

**ADOPTION AND THE RIGHTS OF THE CHILD
IN GUATEMALA**

Guatemala, 2000

by
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for UNICEF

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PREFACE

As part of its mandate to ensure the protection of the rights of all girls and boys, UNICEF commissioned the Latin American Institute for Education and Communication (ILPEC) to conduct a study of Adoption and the Rights of the Child in Guatemala. ILPEC represents the Geneva International Social Services in Guatemala and both institutions work to protect Child Rights in matters related to adoption.

This study arose out of the need to learn more about the current child adoption process and to analyze the level of compliance or noncompliance with respect to child rights. It is designed to help provide support for the Congress of the Republic of Guatemala by identifying those elements most essential to the formulation of a law on adoption, one consistent with the principles of the Convention on the Rights of the Child (CRC) and the Guatemalan Constitution.

In addition, the present study intends to stimulate further reflection and analysis on the part of those policymakers and others who have the means to establish child protection mechanisms and to strengthen public support policies for all marginalized families. This kind of development is needed to help consolidate the family unit, the preservation of which is a fundamental right of all children. The ultimate goal is to work towards ensuring that the process of child adoption always be a matter of final recourse. Once acquainted with this study of current adoption practices, readers will have a more sound basis by which to draft legislation on adoption based upon the best interests of children, a principle which has been enshrined in the Convention on the Rights of the Child.

INTRODUCTION

Guatemalan women have the highest fertility rate in all of Latin America, averaging around five births in urban districts and around six or more in rural areas (ILPEC, 1996). These high fertility rates condition the overall rate of population growth as well as the nation's demographic age composition. The more precarious the economic and socio-cultural conditions of women are, the higher is their rate of procreation. It can be generally said that those women who have the largest number of children are among the least educated of Guatemalan society.

Unemployment and underemployment are a daily reality in Guatemala. According to a 1998 UNDP Report, the Economically Active Population (EAP) has risen to 900 thousand people and "... only one tenth of these find employment in the formal sector of the economy" (PNUD, 1998). About half of the nation's economically active female population is located in the Department of Guatemala.

Moreover, the number of sex crimes alleged before the Judicial Body has reached close to 11% of the total number of criminal acts, thereby making sexual assaults one of most frequently occurring crimes in Guatemala, with an average of two sex crimes being committed every three days.

This overall situation of poor education, unemployment/underemployment and violence encourages the day-to-day births of unwanted children. Given that so many children have such limited possibilities for development and continue to face an ever more uncertain and dismal future, those involved in the processes of child adoption have found fertile ground for encouraging the placement of children up for adoption. As a result, the adoption market has proliferated, information about the process is abundant and the possibilities for placing children into adoption multiply, as the procedure requires increasingly less administrative paperwork.

On top of all of this, Guatemala is a country where two-thirds of its population live in extreme poverty and

the State has never enacted family protection policies. This has contributed to a situation where the sale of children has turned into a way of life for many, especially when so many families lack economic resources and are unable to find any alternative solution or assistance for addressing their most pressing problems. The situation is such that adoption now routinely begins even before birth as there are individuals actively seeking out pregnant women in order to solicit the purchase of their unborn child.

Guatemalan society is bound by international law to the observance of Human Rights. The Convention on the Rights of Child (CRC) is the universal instrument for guaranteeing the fundamental rights of Guatemalan children. The CRC provides for the survival, protection and development of all children in Guatemala and by virtue of being an international treaty to which Guatemala is Party, it has preeminence over the nation's domestic laws.

This notwithstanding, adoption as currently practiced in Guatemala falls short of providing for the rights of children as specified by the CRC. The present study will show that Guatemalan children have a price, a fact that converts the process of adoption into a complex commercial transaction. The interests which most often prevail in adoption are those of foreign families wishing to adopt a child, as well as those of involved lawyers, of notary officials or of adoption agencies, all of which violates the principle of the best interests of the child as provided for in the CRC¹. At present, no legal control has been established to ensure an accurate determination of the origin of adopted children who leave the country (only two embassies require DNA testing).

There is a large number of abandoned children who have been institutionalized but no laws or policies presently exist which can contribute to the strengthening of the family such that children might one day return to their homes. This fact illustrates the way in which the child's right to remain with his or her family has become seriously compromised. At the same time, laws and procedures that facilitate the formal declaration of abandonment, thus giving the child a chance to develop under the care of an adoptive family, also do not exist. Furthermore, there is no regulatory entity in Guatemala to verify existing adoption processes and to perform an investigative home visit in order to carefully compare and substantiate the information provided by the child's parents or caretakers. Indeed, no competent legal authority participates in the adoption process given that the overwhelming majority of adoptions (99%) are performed through a "voluntary jurisdiction process."²

The research team of the present study considered an accidental sample of 90 adoption files, 88 of which were extrajudicial adoptions while only 2 were judicial adoptions, and all of which had entered the Attorney General's Office of Guatemala on the dates of May 26, 27, 28, 31 and June 1, 14, 15, 24 of 1999. Based upon our analysis of these selected cases, we offer this overview study of adoption in Guatemala.

In the course of preparing this report, we had the cooperation of staff at the Office of the Attorney General, the National Migration Authority, the Magistrate for Minors, the Social Welfare Secretariat of the Office of the President, the Ministry of Foreign Relations, and the Defender of Child Rights Division of the Office of the

¹ Article 3 of the Convention establishes that *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."* Seeking the best interests of the child implies the evaluation and sole application of those measures that may best satisfy childhood needs in general and the particular needs of the individual child under consideration according to his/her specific situation, always thinking in those terms most favorable for the child.

² Guatemalan law allows adoptions to be performed without the mediation of a competent judge; these are the so-called extra-judicial adoptions, carried out directly in the presence of a notary official. This is the preferred means of adoption by foreign families wishing to adopt a Guatemalan child.

Attorney for Human Rights. We wish to thank all of these officials for their help in supplying the valuable information needed to make this study a reality. The methodological approach was carried out through direct and indirect sources of information that included analysis of case files and interviews with protagonists of the adoption process, i.e., mothers, caretakers, embassy officials, judges, social workers from the Family Courts, and lawyers.

The first chapter presents a general background on child adoption in Guatemala. The second chapter describes the national and international norms which govern adoptions while the following chapter goes into greater detail concerning adoptions in Guatemala and the various persons and institutions involved. A separate chapter is dedicated to analyzing the violations of child rights that result from the adoption process. In the final chapters, a proposal for an adoption law is presented along with the conclusions of the overall study.

I. GENERAL CHARACTERISTICS OF ADOPTION IN GUATEMALA

"Adoption is a legally sanctioned social institution with the objective of providing, under tutelage of the state, a permanent and adequate family for a minor who is suitably apt to be adopted."

International Adoption is understood as an adoption carried out by persons residing abroad with respect to Guatemalan children residing in Guatemala. If persons residing in Guatemala consummate an adoption, this would be considered a national adoption, regardless of whether these residents were foreigners.

Both national and international adoptions can be an enormous act of love, but only if the process is guided by a commitment to the child's welfare³. Adoption is an individualized life project that can be brought about following prior study of the child's social situation and his or her family of origin. The best interests of the child and his or her lack of family should always be the elements that determine the child's suitability for adoption.

Adoption is aimed at children who have experienced traumatic situations, the most serious of which is the lack of a family or the existence of a family that denies adequate care for the child. The goal of an adoption is to provide a family for the child in which he or she can adequately develop. In this situation, it is necessary to conduct a prior study of the adoptive family's suitability so as to assess their capacity for guaranteeing the child's care and protection in a permanent and reliable manner. It also requires a process of prior preparation of both the child's natural family and the adopting family, with qualified follow-up procedures subsequent to the adoption (SSI-Geneva- Guatemala).

There are two modalities of adoption: simple and full. Simple adoption is oriented to the limited recognition of the adoptive child with respect to inheritance and surnames. This modality allows for cancellation of the adoption and creates no permanent ties of kinship with the adoptive parents. Full adoption, in contrast, is oriented towards the total recognition of the adopted child with all of the same rights and obligations attributable to natural born children. Adoptive parents acquire *patria potestas* of the adopted child and he or she in turn has the right to use the surname of the adoptive parents. Bonds of kinship are created with those persons to whom the adopters are related by affinity or by blood ties, creating a bond of consanguinity as if biological filiation actually existed. Guatemalan legislation only contemplates full adoption.

In Guatemala, adoptions may be international or national. Each of these can be processed either by judicial or extrajudicial (notarial) proceedings.

Judicial Adoptions

This procedure is applied in about 1% of adoptions and is governed by the regulations established in the Civil Code and the Civil and Commercial Procedural Code (ILPEC, Adoption Practices, pp. 115, 116).

The judicial adoption procedure begins with the presentation of the adoptive parents, national or foreign, before a judge. The prospective adopters may be represented by a lawyer or act directly on their own behalf. The judge then takes statements on the suitability of the future adoptive parents by witnesses designated by the prospective adopters. Once the biological parents grant their express consent for the adoption, the court appoints a social worker to perform a socio-economic study of the future adoptive parents. Next, the court remits the file to the Attorney General's Office so that it may issue its opinion and when the file returns from that entity with a favorable opinion, the judge dictates a ruling which orders the issuance of a Public Deed of Adoption. This process, which generally takes between 6 to 8 months, concludes when a birth certificate is requested from the Civil Registry, stating the child's new civil status

³ <http://www.casa-alianza.org/ES/human-rights/illegal-adop/>

(ILPEC. Legal Analysis, p. 38).

