

Intercountry Adoption Reform Based on the Hague Convention on Intercountry Adoption: An Update on Guatemala in 2008



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Until recently, Guatemala was on a per capita basis the largest source of US-adopted children in the world. At its peak, it was estimated that as many as 17 young Guatemalan children, many of them infants, departed Guatemala daily as an intercountry adoptees. The phenomenon was so common that the departure airline flights were called the “baby flight” by adoption agencies and families (Rotabi, 2007a). This dynamic underscores the fact that 98% of all adoptions were carried out internationally rather than domestic adoption placements with Guatemalan families (Latin American Institute for Education and Communication [ILPEC], 2000; UN, 2000). Dating back to the year 2000, reportedly 27,805 Guatemalan children were adopted by United States citizens (United States Department of State [USDOS], n.d.). US data are particularly relevant because a number of other industrialized nations, including Canada, enforced a moratorium on Guatemala as a sending nation due to adoption irregularities, and as a result, the vast majority of children were sent to the US during this time period (Rotabi, Morris & Weil, in press).

This Millenium adoption surge took place in the face of allegations and evidence of serious human rights abuses, including warnings from the US government and direct language such as “child trafficking” (United States Government Accountability Office [US GAO], 2005). While it is not certain just how many cases were fraudulent, illegal birth mother payments are believed to have become routine practice in recent years and this form of child sales was only one unscrupulous tactic of child traffickers.

In addition, there was clear evidence of identity change in schemes known as “child laundering” (Smolin, 2004, 2006) in order to make the child appear to be an orphan in order to meet US immigration and visa guidelines. Under these conditions, rumors of child theft were widely circulated in Guatemala (Rotabi, et. al, in press) and some cases of theft have been verified and children have been returned to their birth families (Associated Press, 2008). Regardless of the conditions or circumstances of a child’s “adoption”, the most vulnerable to adoption fraud were impoverished indigenous families (Rotabi, et. al, in press; Rotabi, 2008; Gresham, Risler, & Nackerud, 2003; ILPEC, 2000; UN, 2000).

Implementation of the The Hague Convention on Intercountry Adoption

To address these concerns, Guatemala is currently implementing the Hague Convention on Intercountry Adoption (HCIA). The Convention is an international agreement which was set forth to prevent the sales, theft, and trafficking of children under the guise of intercountry adoption. Guatemala is one of 76 other nations that have agreed to enforce the Convention (The Hague, 2008). Notably, the US ratified and fully implemented the Convention in 2008 after a protracted process which dated back to the nation’s signature in 1994. Guatemala, on the other hand, initially signed the HCIA in 2002 and after several years of Constitutional challenges, the nation is in the very early stages of Convention implementation. The HCIA implementation is based upon the following 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, 2006), which is further addressed by the requirement that only reasonable professional fees may be charged for the transaction. To

reach these ends, careful policy and systems development is necessary to ensure future ethical adoption practices in the nation.

In a previous Summer 2007 edition of Social Work and Society News Magazine, Rotabi and Morris outlined six critical areas for adoption reform in the nation (see <http://www.socmag.net/?p=171#more-171>). Since that analysis and initial publication, a new Guatemalan adoption law was passed in December 2007 and the nation has made major strides in the identified areas in order to become compliant with the HCIA. The purpose of this current discussion is to present an update on the changes that have taken place in the nation, using and building upon the same critical areas previously identified. They are as follows:

1. The development of a functional Central Authority for child adoption oversight;
2. Abolishing the previous private system of notarized adoptions which takes place outside the presence of judicial oversight;
3. Abolishing the previous system of “adoption facilitation”;
4. Abolishing birth mother recruiting process by jaladoras (private recruiters);
5. Regulation of the foster care system for waiting children, called hogares;
6. Active recruitment of Guatemalan families for adoption placement.

1. Development of a Central Authority

The Central Authority (CA), called the “*Consejo Nacional de Adopción*” or “*CNA*” as it is referred to in Spanish, has been created as the institution responsible for the oversight of adoption in Guatemala. The CA is an autonomous and independent institution. This centralized government approach creates a structure in which administrative policies and procedures are developed and carried out in a coherent and consistent manner. Primary activities of the CA include the development, implementation and oversight of clear policy and procedure in accordance with the HCIA regarding the application requirements for foreign adoption agencies and adoptive parents (both international and national).

