typically take place in a small municipality office, with nothing more than a clerk and a type writer. There would be no further documentation than an altered birth certificate. This is indicative of a society that has many non-formal practices and, as a result, these 'adoptions' are not tracked in national data (Author, and co-authors, in review).

There are obvious problems with this process, even though it is a natural outgrowth from a traditional society. From an international development perspective, this movement from informal to formal will require a number of growth strategies. For example, the nation of Guatemala will need to develop a social marketing plan to encourage families across the country to proceed with formal and legally recognized adoptions. Also, clerks in municipal offices will need to respond to new government regulations. This will be a challenge given the historical and cultural dynamics coupled with the reality of bribery inevitably taking place at the municipal level within the context of a corruption (United States Agency for International Development [USAID], 2006).

Another part of a holistic social marketing plan is raising awareness about the need for families to adopt children who are not related to them. Currently, the practice of non-relative adoption is not truly a part of the consciousness of the entire population. This will be a difficult task given not only the culture, but also the many divisions in Guatemala and the reality of extreme poverty. However, it is considered to be a child's basic human right to remain in his or her country of origin if possible, and efforts must be made to explore that possibility (Andrews & Kaufman, 1999).

## **Conclusion**

Adoption system change in Guatemala is a reality because of the US implementation and eventual ratification of the Hague Convention. With the evidence of corruption and irregular adoption practices, this has become a visible and contentious issue in both countries. The expected implementation of the Hague Convention in the United States has caused a surge in intercountry adoptions of Guatemalan children to the US. In the US, it is the Department of State that regulates international adoptions and issues visas to incoming adopted children. The DOS, as it makes plans for bringing the US into Hague compliance, is watching Guatemala closely and has started to put pressure on the Guatemalan congress to enact reform of its adoption system and to develop an effective central authority. Recently, President George W. Bush recently met with Presidente Óscar Berger and stated that "this year [2007] it is very important for the United States and Guatemala to implement the Hague Convention on adoption to help protect children and families during the adoption process" (The White House, George W. Bush, 2007).

If Guatemala does not set up a central authority as required by the Hague, the US as a Hague signatory country will not be able to approve any more adoptions from Guatemala. This would have serious negative impacts for the many children who do legitimately need homes. In the US, adoption agencies, human rights groups, potential adoptive parents, and their congressional representatives have been closely tracking the DOS and Guatemalan policy development. The DOS has stated that it will not halt any pending adoptions, but that "the possibility exists that adoptions could be disrupted" in order to be compliant with the Hague requirements (DOS, 2006a, p.1). The predominant hope is to prevent a complete shutdown of international adoptions from Guatemala.

Guatemala undoubtedly needs aid and support in becoming Hague compliant. Gaining control of the unbridled international adoption system as it currently is functioning will be challenging. Not only will infrastructure be required, but Guatemala must take steps to monitor and regulate the adoption practices of its attorneys. Because adoption attorneys are an exclusive and influential group in Guatemala and because many of them are now millionaires by US standards, this will be a challenge. However, the Hague Convention will inevitably be an impetus for these attorneys to make appropriate changes. Possibly, if Guatemala complies with the Hague Convention, some of these attorneys will cease the practice of intercountry adoption as it becomes more structured and carefully supervised, more supportive of child and family rights, and less profitable.

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