The required documents are the adoptive and the biological parents' identity cards, additional documentary evidence that shows the prospective adopter's economic solvency, the marriage certificate of the adoptive parents (it has not been legally required that the adopters be a married couple, however, married couples are given priority when various requests exist), and the birth certificate of the child to be adopted, proving that the child is the biological son or daughter of those delivering him or her up for adoption.

Notarial (Extrajudicial) Adoptions

This process, *which apparently only takes place in Guatemala*, is performed before a Notary, based on the Regulatory Law of Notary Procedures in Matters of Voluntary Jurisdiction. 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.

If the future adoptive parents reside in the country, they request the services of an attorney who can also act as a Notary. If they reside abroad, they must contact an attorney directly or through an international adoption agency and present a socio-economic study along with their judicial history. In this case, the notary appoints another attorney as the future adoptive parent's proxy, authorized to perform the necessary procedures and, on some occasions, to travel with the child and deliver him or her to the adoptive parents in their country of residence.

The Notary must receive two written testimonies concerning the adopters' good moral character and their economic capacity to comply with the obligations of the adoption. Upon drafting a document which formally requests the initiation of the procedure, the Notary official subsequently requests the report of the social worker affiliated with the Family Court. The respective file must be remitted for the opinion of the Attorney General's Office which, if favorable, permits the Notary to issue the public deed with the participation of the adopting and biological parents. The deed is then sent to the Civil Registry for registration and the procedure ends when the adoption certificate is issued. If the resolution is unfavorable, the Notary must comply with the instructions indicated by the Attorney General and resubmit it. If it is an international adoption, a series of procedures for the issuance of a passport and expediting the respective visa must also be followed.

Adoptions are also divided into the categories of international and national:

International Adoptions

No national regulation exists in the case of international adoptions. Although the Convention on the Rights of the Child defines international adoption as a subsidiary of national adoption, this principle is not upheld in practice in Guatemala. What is worse yet is that the vast majority of adoptions are international (98%) and are carried out by extrajudicial or notarial procedure. In addition, Guatemala has not signed the Hague Convention.

The protagonists of international adoptions are: a) the biological mothers or those institutions where children are placed as a result of abandonment; b) international adoption agencies; c) adoptive parents; d) social workers who prepare the socio-economic report of the prospective adoptive parents; e) psychologists who conduct a psychosocial study of the adoptive parents; f) two witnesses who give testimony of the adoptive parents suitability; g) the offices of each country in charge of issuing the Certification of Criminal Record; h) the Ambassador and/or Consul of Guatemala in each country who authorizes the documentation sent to the Ministry of Foreign Affairs in Guatemala; i) the sworn translator who translates the file information into Spanish whenever these documents come from a non-Spanish speaking country; j) the Guatemalan

attorney who drafts the Notary application and the final public deed; k) the Family Courts; l) the social workers affiliated with the Family Courts; m) the lawyer of the Adoptions Division of the Attorney General's Office who issues the ruling; n) the Civil Registrar who records the child's new birth certificate; o) the Migration Officer who issues the passport so that the child may travel abroad; and p) the Embassy and/or Consulate who issues the respective visa.

Adoption of a Guatemalan child must be carried out within the country. The adopting parents appoint a judicial agent in Guatemala who appoints the attorney; the adoptive parents send their criminal records, a socioeconomic report, a financial report, an authorization from the government of the foreign country, a marriage certificate, their birth certificates, medical certificates, three letters of recommendation testifying to their acceptable moral qualities, proof of the salaries they receive, and two recent photographs. If the requesting parties are from non-Spanish speaking countries, the above listed documents must all be translated into Spanish.

These adoptions are processed through adoption agencies that directly contact the lawyers who can carry out the required procedures.

National Adoptions

National adoptions are those in which children are located within a family without separating them from their culture or social environment. This type of adoption can also be processed judicially or extrajudicially by following the respective legal procedures that apply. The Convention on the Rights of the Child (CRC) points out that national adoptions hold priority over international adoptions. But in practice, international adoptions constitute the great majority of adoptions carried out in Guatemala.

According to conversations carried out with adoptive parents, judges, and social workers in charge of Children's Homes in Guatemala, national adoption has not been favored due in large part to the fact that too many requisites are demanded, thereby making these procedures quite complicated. It was also said that social workers impose obstacles for national requests; that the Children's Homes or Orphanages prefer giving the children to foreign parents abroad; that attorneys prefer that their fees be paid in dollars; that Guatemalan families don't want to adopt children from this country; that the costs are too high for Guatemalans; and that a culture of adoption is virtually non-existent in Guatemala.

Due to the above-mentioned reasons, children who don't have the opportunity of living in a home become forced to live in residential institutions. Moreover, it has been for some time now (we were unable to obtain precise information on how long) that the Elisa Martínez Home (a dependency of the Social Welfare Secretariat of the Presidency of the Republic and an institution in charge of the protection of abandoned children and children delivered for adoption by their parents) no longer performs adoptions for fear of facing problems caused by the absence of a specific law.

This suggests that those children who are presented for adoption are not those most in need of placement, given that the residential institutions hold a large number (exact figure could not be established) of abandoned children.

The protagonists of national adoptions are: a) the biological mothers or the residential institutions where the child is placed in the event of abandonment; b) the acting attorney who presents the notarial act or final public deed before the courts in the case of an extrajudicial adoption, or the competent judge in cases of judicial adoption; c) the social worker who performs the socio-economic study of the biological parents; d) the physician who issues the child's health certificate; e) two witnesses who give testimony on behalf of the adoptive parents; f) the adopting parents; g) the lawyer of the Adoptions Division of the Attorney General Office; and h) the Civil Registrar who performs the corresponding inscription.

Other Forms of "Adoption"

Due to the difficulties that arise in adoption procedures when requested by Guatemalan families, two alternative mechanisms have been commonly practiced in the country. While they cannot be considered full adoptions as they do not conform to the above-mentioned legal dispositions, they nonetheless imply the delivery of children by their biological mother to a couple whom becomes the child's new family.

Adoption by Municipal (Mayoral) Authority

In isolated zones with no access to the courts or law offices, the biological parents and adoptive parents appear before the local mayor in order to request that an act be written up which recognizes that the former are delivering their child up for adoption. Subsequently, the child's Birth Certificate is recorded in the Civil Registry and the adoptive act is consummated.

Case No. 1

A Guatemalan couple who was unable to procreate traveled to San Sebastián, Huehuetenango, in order to work with an Evangelical Church. They resided there for many years and established a good relationship with its inhabitants. During their stay, they adopted three children. The adopting mother maintained a close relationship with the mothers of the church community, and therefore with all of the biological mothers of her adopted children. In each of the three cases, she had the opportunity of living with them during their pregnancy, sharing the uncertainty of not knowing what the child's sex would be, and later remaining with each biological mother during their lactation period.

Since no courts exist in this town, the couple arranged for the legal process in the Municipality of San Sebastián. In all three cases, the biological parents and the adopting parents signed a document before the Mayor, establishing that the biological parents of the child, in mutual agreement with the adopting parents and free of pressure of any kind, ceded their *patria potestas* to the adopting parents. With this document, the adopting parents registered the new birth certificates in the Civil Registry of the locality.

(Source: Interview ILPEC, 1999).

Adoption by Supposition of Birth (Pre-Birth Agreement)

This consists of a situation where the biological mother delivers her child to the adoptive parents immediately upon birth.

Frequently, both women enter the same (private) hospital where the biological mother registers under the name of the adoptive mother. The child subsequently leaves the clinic registered as the child of the adoptive mother.

Case No. 2

A Guatemalan couple decided to adopt a child because the wife was unable to procreate. After various solicitations, a friend told them of a pregnant woman who wished to give away her child as soon as he or she is born, basically because she already had three other children and could not provide for another.

Without at all knowing the mother, the adoptive couple assumed all maternal care expenses (gynecologist, vitamins, exams, food, etc.) under the condition that all of the medical exams be registered under the name of the future adopting mother.

At the time of delivery, the biological mother entered the hospital under the assumed name of the adopting mother and the couple was able to register the baby girl's birth certificate as their legitimate and biological daughter, with no problem whatsoever.

Subsequently, they learned of another newborn baby girl whose mother had died during labor and her father wanted to give her away since he had five other children and could not provide for her. The couple explained the case to a physician friend, who issued a birth certificate based on his awareness that the first adopted child has been well cared for by the couple. With the physician's certificate, they were able to register the baby girl as if she was their own biological daughter.

(Interview. ILPEC. 1999).

II. NATIONAL AND INTERNATIONAL NORMS GOVERNING ADOPTION

National Laws

Due to the highly dispersed character of the norms governing adoption in Guatemala and the lack of analysis behind the existing legislation on this issue, there are many gaps and contradictions in the system. This shows that despite all of the trappings of legality, the process does not guarantee children the integral protection required. (Adoption Practices, ILPEC, p. 157).