The CA is also charged with oversight of child care facilities (institutions) and foster families which are caring for children eligible for adoption. The CA oversees the management of a national database of children at various stages of permanency planning, including DNA information on children who are determined adoptable (Adoption Law 77/2007, article 23). Once a child is deemed eligible for adoption, a CA social worker and psychologist are responsible for developing a child case report which includes family, medical, social and psychological information about the child (Adoption Law 77/2007). A multi-disciplinary team from the CA, which includes social workers, psychologists and lawyers, is responsible for the matching process. The team identifies the best family able to meet the specific needs of the child while giving priority to potential Guatemalan adoptive families. Only if these placements are found inadequate and not deemed in the best interest of the child, a foreign family considered for adoption. CA social workers are also actively engaged in recruitment of Guatemalan families for domestic adoption.

The general oversight of the CA is through the Board of Directors (*Consejo Directivo*) comprised of three representatives from the Social Welfare Secretariat (*Secretaria de Bienestar Social or SBS*), Ministry of Foreign Affairs and the Supreme Court (Adoption Law 77/2007, 2007, article 19). The Board of Directors is responsible for ensuring that the policy and procedures of the CA and the HCIA are being adhered to as well as representational commitments with other Central Authorities and the Hague Bureau.

The General Director is responsible for administration of the CA. There is also the key of position of Coordinator of the Multidisciplinary team (Adoption Law 77/2007, articles 24, 25,

26). The Multidisciplinary team is currently comprised of twenty professionals, including social workers, psychologists, lawyers and a medical doctor. It is divided into three units: The Unit for the Support and Training of the Biological Family and Child, which is specifically focused on the assessment of the biological family and possibility of family preservation and/or reunification or the need for adoption. The second unit is The Unit for the Support and Training of the Adoptive Family and Adopted Child, charged with the assessment of adoption applicants, the preparation of the child for adoption and the monitoring and follow-up of adoptive placements. The third unit is the Unit for Research, Accreditation and Supervision of Private Entities and International Organizations responsible for the accreditation and supervision of child care institutions and research around adoption practice and related issues.

2. Notary Adoptions

Previously, almost all international adoptions were completed in an extra-judiciary process (Gresham, et al., 2003; ILPEC, 2000; UN, 2000), based on a *notarial* system which was implemented by an attorney as the lead professional and the process was typically carried out in a private attorney's office. It was termed a *notarial* adoption because a notary public and an adoption agent were required to participate, both of whom were required to be attorneys at law. In the majority of cases, the same attorney acted in both roles as notary and agent (ILPEC, 2000; UN, 2000) in a dual relationship that failed to safeguard children and birth mothers because impartiality was impossible under these circumstances as the same lawyer represented both the biological mother and the adoptive family in a dual relationship (Rotabi, et. al, in press).

Under the previous system, the only family court oversight was the involvement of a social worker who was ordered by a judge to complete a birth parent social history. The birth parent interviews were held at the office of the court social worker and no home visits were required to ensure that the information given in the report was valid. Unfortunately, this process also became corrupted and some of these social histories have proven to be filled with significant inaccuracies, such as false addresses or even changes of birth parent identities. This limited regulation created a system that was run by attorneys, some of whom were estimated to earn as much as \$20,000 US Dollars per adoption (HCCH, 2007).

Under the new adoption law, a birth mother may not relinquish her parental rights to a private attorney, rather a judge of the Children's Court system (Adoption Law 77/2007, articles 10 and 36). The court social worker is required to do a home visit as part of the process to determine whether or not relinquishment is in fact in the best interest of the child. Under the new system, a judge is responsible for issuing a final decision as to whether or not the child should be relinquished. Before determining whether adoption is the best alternative for the child, kinship care possibilities must *first* be explored. If the child is deemed eligible for adoption, the case is referred to the CA where they will determine the best family to meet the needs of the child, always giving priority to Guatemalan adoptive families before foreign adoptive families (Adoption Law 77/2007, 2007, article 9).

3. Adoption Facilitation

Under the old system, most cases were "managed" by an adoption facilitator. This is the individual who would negotiate the multiple steps in the adoption process on the Guatemalan side of the equation. Quite often, the facilitator was an American or a very well-connected Guatemalan savvy at navigating the system and the many paperwork processes required to complete a foreign adoption. The facilitator would actively communicate with everyone involved with the adoption cases including the US adoption agency, waiting families, attorneys, Guatemalan government officials, and care takers of the waiting children including pediatricians and foster families. This "middle man" function was a complicated issue as there were neither professional standards nor oversight of these individuals who were clearly acting

as “agents” within the system and were actively communicating with parties in the receiving nation by means of telephone and internet.