The legal basis for adoption in Guatemala is contemplated in Article 54 of the Political Constitution, the Civil Code, the Family Court Law, Commercial and Civil Proceedings Code and the Regulatory Law of Notarial Procedures in Matters of Voluntary Jurisdiction.

Constitution of the Republic: Article 54.

This Article states that: "The State recognizes and protects adoption. The adopted child acquires the condition of the adopter's child. The protection of orphans and abandoned children is declared to be of national interest."

Civil Code

In Articles 228-251, the Civil Code summarily regulates the concept of adoption, defining it as "a judicial act of social assistance by which the adopter takes a child born to another as his or her own," allowing the adoption of a person legally of age, so long as he gives his express consent, even when the adoption actually existed before he or she came of age. It also contemplates the effects of adoption, from the perspective of a limited, incomplete, adoption; in this way, for example, it establishes that the adopted person and his/her natural family preserve their rights to reciprocal succession and regulates the principle that the adopted party not be a heir of the adopter; it also establishes that the adopted individual not yet legally of age at the time of the adopter's death, shall return to his/her natural parents or tutor, or to the social welfare institution from which he/she initially came.

The Civil Code also contains some procedural dispositions, such as certifying the conditions of domicile of the adopter before a Judge of the Civil Court, accompanied by the child's birth certificate and a proposal for testimony concerning the good character and overall suitability of the adopter; consent of the child's parents or other caretaker who is exercising tutelage, who along with the adopter should be present during the granting of a public deed which is to be registered in the Civil Registry.

The Civil Code also regulates the possible causes for termination of the adoption, through consent or revocation, as well as the principles by which this can originate.

Given the dispositions described above, this code is insufficient and does not respond to the existent social reality where 98% are full, international adoptions, being processed through a Notary. Moreover, the process violates the spirit of the Convention on the Rights of the Child (CRC) and does not respond to internationally accepted principles as specified by the Hague Convention which remains unratified by Guatemala.

The articles in this Code which refer to adoption contain the following main deficiencies:

- They do not establish the principle of the “subsidiary character” of international adoptions relative to national adoptions.
- They do not establish the guiding principle of acting in the “best interest” of the child.
- They do not demand “consent” from the child who is to be adopted when he/she is of sufficient age to offer it (12 years of age is generally the established age according to various pronouncements), nor do they recognize the need for the child to be “heard” when he/she possesses sufficient capacity of judgment.
- They do not reference the “suitability” of adopters in direct relation to the child’s needs.
- They do not sufficiently regulate control over the “child’s origin,” for example, they do not contemplate an authority or state entity charged with such control prior to initiating the judicial proceedings, nor is there any control over the orphanages or child refuge centers.
- They fail to insist that all receiving countries have laws that guarantee the same rights and obligations for minors as recognized in their country of origin.
- Since adoptions are not always “full” adoptions, the links with the biological family are not always completely severed. For example, a revocation of adoption can take place, as well as certain caveats such as an absence of inheritance rights on behalf of some relatives whose kinship ties result from the adoption. The Civil Code contemplates that the biological family can preserve certain rights over a child offered up for adoption.
- The dispositions of the Civil Code do not establish the necessity for “follow-up” of a child who is adopted by a foreign family residing abroad, thereby running the risk that child adoption can be utilized by adoptive parents for exploitative purposes (prostitution, trafficking of organs, etc.)

Regulatory Law of Notary Proceedings in Matters of Voluntary Jurisdiction, 1977. (Articles 28-33)

In these scant few articles, the cited law regulates the procedures to be followed before a Notary which, as pointed out in this investigation, constitute the procedures followed in 98% of adoptions. These articles establish the following:

- Article 28 specifies that adoptions which are formalized before a Public Notary do not require prior judicial approval.

When no public control exists with respect to the origin of the children, and when no judicial control over the adoption procedure itself exists, what is left is a series of “legal” adoptions in form, but “illegal” in their content. The origin of the children is frequently unknown, uncontrolled and no real barriers exist to impede those attorneys practicing in the area of adoptions from turning the process into a bona fide trafficking of children. Given that the fees that lawyers can demand from the adopters are unlimited, as are the “methods, modes or forms” that can be used to “convince” mothers with large families and scarce economic resources to “consent” to methods of “negotiation,” this ultimately leads towards various forms of coercion.

- Articles 29 through 33 refer to the specific procedures which consist of the following:
 - Application for adoption before the Notary official, including presentation of the birth certificate and the proposal of two honorable persons who can attest to the adopter’s overall suitability.
 - A favorable report from a social worker affiliated with the competent Family Court.
 - Preparation of a Notarial inventory in the event that the child owns any assets.
 - A favorable report from the Public Ministry, typically from the Attorney General’s Office.
 - Joint appearance before the Notary of the adopter and the child’s biological parents, or the persons or institution exercising tutelage.
 - Presentation of testimony which attests to the suitability of the adopters and inscription in the Public Register.

As can be clearly appreciated, these procedures do not offer any guarantee of protection of the child's interests. The child is not granted any participation either to give his or her consent or even to be heard. The parental consent is never presented before a judge, such that an unscrupulous Notary can elude consent by falsifying a signature or obtaining it through illegal means (coercion, corruption, etc.). In addition, the adopter's suitability is based solely upon the testimony of two people who might have been paid and/or may not even know the adopter (no control over this matter exists). Finally, there is a complete lack of follow-up with respect to cases of international adoption.

Family Court Law and the Civil and Commercial Proceedings Code

The Family Courts Law refers to that which is set forth in Book I, Title II, Chapter VI, (articles 228-251) of the Civil Code, concerning the procedures to be followed in cases of judicial adoption. For its part, the Civil and Commercial Proceedings Code, in article 401, specifies those acts that should be processed through voluntary jurisdiction, referring to cases which "by legal disposition or at the request of the interested parties, require the judge's intervention, without any matter of contention being promoted by the involved parties." It is for this reason that the lawyers process judicial adoptions through this procedure. If any opposition should emerge during the course of the procedure, it would then revert to the status of a contentious issue.

International Norms

This part will refer to the Convention on the Rights of the Child (CRC), ratified by Guatemala in 1990, and the Hague Convention related to Protection and Cooperation in International Adoptions Matters, which has not yet been either signed or ratified by Guatemala.

Convention on the Rights of the Child (CRC)

Since May 10, 1990, Guatemala is party to the Convention on the Rights of the Child, which in Articles 9, 11, 20, 21 and 35, establish the rights and duties associated with adoption.

Article 9 stipulates the right of children to be with their family by stating 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."*

Article 11 states that *"1. States Parties shall take measures to combat the illicit transfer and non-return of the children abroad. 2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements."*

Article 20 establishes adoption as a mechanism for child protection in stating the following:

- 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. State 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, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

Article 21 outlines those principles which should regulate adoptions and the duties of States in this regard:

States Parties that 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) *Recognize that inter-country 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 the intercountry adoption, the placement does not result in improper financial gain for those involved in it;*
- e) *Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.*

Lastly, Article 35 of the Convention on the Rights of the Child establishes that *"States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or the traffic in children for any purpose or in any form."*

The Hague Convention

Although Guatemala has not yet signed on to this agreement adopted by the Hague Conference on May 10, 1993, it is important to make reference to it here. Adherence to this Convention would be a major advance in making the whole adoption process more transparent in Guatemala. This Agreement was inspired by the 1989 Convention of the Rights of the Child and specifies the following:

Objectives (Article 1):

- To establish safeguards to ensure that intercountry adoptions take place in the best interests of the child with respect for his or her fundamental rights as recognized in international law.
- To establish a system of co-operation among Contracting States for ensuring that all safeguards are respected and to thereby prevent the abduction, the sale of, or trafficking of children.
- To secure the recognition of adoptions by Contracting States carried out in accordance with the Convention.

Class (Article 2):

- This agreement only applies to international (intercountry) adoptions, in other words, when a child residing in a contracting State (State of Origin) has been, is or shall be displaced to another contracting State (Receiving State).

- This agreement only covers "full" adoptions, i.e., those which create a permanent parent-child (filial) relationship.

Conditions and Procedures (Articles 4-22):

- The authorities of the country of origin shall: establish that the child is adoptable, that international adoption is to his or her greatest benefit after prior examination of the possibilities of national adoption, that the required consents (including that of the child) have been presented and were granted in a manner specified by the agreement (freely and with prior counseling, without intervention of any payment or compensation).
- The authorities of the receiving country should be satisfied as to the suitability of the parents, that they have been amply counseled, and that the authorities are in full agreement that the child will receive state authorization to enter and to permanently reside in the recipient country.
- A Central Authority in charge of complying with the obligations of the Convention shall be appointed in every contracting state. Such authority shall file all the information referring to the child and the future adoptive parents.
- Procedures should include the following: a request of personal data before the State Central Authority of the habitual residency of the party; a report from the this Authority to the State Central Authority of the child's origin (in the event that it is decided that the requesting party is well-suited to adopt, and this report shall evidence all available information pertaining to the party such as identity, judicial history and capacity, personal, family and medical conditions, motives, etc.); a report on the child by the authority from the country of origin to that of the receiving country (on the child's identity, adoptability, prior development, medical history...., keeping the child's educational conditions as well as his/her ethnic, religious and cultural origins in mind) and the presentation of evidence that the adoption effectively serves the best interests of the child, that the required consents have been granted, and that the adoptive parents display suitable characteristics for this adoption; the necessary measures should be taken by both Central Authorities such that the child receives authorization to leave the state of origin as well as entry and permanent residence in the receiving country; in the same manner, these authorities should ensure that the transfer is carried out securely, under safe and adequate conditions, and in the company of the adopting parents (except for extreme cases when not possible or practical).

Recognition and the Effects of the Adoption (Articles 23-27):

- Complete recognition of the rights of each of the contracting States.

General Provisions (Articles 28-42):

- No contact whatsoever shall exist between the adoptive parents and the child's biological parents or others who have the child in their custody until all the prerequisites and conditions provided for in this Convention (adoptability, aptitude, suitability, etc.) have been complied with, except when the adoption is performed between relatives.
- The Authorities shall retain all information pertaining to the child and his or her parents. The child or the child's representative should have access to this information to the extent permitted by the laws of the applicable state.
- A prohibition shall exist on improper material benefits or excessive fees from any activity related to intercountry adoption.

COMPARATIVE JURISPRUDENCE

El Salvador

The first Adoption Law in El Salvador was enacted in 1956, but did not focus on guaranteeing the rights of children.

The 1982 Constitution of the Republic established that children born either within or outside of wedlock and those who are adopted, all have the same rights with respect to their parents. El Salvador ratified the Convention on the Rights of the Child (CRC) in 1990. The Family Code and the Procedural Law of the Family, which together contemplate adoption within a framework that incorporates the philosophy and guiding principles of respect for children's rights entered into effect in October of 1994. The Hague Convention was ratified by this country in July, 1998.

According to the procedural norms established as a result, the adopter must personally appear before the judge in order to receive the child and no child may leave the country with the intention of adoption and residence abroad without the adoption procedures having been previously carried out in El Salvador. Furthermore, it is required that all possibilities of a placement with relatives be exhausted before the child can be considered eligible for adoption. In this, national adoption is given preference, leaving international adoption as a last recourse.

Foreign adoptive parents must be judged to be suitable in their place of residence; be psychologically and socially evaluated by professionals of a public or private institution duly authorized by the State; obtain a commitment from an institution to perform follow-up in the receiving country once the child has been adopted; and be considered suitable for adoption in El Salvador (Attorney General's Office of the Republic and Salvadoran Institute for the Protection of Minors, 1999).

The adoption process consists of an administrative phase and a separate judicial phase.

The administrative phase, established by Article 168 of the Family Code, constitutes a special guarantee of children's rights and it falls under the purview of the office of the Attorney General of the Republic and the Salvadoran Institute for the Protection of Minors. The General Attorney's Office, which is part of the Public Ministry and is constitutionally in charge of protecting the rights of the family and children, was created sixty years ago and therefore has broad experience in adoption matters. For its part, the Institute was created in 1993, and acquired competence in this matter upon the entry in force of the Family Code. At present, both institutions participate separately and jointly in applying the new principles of family and children's law.

The responsibilities of the Salvadoran Institute for the Protection of Minors in adoption matters are to evaluate, in conjunction with the Attorney General's Office of the Republic, the adopting family's suitability and to assess the child's suitability for adoption. This is done by performing a social, psychological and legal investigation of the situation of both the child and his/her extended family.

The Attorney General's Office, for its part, is in charge of evaluating, in conjunction with the Salvadoran Institute for the Protection of Minors, the psychological and social suitability of the adoptive family, assigning those children considered to be apt for adoption by the Institute to a family that guarantees their integral development and protection. This allows the judicial phase to commence. During the judicial phase, the Judge of the Family Court is in charge of finally decreeing the child's adoption.

When the Hague Convention was placed into effect in El Salvador, it was determined that the central authority for international adoption procedures would be the Salvadoran Institute for the Protection of Minors

and the Attorneys General's Office of the Republic, thus creating the impetus for organizing a joint office which became known as the Office for Adoptions (OPA). This Office was created on February 18, 1999 and its top authorities are the Attorney General's Office of the Republic and the Executive Director of the Salvadoran Institute for the Protection of Minors. At present, the office staff includes a coordinator, three legal attorneys, two social workers and two psychologists.

The establishment of this office reflected the aim to create a singular, agile and transparent process that allows for the centralization and systematization of information. At present, the first phase is being developed in order to establish a permanent training program for its staff and to learn from international experiences on this matter (Miguel Angel Cardoza, Attorney General, El Salvador, 1999).

Honduras

No specific adoption law exists in Honduras and the State has not ratified the Hague Convention. Presently, draft legislation on adoption is pending submission to Congress. In this context, adoptions are presently governed by legal norms specified in the Constitution of the Republic (1982), the Convention on the Rights of the Child (1990), the Code on Childhood and Adolescence (1996), the Family Code (1984) and the Honduran Institute of Childhood and Families Legal Framework (1997).

Beginning with the ratification of the Convention on the Rights of the Child and the institution of the Code on Childhood and Adolescence, the country began a process of reformulating adoptions from a legal, conceptual, social and institutional point of view. As a result, adoptions have been incorporated into the Honduran System for Child and Family Protection (IHNFA), a recently created entity that serves to guide the State's social policies toward children and adolescents.

In Honduras, the adoption process consists of four stages:

1. The administrative stage, which is the exclusive responsibility of the Honduran Institute of the Child and Family and involves the investigation, evaluation and legal and psychosocial analysis of those children and parents that are candidates for an adoption.
2. The jurisdictional stage, where the competent authority of the Family Court issues the definitive decree which authorizes the adoption.
3. The Notarial stage, consisting of the actual adoption deed, once the jurisdictional stage has been concluded.
4. The registration stage, which refers to the inscription of the child in the National Registry.

In order for a child to be a candidate for adoption, he or she must belong to the IHNFA Programs in the capacity of an orphan, be in the state of abandonment, or be part of a family whose parents have consented to an adoption process. The "status" of the child candidates for adoption can be obtained only when the Child Courts issue their final sentence, resolving that the child has been abandoned, or when the IHNFA has investigated the child's background. In those cases in which the child has been delivered by his or her parents, said parents must appear before the Family Court to give their consent for adoption.

The Family Law demands that adoption procedures be performed through agencies or accredited public or private entities. This procedure aims to guarantee the integration of children into established homes and to ensure subsequent follow-up concerning the child's adaptation and how he or she is being treated by the family.

At present, there are fifteen United States, one Canadian and one Spanish adoption agencies which are registered and accredited in Honduras. These agencies must have a representative in Honduras and gain recognition from the IHNFA entity which, after performing an exhaustive investigation and obtaining the approval of an ad-hoc Committee, then proceeds to register these agencies (Source: Mercedes Raudales, IHNFA, Junio 1999).

III. MAPPING THE SYSTEM OF ADOPTION IN GUATEMALA

Statistical Data

According to information derived from the adoption Registrars held by the 1st through the 6th Family Courts, 777 adoption files had been processed in 1999 up through June 30.

According to the records of the General Attorney's Office, 731 adoptions were approved in 1996; 1,278 in 1997; and 1,370 in 1998. Up to May 31, 1999, 1,057 files had been presented before this entity, of which 633 were approved. According to the recorded figures, it was anticipated that between 1600 and 1,650 adoptions would be finalized in 1999, at an average of 133 per month or more than 4 adoptions per day.

It should be noted that the total figures concerning files presented before the Family Courts do not coincide with those of the General Attorney's Office. This difference can be explained by those files that are rejected or withdrawn from the Court due to various procedural reasons (e.g., incomplete documentation, natural mother changes her mind or fails to appear in the proceedings, etc.) and because of irregularities in the processes developed by the courts in rural areas of the country.

Despite the high figures of children delivered for adoption, those institutions which give refuge to orphans, abandoned children or child victims of abuse and mistreatment remain inundated. Some institutions house up to 300 children, condemned to live their whole lives there because they have been forgotten by their family, or because the process of an abandonment sentence can last up to 7 years, or simply because those children older than 2 years of age generally have no possibilities of being adopted.

The majority of children in the adoption process are held in private homes under the care of custodians or caretakers authorized by the Attorney General's Office. These are children that have been delivered directly and privately to the attorneys by their mothers.

According to statistical data maintained by the Social Welfare Secretariat of the Presidency of the Republic, child adoptions in the institutions under their supervision have declined. In 1980, 52 adoptions were finalized as compared to only 29 in 1989, 6 in 1992 and only 1 in 1994 (Cadena, Ramón, UNICEF, 1994). According to the information provided by Cadena, these adoptions have declined due to the supply that exists outside of these institutions, the level of direct intervention which attorneys have in these particular adoptions, and the overall poor functioning of the Elisa Martínez Home (Hogar Elisa Martínez), the governmental institution which houses those children who have been declared abandoned.

On the other hand, the files contained in the official registers of the Family Courts and the General Attorney's Office reveal that for 1997 and 1998, respectively 99% and 98% of adoptions were international in nature. According to information from Guatemalan couples who wanted to adopt, there are many obstacles that prevent them from doing so, mainly, the high costs associated with the adoption process and the fact that some institutions prefer contracting adoptions only with those who pay in U.S. dollars.