This facilitation service was paid for by prospective adoptive families and led to many problems especially as the system spun out of control in the past few years. This particular role is one of the critical nexus points for graft as bribery became an expectation for ordinary paperwork processes such as securing necessary birth certificates and other critical documents. Straddling both sides of the adoption transaction, adoption facilitators carried out very sensitive processes that are easily compromised in a nation known to be one of the most corrupt in the Western Hemisphere (USAID, 2006).

Under the new adoption law in Guatemala, individuals acting as facilitators or “middle men” with no oversight or standards of professional practice will be allowed to work within the system. The new law, which is based on a HCIA framework and guidelines, requires that all foreign adoption agencies go through a rigorous accreditation process. This includes clear identification and professional expertise of all international and Guatemalan staff. In addition to this, the accreditation procedures currently being established by the CA, stipulate the submission of job descriptions of key positions within the agency, (i.e., role of executive director, program director, assessment and placement social workers, and others, etc.), including actors who work both internally and internationally. Accountability for actions of staff is a key issue addressed under the HCIA. Once approved, the agency will undergo re-certification processes and all staff will be reviewed, including complaints the CA will be collecting. The agency will be required to respond to concerns, clarify questionable actions, and maintain good records for this accountability process. This record keeping has a heavy emphasis on financial transparency as well as quality human services practices.

4. Birth Mother Recruiting

Another area of great vulnerability for corruption was the practice of birth mother recruiters. This role has been problematic in other nations where adoption fraud has become systematic; the case of Cambodia is one notorious example (Rotabi, 2008). In Guatemala the recruiters are referred to as *jaladoras* or *buscadoras* (Rotabi, et. al, in press). They worked across the countryside in an unregulated manner. This “baby broker” (Lacey, 2006), worked in collusion with the attorney (notary) without any judicial or social agency oversight. Evidence also indicated that medical providers, such as doctors, nurses and midwives were informants in the process who would routinely tip off the recruiters when and where vulnerable women had delivered babies (Gresham, et al., 2003; ILPEC, 2000; UN, 2000).

It was common practice that the *jaladoras* were paid between \$3,000-8,000 per baby. Sadly, relinquishment agreements were secured within these networks and adoption fraud resulted because birth mothers were given false information (i.e. told that their infant died during child birth) or they experienced other coercive interactions which took advantage of their impoverished conditions and vulnerable situation due to the power differential between medical provider and patient (Gresham, et. al, 2003; Rotabi, et. al, in press; ILPEC, 2000; UN, 2000). For obvious reasons, under the new adoption law, the role of a *jaladora* is prohibited. Following the HCIA, the Adoption Law states that no compensation, financial nor material may be exchanged; inducement of any sort at any stage of the process is clearly a violation of the law (Adoption Law 77/2007, article 10).

5. Foster Homes: Hogares or Cuidadoras

Under the old system, foster homes and children’s homes were unregulated in Guatemala. It was impossible to know how many homes actually existed, the number of infants and children awaiting adoption placement, their legal status and the health conditions of the homes themselves (Bunkers, 2005). A number of problems manifested under these conditions and while some adoption professionals pointed to Guatemala as an alternative to “orphanages” or

institutional care, the conditions in these homes varied, but they failed to acknowledge that the foster caregivers were given limited if any training, received little oversight and followed no formally recognized standards of care. The foster care providers were recruited and paid for by the private attorney who felt no obligation to report the number of children in care, the name and whereabouts of the caregiver, nor how much money was exchanged for services rendered.

Beginning in 2006, the *Secretaria de Bienestar Social* (SBS) began developing a pilot foster care program in the capital of Guatemala City. In 2008, the program was expanded to seven regional social service centers. Under the current plan, foster caregivers will be recruited, trained and monitored utilizing clear professional standards and general oversight will be the responsibility of the *Secretaria de Bienestar Social* (SBS). In foster homes where the child in care is eligible for adoption and within the database of the CA, joint supervision will be conducted by both the SBS and the CA. Similarly, all child care institutions will be required to go through an accreditation process and will be monitored by the authorities (SBS and CA) depending on the population of children in care (Adoption Law 77/2007, articles 27, 30 and 31. HCCH 2008).

6. Recruitment of Guatemalan Families for Adoption Placement

A critical component of the Hague Convention is the requirement for the nation to make domestic placements as the primary adoption plan. Under the old system, young children were immediately identified for intercountry adoption rather than giving first consideration to Guatemalan adoptive families. One of the arguments that many supporters of the old adoption system utilized to justify the prioritizing of children for international adoption was that Guatemalans did not adopt due to issues of racism. In August of 2008, the Guatemalan newspaper published a survey of attitudes and beliefs around adoption conducted by Vox Latina which had very interesting results. The study found that 55% of respondents believed that Guatemalan children would be happier with Guatemalan adoptive families and 37.1% believed they would be happier with foreign adoptive families. Additionally, 10 Guatemalan families who adopted a Guatemalan child were asked if race was an issue when they considered adoption and 92.6% said no (Prensa Libre, 2008).