With regard to this matter, Héctor Dionisio, coordinator of Casa Alianza's Legal Support Office stated: *"In May, 1998, 85 infants left the country while during the same month a year later, the number is 159. During all of last year, the General Office of Migration (DGM) had issued 1,221 passports for children who were going to live abroad with their new parents, mainly in the United States, Canada and Europe"* (Siglo XXI, May 21, 1999).

The destination of children whose adoptions had been approved in 1998 were as follows:

1.	United States of America	854		62.34%
2.	France	166		12.22%
3.	Canada	73		6.33%
4.	Spain		71	5.19%
5.	Italy		32	2.34%
6.	Israel		31	2.26%
7.	United Kingdom	23		1.68%
8.	Guatemala		23	1.68%
9.	The Netherlands	19		1.38%
10.	Ireland	17		1.24%
11.	Germany		13	0.94%
12.	Switzerland		8	0.59%
13.	Belgium	8		0.59%
14.	Sweden	7		0.52%
15.	Norway	6		0.44%
16.	Denmark		5	0.36%
17.	Australia		5	0.36%
18.	England	4		0.29%
19.	Luxembourg		3	0.22%
20.	Bahamas		1	0.07%
21.	Austria	1		0.07%
Total		1.370		100%

(Source: PGN. Sección de Procuraduría, 1999).

Destination countries of children in 1999 (90 sampled cases)

United States	54
France	15
Spain	8
Canada	3
Holland	1
United Kingdom	1
Mexico	1
Switzerland	1
Luxembourg	2
Guatemala	4

System Characteristics

Supply

Profile of Adopted Children

Out of those cases registered in 1999, a sample of 90 files were selected for study, 88 of which extrajudicial adoptions and 2 were judicial adoptions.

Of the studied cases, there were only 4 national adoptions. Of these, two were performed between relatives while the third involved an abandoned child. The remaining child was requested by a person of the community, given that the child's mother died while giving birth and the father felt unable to cope with the infant, having seven children in the family already.

The sampled adoptions consisted of 39 boys and 51 girls, or 43% males and 57% females.

The age characteristics of the 90 children sampled were as follows:

0 to 3 months	13 children
3 to 6 months	25 "
6 to 10 months	35 "
10 to 18 months	8 "
1.9 years	1 child
2.8 years	1 "
4.8 years	1 "
5 years	1 "
7 years	1 "
10 years	1 child
15 years	1 " (a child living on the streets)
4 and 8 years	2 children (a pair of siblings)

As can be observed in the 90 cases sampled, the majority of adoption procedures (60) involved children between the ages of 3 and 10 months. From this, it can be concluded that adopting parents generally prefer children who are younger than one year of age.

The average time it takes for a legal adoption process is between 6 - 8 months and they generally begin a few days after the child is born.

With respect to the child's place of birth, it was determined for the 90 case sample that 58% of the children delivered for adoption come from Guatemala City while the 42% remainder originated from the interior of the Republic, mainly from the departments of Quetzaltenango, Jalapa, Jutiapa, San Marcos, Izabal, Escuintla and Retalhuleu.

82% of the 90 sampled children destined for adoption were being cared for in private homes and were under the supervision of lawyers, with another 12% housed in institutions, and 4% already living with their adoptive parents and only 1% living with their biological mother.

The ethnic background of the children delivered for adoption could not be determined since the pertinent information had not been collected in any of the 90 sampled cases. However, information gathered from lawyers and embassy staff responsible for issuing visas indicated that about 50% of the annual requests

they receive for children are "ladinos" (mestizos) with the other half being of indigenous background. For their part, social workers indicate that there is a greater number of "ladinos" (65%) than of indigenous children (35%).

Profile of the Biological Mothers

According to the identity cards that appear in the adoption files of the 90 cases sampled, 65% of the biological mothers who put their children up for adoption originated from the interior of the country (Departments of Izabal, Suchitepéquez, El Progreso, Retalhuleu, San Marcos, Quetzaltenango, Escuintla, Chiquimula, Jalapa and Jutiapa).

Age of the biological mothers

Less than 18 years of age	5 (1-14yrs, 1-15yrs, 2-16yrs and 1-17 yrs)
From 18 to 20 years of age	7
From 21 to 22 years of age	13
From 23 to 24 years of age	16
From 25 to 30 years of age	21
From 31 to 35 years of age	4
From 35 to 40 years of age	13
From 41 to 45 years of age	3
From 46 to 48 years of age	2

The largest portion of mothers in the sample are between the ages of 21 and 30 (50 mothers). In three of the five cases where the mothers were legally considered minors, the maternal grandmothers delivered the children of their daughters while in the other two cases, delivery was performed by the maternal grandfathers. In five cases, it was stated that the families did not have the financial means necessary to maintain the children. As for the two mothers between the ages of 46 and 48, they had procreated 13 and 12 children respectively, and one of them indicated that only 8 of her children were still living.

According to the information contained in the files studied, 64 mothers had stated that they are dedicated to caring for their other children or that they are employed as domestic workers in residences located in the City of Guatemala (some social workers indicated that the lawyers place the mothers as domestic workers in the Capital up until they give birth, and then they return to their villages). Two mothers worked in maquiladora assembly factories, two sold vegetables in the market, one worked in the packing division of a factory and three others worked as prostitutes. In the other 18 cases, the mothers provided no information on their work activities.

In addition to the above, social workers from the Family Courts expressed their perception that a majority of the mothers who are young adults wish to live their lives without problems, that they have come to the Capital to find jobs as domestic workers, and/or they don't want their relatives and friends to know that they have become pregnant and given birth. Some mothers state that they have already left their children under the care of their parents back in their villages and that they cannot send them another child because it would pose too great a burden for them. In addition, mothers indicate that they are not accepted with children at their place of work.

Although information was not available for every one of the 90 cases studied, it was found that 82 mothers cited their precarious economic situation as justification for offering their children up for adoption, stating that they wanted other people to give their children what they were unable to provide. One child was placed up for adoption due to being the product of a rape and in another case, the mother stated that she did not want her child because she had lost the man she loved as a result of the child's birth.

It seems that the mothers are generally quite clear on what they need to say when appearing before the Family Courts and Embassies to make their statements. This is because they generally state the same information in both interviews and according to the perceptions of social workers from the Family Courts, *"they express themselves with the same clichés."* The mothers typically state that either their relatives do not know that they were pregnant, that they do not have the means to support another child, that the child's father left them when he learned of the pregnancy, that they already have too many children, that the child was unwanted, or that the child was a result of rape.

With the aim of corroborating the information that appears in the sampled files, it was decided to conduct house visits to the biological mothers. However, of the 16 mothers selected for these visits, only two of the files contained the correct address information. In the rest of the cases, it was discovered that the mothers either never worked in the homes they had listed as their place of work, that the address recorded in the file did not exist, or that the addresses filed corresponded to businesses which had never heard of the mother. It is rather curious that some of the addresses were very intentionally misrepresented. In some cases, a gully or ravine was located at the address indicated while other addresses corresponded to a park or to places of extremely difficult access. This falsification of information had been performed by the mothers or by the lawyers managing the adoptions in order to avoid any subsequent contact with the mothers and to avoid any risk of being sought for additional information on their decision and the process in which they had participated. In this way, both the mothers and the lawyers involved were obstructing information for their own protection.

During the two interviews with the only biological mothers that could be located out of the selected sample, they confirmed that economic factors forced them to deliver their child up for adoption.

It is the perception of the interviewer that these mothers live with a painful memory of their children and that it has turned out to be a traumatic process for them. They are consoled only with the knowledge that their children are now abroad, that their new parents will love and care for them, and that the children will receive what they were unable to have in their natural family because of the conditions of poverty.

According to information obtained from the social workers, they feel that the majority of mothers (98%) feel certain that they wish to put their child up for adoption and that they express little affection towards the child. Very few of them (2%) manifested pain or sorrow, arguing that their minds had been made up and that this was the only way to offer the child an opportunity of living a better life. The social workers also affirmed that only one of every 500 mothers later change their minds and decide not to follow through with handing over their child. They also state that when the interviews of the mothers and custodians are held, they frequently do not wish to see their child, and that if they are in the presence of the child, they only manifest indifference.

The interviews performed by the social workers during the hearings of the Family Courts of those cases analyzed indicated that 99% of the mothers do not admit having received money in exchange for the child. However, it was mentioned that in one Family Court hearing, a mother commented on "how rapidly the money I received evaporated into thin air." One percent of the mothers admitted that the lawyers had helped them purchase things for their child, and out of fear of having to return the money if they change their minds, they proceed to ratify their earlier decision to surrender their child.

With respect to this issue, it is necessary to point out the difficulty in obtaining reliable information about the extent to which the biological mother has received a significant economic benefit for agreeing to surrender her child, precisely since they have been well trained by the lawyers to always provide the same answer: *"No money was received"* or *"The attorney only provided a little practical assistance."* This notwithstanding, it is important to take into account that the payment of any such "assistance" constitutes a violation of the

Convention on the Rights of the Child since it involves improper economic benefits. Officers from all of the various offices and agencies (especially the Embassies and the Family Courts) believe that the mothers do generally receive some economic benefits despite their denials of the same.

Characteristics of the Notaries and Agents

From analyzing the official adoption registers of the courts, it was found that there are lawyers who have taken up the adoption process as an almost exclusive practice. At present, there are between 175 and 200 lawyers dedicated to performing these procedures.

In international adoption procedures, the participation of a Notary and an adoption agent is required, both of whom must be attorneys at law. The Notary is in charge of all related legal procedures while the adoption agent is entrusted to judicially represent the adoptive parents, act as the child's tutor until he arrives at his new home (which includes the authorization to specify the child's residence and the necessary measures for the child's care, security and well-being), request the new birth certificate from the Civil Registry⁴, and to perform the procedures necessary to obtain the child's passport and visa from the migration authorities and foreign consulates.

In the majority of cases, the same attorney acts as the Notary and Agent. The investigative team for this study learned of one case in which the lawyer acted as the Notary, the Agent, and on occasions as the sworn translator of the psychosocial study conducted of the prospective adoptive parents.

Those lawyers who work almost exclusively in adoptions tend to present their petitions in the five most convenient courts, helping to explain how there are lawyers that can handle up to 50 adoptions per year.

During the course of conducting the present study, six lawyers were interviewed. These professionals have been practicing in the area of adoption for between 5 to 20 years and they referred to the adoption process as a "*noble institution*," "*an act of love*," or "*a way of providing a different life option to the child*."

With respect to the children's origin, the lawyers affirmed that mothers who wish to give up their children for adoption are people who seek out their services and that they have been generally referred by friends or employers.

All of the attorneys maintained that the purchase of children is nonexistent. They did admit that there have been mothers who wanted to receive money, but that the lawyers refuse to offer any payment. At the same time, the majority of those six lawyers interviewed acknowledged that they do give the mothers "*some help*." One attorney indicated that he "lends his assistance" at the end of the adoption process so that the process will not be interpreted as a sale. The same lawyer maintains that some mothers who wish to continue receiving money after the adoption is finalized have actually tried to pressure him by spreading false rumors. All of this provides evidence as to the vulnerability of the Convention of the Rights of the Child, according to which the State must support those families with scarce resources and that adoption must not give way to improper financial benefits.

The attorneys indicate that they are aware of the existence of the so-called "jaladores" or people dedicated to seeking out impoverished women in situations of desperation in order to purchase their soon to be born child. Nonetheless, they state that they do not accept such intermediaries in adoption cases since this

⁴ Article 7 of the Convention on the Rights of the Child (CRC) establishes that the child must be registered and has the right to a name upon birth and to acquire a nationality. The birth certificate is the mechanism established by Guatemalan law to make this right effective.

would amount to the adoption process becoming transformed into a business, with complete disregard for whom or for what objectives these "jaladores" are purchasing the children.

Most of the lawyers stated that when the mothers seek out their services, the children involved are frequently ill or in an advanced state of malnutrition. Consequently, the lawyer needs to urgently seek out a babysitter or a formal, dedicated and responsible custodian to temporarily care for the child and take him or her to the physician if needed.

Significant differences were found among the prices that the lawyers quoted with respect to the fees they required for performing the adoption procedure. One lawyer stated that he works for a religious institution and handles only the legal-judicial procedures, having nothing to do with the child's care. In his case, he works with another lawyer and the two of them together receive around US\$1,500 in professional fees per adoption.

Another lawyer stated that her fee is 5,000 Quetzales (about US\$ 650) for each adoption procedure and that she also has nothing to do with the child's care. Two attorneys, who work as Notary and Agent, respectively, maintained that between the two of them, their fees amount to around US\$6,000 per adoption.

Only in one of the cases did a lawyer declare that he singularly charged US\$6,000 per adoption. He justified the amount by way of expenses which broke down in the following way:

Payment of custodian or baby sitter	Q. 1,000 (US\$ 150)
Purchase of milk (10 cans per month)	450 (US\$ 60)
Physician, vaccinations, medicines, etc.	2,000 (US\$ 300)
Diapers and cloths	<u>2,000 (US\$ 300)</u>
	Q. 5,450.00 x 7 or 8 months =
	Q. 43,600.00 (approximately US\$ 6,000)

The attorneys maintain that adoption procedures are very slow and that the costs become increased as a result. Also, they state that the sworn translation of the socio-economic and psychosocial study as well as the preparation of the case history of the adoptive parents who do not speak Spanish are very expensive (at present, translators charge between Q. 2,000 and Q. 4,000, or US\$ 300 and US\$ 600 for each file, depending on the length of the reports). In addition, the DNA tests required by the United States and Canada raise the costs even further (although, according to the embassy officers of these countries, the adoptive parents cover these costs in their country of residence). One attorney pointed out that a normal, non-profit international adoption procedure can cost up to US\$ 4,000, while the cost of a national adoption would not normally surpass Q.1,000 (approximately US\$150).

The legal professionals interviewed manifested their discontent with respect to the excessively prolonged length of time involved in the adoption process, which presently takes between 5 and 7 months. They did recognize nonetheless that the process is now more agile than it was in the past. As recently as the 1980's, the process usually took around 3 years per adoption.

Finally, the attorneys indicated that they are reluctant to carry out national adoptions. They argued that *"they are very slow,"* that *"the social workers of the Family Courts establish greater obstacles,"* that *"the institutions prefer to offer the children to persons abroad since they will lead a better life,"* that *"there are too many requisites,"* or that *"Guatemalan families do not adopt."* Sources from the Family Court in turn stated that the attorneys do not like these types of adoptions because they *"are not paid in dollars."* With this kind of attitude, the Convention on the Rights of the Child is placed in serious jeopardy, since Article 21 stipulates that national adoption should hold priority over international adoption.

The Convention is equally compromised by the lack of counseling for the biological parents with respect to the adoption, especially concerning its judicial and psychological effects. In this regard, not one of the attorneys indicated that they offer such services, either directly or indirectly.

Child Custodians

The custodians receive a monthly salary from the attorney amounting to between Q. 500 to Q. 1,000 a month for each child under his/her care. They cannot receive more than two children to care for at any one time, since this is prohibited by the Attorney General's Office. Generally, the expenses for milk, food, physician care, and clothing for the child are absorbed by the attorney. Only one custodian stated that she received Q. 3,000 per child, but in this case was responsible for managing all related expenses.

During the course of this study, 16 custodians were visited. They were found to be generally mature persons (between 45 and 60 years of age) of middle and low middle class backgrounds, who live with their family and have their own children. When being interviewed, the custodians feared that *"something was wrong"* with respect to their work and proved to be rather cautious about the information they provided.

The custodians generally maintain the children in good conditions. Fourteen of them stated that it is the lawyer who ensures that the children are kept clean, well fed and well cared for, and that they receive all of the proper vaccinations. As far as could be determined, the majority do a good job in caring for the children and feel proud to be part of the children's upbringing. They regularly receive the children about eight days after they are born and remain with them for approximately 8 months or the time it takes for an adoption to be finalized. Also, persons involved with the children as well as the adoptive parents themselves made it known that the custodians become rather attached to the children and that, at times, the separation is difficult. One custodian even indicated that *"I won't ever take care of another child because the separation is too painful."*

After various attempts at making one visit, no custodian could be located at one address in the Capital (16 Calle and 9a Avenida, Zona 1). This was the only case in which the residence was found to be dirty and the location appeared to be inappropriate for children since several bars and brothels were located nearby.

Orphanages and Children's Homes

A field investigation was also performed in order to learn more about the operation, necessities and suggestions of the orphanages or children's homes. The greatest concern expressed by the institutions were related to the frequent delays of the Courts of Minors in issuing the abandonment rulings⁵ (they spoke of cases in which the abandonment process took up to 7 years) and the length of time needed for conducting the socio-economic studies required by the Family Court in order to continue the adoption process. With respect to these issues, one of the Directors pointed out that: *"In general, parents wish to adopt children younger than one year of age, so that the adoption is easier for both parties. But sometimes, 2 or 3 years can go by before the abandonment ruling is declared."*

Two institutions denied the research team access to their installations and their staff members reacted in a distrustful manner.

⁵ In theory, after the state of abandonment has been declared, both the judicial and extrajudicial adoption should proceed. In practice, however, the extrajudicial adoption is performed in the majority of cases because the orphanages lack the instruments to resort to the judge and follow the complete procedure and they are at a disadvantage in relation to the attorneys, who facilitate the procedures in the courts through diverse means, in some cases of financial character.

The first case involved the facility named "Ayudando con el Corazón" (Helping with the Heart) located at 19 Avenida 8-94, Zona 15 in the Capital where three guards obstructed the interviewer's entrance. Two separate visits were attempted. During the first opportunity, it was said to be impossible to receive the interviewer since there was no one available to show her the files (despite the fact that the interviewer made it clear that she did not want to see any files). On the second occasion, various people asked the interviewer what institution she belonged to and finally indicated that the director was not presently on site. The Attorney General's Office is presently investigating this center since it has received a series of complaints about abnormal situations that have been observed.

In the second case, the children's home named "Vida Nueva" (New Life) located at 1a avenida "A" 2-44, Zona 2 was visited by an interviewer accompanied by United Nations official Mrs. Ofelia Calcetas. At the time of the visit, the employees contacted the Director who indicated that he would not authorize the entrance of the U.N. official. Throughout the attempted visit, the Home's staff exhibited a certain degree of apprehension. It seems that this home had obtained the protection of certain authorities from the Minor's Courts, who took advantage of their positions to remove children from other homes and place them in this home. It can be inferred that they do this in order to guarantee the number of children in residence required for international adoptions, all of which are processed by the Director of the Institution who is an attorney.