As of October 2008, there are 156 Guatemalan families who have submitted an application for adoption, whilst 116 children have been declared eligible for adoption. In addition, 24 children are currently placed with Guatemalan families and have had their administrative adoption process concluded. This is a notable accomplishment as one frequently voiced argument supporting the old adoption system was the mantra that Guatemalan families do not adopt. After only 10 months of the adoption law was approved by Congress, more than 170 Guatemalan families have initiated the process to adopt (C. Baglietto of UNICEF Guatemala, personal communication, October 14, 2008).

As of October 2008, the CA, together with the SBS has initiated the accreditation and supervision process of 21 private child care institutions in accordance with the new law. This effort is very important for both the CA and SBS as will hopefully promote transparent, ethical and appropriate child care for orphaned and vulnerable children and the necessary supervision to ensure that standards are being adhered to by private institutions charged with caring for those children (C. Baglietto of UNICEF Guatemala, personal communication, October 14, 2008).

Notable Important Changes Emerging in Guatemala

In addition to these six reform areas, other systems are being developed to support vulnerable families who may be considering adoption as a plan for their child or children. The new adoption law has, in many ways, given impetus to improve the overall child protection system and promote deinstitutionalization of children via the development and strengthening of

family-based care options such as kinship care, foster care, and family reunification. UNICEF and the USAID have both funded and provided technical assistance for several initiatives which support the development of a continuum of care options beginning with family preservation, including kinship care, and then foster care for children who cannot remain with their biological family.

For example, regional “Child Rights Centers” have been opened in seven regions of the Guatemala. The Centers are under the SBS, with funding from the Guatemalan Government and UNICEF. The centers contain family preservation and foster care programming and are targeting services towards institutionalized and at risk children in the communities. The staff includes trained social workers and psychologists responsible for providing birth parent counseling and proactive family support activities designed to prevent out-of-home child placement. Significant new funding appears to be designated to child protection activities include UNICEF and the private US Private Voluntary Organization, Holt International Children’s Services. In addition to external funding increases, the Government of Guatemala also significantly increased the annual budget of the SBS in 2008 quadrupling the amount assigned in 2007 (Prensa Libre, November 2007).

Ongoing Needs

In the previous system, social workers were vulnerable to the corrupt practices required to make a child an “orphan” on paper and the social history documentation process was undermined. This is particularly concerning because social workers are now primary providers in the new and emerging adoption system and this is an expansion of their responsibilities. Their training and professional development is a critical step forward as their role emerges as gate keepers of an ethical child placement process. In this role, they will need to be better equipped with basic child welfare skills, including case management, child development, family support and empowerment strategies, and ethical decision making. At this time, training has begun and short-term educational opportunities have been made available to social workers. However, a more comprehensive social work education model is necessary with an emphasis on child welfare, including all levels of intervention from preventive family support activities to case management and administrative skills for public welfare settings.

Developing such a holistic initiative will require building upon the current social work education system which is already rooted in Guatemala, making an assessment of strengths, weaknesses, opportunities, and threats of the existing systems and developing a plan of action. To meet this end, the authors recommend the development of a multi-national social work educator’s team to carry out the necessary assessment strategies, such as focus groups with practicing social workers and current students, in order to make a comprehensive and pragmatic analysis which will result in strategies for the development of a child welfare specialization.

Conclusion

Intercountry adoption reform has not yet been modeled in any nation that has undergone such international scrutiny. Moratorium is all too often the response rather than a sustained and practical response to build an ethical and transparent system. This was the case in Romania and Cambodia. In mid-2008, Vietnam closed to US citizens and the nation will either reform its system, potentially with signature and conformity with HCIA (see http://travel.state.gov/family/adoption/country/country_4373.html), or the nation may be joining the ranks the moratorium nations. Guatemala, on the other hand, is in a position to model what is possible when there is a sincere and planned effort to reform a system rather than settle on a moratorium by default.

The needs are great yet Guatemala may well be in early stages of real and meaningful reform as the nation moves towards a more ethical and transparent system child protection system which includes adoption as a component of the continuum of care. The continuation of international development funds to further bolster current initiatives could expand the scope and geographical coverage, especially the training of social workers as they emerge as the gate keepers of adoption practices and the promotion of family preservation and family-based care as alternatives to institutionalization.

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