With respect to cases such as these, it is urgently necessary that the Magistrate for Minors, in compliance with Article 22 of the Minors Code, assume its responsibility with respect to the supervision of the children's homes and orphanages operating in the country, so that their operations can be properly regulated.

Throughout this study, it was found that institutionalized children do not generally have access to the opportunity of a new family through adoption. This is due in part because the lawyers have created their own mechanisms to ensure that children become directly delivered to them. At the same time, it is true that adoptive families prefer children younger than one year of age, something quite infrequent on the part of those children who are institutionalized.

1. [Elisa Martínez Children's Home](#)

This is the only government institution that was visited and it is under the jurisdiction of the Social Welfare Secretariat of the Presidency of the Republic. Until just a few years ago, it was in charge of the protection of children from 0 to 6 years of age and its programs were oriented towards their eventual adoption. However, due to changes carried out by the Secretariat, they presently only service children between the ages of 8 and 18, referred to them by the courts who have ordered that they remain for the time being in state protective custody, and do not any longer have an adoption program. Since they most frequently receive children with behavior problems, changes in conduct are one of this institution's main priorities.

The Elisa Martínez Home displays many limitations, both in terms of materials and planning, as well as in physical infrastructure. It does not have occupational programs for children (the children were observed to be unoccupied, watching television, or just lying on the floor in empty rooms) and the building's conditions are depressing and unhealthy.

The Secretariat manages similar centers in Antigua, Zacapa and Coatepeque as well as a surrogate home program, which places children with a relative or with non-relatives. These people who have temporary custody are given state support in the amount of Q. 300 a month. In addition, the Secretariat operates 33 shelters where children are cared for during the day as a form of assistance for their working mothers.

2. [Los Pinos Adventist Home](#)

During the visit to the Los Pinos Home, we observed 68 boys and girls (between the ages of 0 and 7) in placement there, enjoying optimum conditions and being well attended to by the 30 staff members employed there. This home is one of the 20 centers which the Washington-based agency International Children's Care (ICC) operates throughout the world. The home receives children who have been abandoned, mistreated, or who are orphans or in the process of waiting for an abandonment decree.

In addition to the home located in Guatemala City, there is another in Las Lajas, Poptún, in the Department of Petén, which has 35 employees and which cares for children over the age of 7. This center offers study programs where the youngsters can obtain degrees in education, accounting, bilingual secretarial work, or computer technology services, among others. There are children who have grown up in this center who are now professionals, including even physicians.

These two centers work with adoption agencies in the United States who directly contact the attorneys and perform the required procedures. They do not primarily maintain their operations based on adoption fees since there are very few per year (5 - 8) and it would be therefore impossible for them to maintain both homes (in which 200 children are cared for) in this manner. Instead, these homes subsist on the support sent by the ICC, support in kind (milk, fruit, vegetables, provisions, etc.) from Guatemalan families, all in addition to the fees and support provided by adopters.

3. [Quetzaltenango Children's Home](#)

The children found in this home are under three years of age. The majority of them are sent by the Family Court while some are placed there by lawyers while an adoption procedure is being processed. According to the information obtained at this home, the children remain in residence approximately 8 months and during the first portion of 1999, five adoptions had been processed, all to foreign parents. The Home is administered by Larry Boggs and his wife, Cara de Boggs who work along with Attorney José Adalberto Cabrera Urizar.

This home is financed with support from Evangelical churches in the United States and does not receive any funds from adoptions. However, a lawyer that was spoken to on the premises stated that he paid Q. 1,500.00 a month for the care of one child.

Eleven people work at this center and it is a clean and secure facility in which the children were found to be in good conditions. At present, the institution houses 16 children including both normal and special needs youth, of which 8 are girls and 8 are boys. Their ages vary between two months and 3 years of age, with two of the children at the time of the visit found to be awaiting the court ruling to certify their abandonment.

4. [San Jerónimo Emiliani Home](#)

This home is sponsored by the religious Congregation of the Somascan Sisters and is located in the Capital. Its function is to protect children between the ages of 1-18. It also receives special needs children (30 at present) which are attended to throughout their lives with special dedication. This religious order also has a similar center in San Lucas Sacatepéquez and the John XXIII Girl's Home in the Capital.

The San Jerónimo Emiliani Home has a population of 170 children, of which 60 are under the age of 3. The children are divided into groups according to their age, living in separate houses. During the day, they study at a school sponsored by the same congregation and many of the children work, but all return to spend the night at the home.

It was evident that the staff who operate the home make great economic efforts to keep the children in good physical condition, providing a healthy and nutritious environment. The children are well attended to, though many of them are condemned to remain in the institution, in need of the individual love and attention that could be provided by a family.

The home has an adoption program, where children are generally placed with Italian parents. Nonetheless, adoption possibilities for these children are limited and scarcely 7 or 8 are placed each year. These placements are also complicated by the long period of time it takes for the Minors Courts to expedite the abandonment rulings.

The Somascan Sisters acknowledge that they prefer international adoptions, expressing that they have had a very painful experience with national adoptions.

CASE NO. 3

Pedro was adopted by a Guatemalan couple when he was four. He remained with the family for 4 more years and when he turned 8, the adoptive mother became pregnant. During the pregnancy the couple began to reject the child arguing that the child *“was lazy and misbehaved.”* The couple told Pedro that his name would now be Juan since the child they were expecting would be named Pedro.

After four years of a family relationship and daily co-habitation, they returned Pedro to the home where they had found him. (Fictional names. Source: Hogar Jerónimo Emiliani, 1999)

5. [Association for Family Integration \(Asociación para la Integración Familiar - APIF\)](#)

This non-governmental agency was entrusted by the government fourteen years ago with the care of children between the ages of infancy through adolescence (age 14) who have been sent over by the Minors Courts. These are children who have been abandoned and are awaiting the termination of a legal process or are currently under court ordered protection and temporary care measures. At present, the association has a population of 60 children in homes located in Kaminal Juyú, Zone 7 and Zone 11 (Guatemala City) and receives financial aid from the Hold International Agency in Oregon, the foreign entity which supervises and evaluates its programs.

The APIF manages programs which service children from infancy up to the age of 7 who have been rejected, mistreated or abused. In addition, they provide temporary family homes or substitute homes for children between the ages of 0-12 who require special attention. They also facilitate national and international adoptions in order to place children who have been declared in a state of abandonment.

The APIF manages international adoption cases according to the principles espoused by the Hague Convention. To this end, it verifies that the adoptions yield no financial profit and spares no resources to perform a careful study so as to establish if any relatives could provide the necessary care before delivering the child up for adoption. When it receives siblings, it always keeps them together and also tries to place children abroad who because of their age have scant possibilities of national adoption. The necessary steps are taken to ensure that children are integrated into families that have been carefully investigated and which can address the child's needs, to this end taking into account their age and sex and the characteristics of

the adopting family. In 1998, it managed 7 adoptions, 2 of which were national and 5 of which were international.

6. Guatemalan Association for Assistance to Unprotected Children (Asociación Guatemalteca para la Asistencia del Niño Desamparado –AGAND)

This is a private institution which offers care and protection for those children who are sent over by the Minors Courts, due to either abandonment or mistreatment. The institution was created in 1976 and was the first, along with the Elisa Martínez Home, to process adoptions in Guatemala.

AGAND houses 30 children between the ages of 4 and 5. The institution has a permanent physician on residence to attend to the children. Eight of the children study in private schools where they have obtained scholarships.

The home survives with the help of national and international donations and an infrastructure sufficient to shelter between 30 and 40 children. The adoptions processed by the home are mainly international with adoptive parents in the United States. It collaborates with "New Horizons," an adoption agency which during its 23 years of operations has finalized approximately 350 children in international placements. AGAND works with Attorney José Humberto Santizo, who charges Q. 2,000 per adoption.

AGAND seeks to manage its adoptions within an ethical and humanist framework. In this sense, it respects national adoption and recurs to international adoption as a last recourse. It follows up on international adoption cases through periodic and obligatory reports sent by the adoption agency and also keeps a photographic file of all adopted children. It has maintained communication with some of the children who are now professionals, married and forming their own families. Some of the youngsters now living abroad have arranged to return and visit the home along with their new families so as to learn more about their roots. The Association prefers that the children live in certain states such as Iowa and Minnesota, since these regions have many adoptive families with which the new family may relate and celebrate certain festivities.

7. Rafael Ayau Home

Up until three years ago, this home pertained to the Social Welfare Secretariat of the Presidency of the Republic. Its charge was to shelter children between the ages of 8-18 and attempted to develop an adoption program, even though very few children could enjoy this option because of their age.

In 1996, the government devolved the administration of the institution to a religious congregation. At present, it has a population of 150 children, of which 60 could be placed into adoption, but the abandonment ruling is still outstanding in each of these cases. During the last three years, the home has received 400 children as a shelter or for protective measures and has processed 24 international adoptions along with one national placement.

Despite the large number of children in this institution, they are generally well- attended to and experience a good environment, with a nutritionally sound and healthy atmosphere. The institution has its own school and a physician which attends to the children. According to information which was obtained, the cost for daily maintenance of each child is US\$8, making it difficult to dramatically improve the services offered to the children.

The home is financed by the assistance it receives from abroad and that which it receives for adoptions. The cost of an adoption is US\$ 7,500, of which US\$ 1,000 is paid to the lawyer in charge of the process. The institution has detected certain anomalies, such as the U.S. adoption agency "National Adoption" which

offered up to US\$ 25,000 for a child, which was not accepted. Also, there was a case some time ago when Mr. Hector Rene Rosseti, from the "Vida Nueva" (New Life) Children's Home who was accompanied by a Minors Court Judge from Mixco, demanded that the institution deliver four children without justifying this decision.

The institution has been especially careful with adoption requests from Switzerland and the Netherlands, due to the heightened risks of child prostitution. It performs subsequent follow-up for all adoptions through an Adopter Parent's Club operating in various countries.

Adoption Agencies

The following list of agencies was taken from Internet and it is important to observe the supply of children, in this case within the United States, as if they were manufactured according to the public demand.

GUATEMALA

HERITAGE ADOPTION SERVICES

AVAILABLE: mostly infants
COST: about \$16,000, not including travel
TIME: usually under 6 months
FACTS: singles, yes; age 25+; travel optional (2-3 days); prefer parent home for 3 months after placement if possible.

HOLT INTERNATIONAL CHILDREN'S SERVICES

AVAILABLE: girls 6+, boys under 6, waiting children; sibling groups
COST: \$6,050, not including transportation and local service
TIME: up to 15 months to referral, usually 4-8 months to travel.
FACTS: singles considered; couples married 5 years; 1 divorce each acceptable; parent(s): 25+ and 45 years age difference maximum; no more than 3 children for healthy child; travel for 1 parent for 1 week. Limited applications at present.

HOMESTUDIES, INC.

AVAILABLE: mostly infants, occasionally toddlers and older, extensive testing
COST: \$18500, including local service for NJ residents, travel accommodations
TIME: usually 6 months to referral, then 3-6 months for processing
FACTS: singles, yes; flexible on age and marriage-length; travel for 3 days

INTERNATIONAL ADOPTION SERVICES

AVAILABLE: all ages, AIDS-tested
COST: 18000
TIME: usually up to 4 months to referral, the 4-6 months to travel
FACTS: single women, yes; travel possibly, for 2-3 days

JOURNEYS OF THE HEART ADOPTION SERVICES

AVAILABLE: ages 4 months + AIDS and hepatitis B-tested
COST: \$15000 including travel
TIME: 8-10 months
FACTS: single women, yes; couples married 1 year; travel not necessary

LOS NIÑOS INTERNATIONAL ADOPTION CENTER

AVAILABLE: infants
COST: \$16000 total
TIME: 7-10 months
FACTS: singles, yes; couples married 1 year; age 25-50; travel 1-2 days for both

MAINE ADOPTION PLACEMENT SERVICES

AVAILABLE: many infants
COST: \$13000-\$15000 depending on area, not including travel
TIME: up to 18 months for healthy under 5
FACTS: single women for age 3+; parent(s) no more than 40 year older than child; couples married 2 years; if you go, 1 or both for 1 week

NEW HORIZONS ADOPTION AGENCY, INC. (MN)

AVAILABLE: all ages, all ethnicities
COST: \$13810-14810 depending on area, not including travel
TIME: usually 6-12 months to referral, normally 9-12 months to travel/arrival
FACTS: single women, yes; ages 25-40 (special approval for 40+); couples married 2 years; usually escorting ok, but travel on 1 week may be necessary

PLAN INTERNATIONAL ADOPTION SERVICES

AVAILABLE: mostly infants
COST: \$12000-14000
FACTS: singles yes; parents under 45; prefer couples married 1 year; travel optional

SMALL MIRACLES INTERNATIONAL, INC.

AVAILABLE: 0-15, many infants, few toddlers; Hispanic and Hispanic-Indian in appearance; more boys than girls; AIDS-tested
COST: 13800-14500
TIME: 3-9 months to referral, 3-5 months processing time
FACTS: singles, yes; ages 25-50 (more flexible for older children); marriage minimum 2 years; parent(s) travel, staying 3-5 days.

ADOPTION ALLIANCE (CO)

AVAILABLE: ages 0-12; AIDS-tested; more boys than girls
COST: \$20000
TIME: 2-6 months to referral, 4-6 for processing
FACTS: singles yes; travel for a week

ADOPTION ASSOCIATES (MI)

AVAILABLE: ages 0-2
COST: \$13500-\$16500, not including travel
TIME: about 9 months
FACTS: singles, yes; ages 25+; travel for 3 days

ADOPTIONS INTERNATIONAL, INC.

AVAILABLE: ages 3 months-14 years, AIDS-tested
COST: \$17350 (local service not included), including 6 months foster-care
TIME: 6-12 months
FACTS: single women, yes; age 25+; travel 3 working days (escorting possible)

A.M.O.R.

AVAILABLE: 0-12 years, some waiting and sibling groups
COST: \$12000-\$14000, including 3-4 months foster-care
TIME: infant boys 3 months, girls 6 months, toddlers up to 1 year
FACTS: singles, yes; age under 55; couple married 2+ years; travel about 3 days; proxy available

BAY AREA ADOPTION SERVICES (Serving on Northern CALIFORNIA)

AVAILABLE: mostly infants, but older available, AIDS-tested on request
COST: \$13600-\$14400 not including travel, including local service, translations
TIME: 6-9 months
FACTS: single women, yes; 2 trips

A CHILD AMONG US

AVAILABLE: infants & toddlers
COST: \$21500, including escort, foster-care, visa, etc.
TIME: about 6 months after papers are in Guatemala
FACTS: singles, yes; age & marriage-length flexible

CHILDREN'S ADOPTION NETWORK

AVAILABLE: infants, AIDS-tested
COST: \$15375, not including travel
TIME: usually under 1 year
FACTS: singles, yes; 25+; travel, optional

CHILDREN'S HOPE, INC.

AVAILABLE: ages 0-3; Hispanic appearance
COST: about \$17000, not including travel
TIME: usually 2-4 months after all paperwork done
FACTS: singles, yes; parent(s) 25-50 for infant; couples married 2 years; travel 1 week

CHRISTIAN ADOPTION SERVICES

AVAILABLE: 0-5 years, AIDS-testing on request
COST: \$18400-19900, including travel/escort (lower fees for out-of-safe)
TIME: for healthy under 5, usually under 6 months
FACTS: singles, yes; 45 years minimum between younger parent and child; couples married 2 years; Christian; if you travel, 1 week stay

CHRISTIAN WORLD ADOPTION, INC.

AVAILABLE: infants
COST: \$18000, not including travel
TIME: 4-6 months to referral (shorter for boys); 4 months until travel
FACTS: singles, yes; travel for both parents 2-4 days

CONVENANT INTERNATIONAL, INC.

AVAILABLE: ages 0+, some AIDS/ Hepatitis B tested
COST: \$14450-\$16500, including INS filing, document prep & fees, not including local service or travel
TIME: 4-8 months after referral (ref. time depends on waiting list, longer for girl)
FACTS: 4 programs, singles case-by-case; 1 parent under 45, both under 50.

Christians preferred, travel for about 3 days, some escorting possible.

DATZ FOUNDATION

AVAILABLE: many children available; assigned as newborns, but 8 months older when come home
COST: \$12000-\$14000, not including travel
TIME: 4 months from referral to arrival
FACTS: singles, yes; parent(s) up to age 50 for infants; travel, 1 short trip

DILLON INTERNATIONAL, INC.

COST: \$13990, not including travel
TIME: around 2 years
FACTS: childless couples married 3 years, priority for conventional Christian religion, under 40, no sex-preference, no divorce

FAMILY NETWORK, INC.

AVAILABLE: ages 0-5, waiting children also, HIV and TB tested
COST: \$19000-\$20000 including travel, accommodations
TIME: 6 months-2 years
FACTS: singles, yes; couples married 2 years, ages 25-45, travel 2-5 days

GIFT OF LIFE

AVAILABLE: ages 1 month-10 years, some waiting children, AIDS-tested
COST: \$21000 not including travel or local service
TIME: usually 6 months to referral, about 3 months to travel
FACTS: singles, yes; couples married 1 year +; travel 2-3 days

THE GLADNEY CENTER

AVAILABLE: mostly healthy infants
COST: \$15500 not including local service and travel
TIME: about 4 months from referral to finalization
FACTS: singles, yes; ages 25-60; travel 3-7 days (some escorting possible)

GROWING FAMILIES, INC.

COST: \$17000, \$18000
TIME: very short

HAND IN HAND

AVAILABLE: mostly infants
COST: \$18800 for CO, AZ & IN. Other states \$18200 not including travel
TIME: 10-24 months from application to travel
FACTS: single women, yes.

SPENCE CHAPIN SERVICES (serving only NJ, NY)

AVAILABLE: infants-2 years
COST: \$12500, not including agency fee or travel
TIME: estimate about 6 months
FACTS: 2 short trips, 1st trip to see child, 2nd to get visa

SUNCOAST INTERNATIONAL ADOPTIONS, INC.

AVAILABLE: infants & toddlers

COST: \$18500, including travel; \$19500 escorted
TIME: 6-12 months
FACTS: single women, yes; travel optional (stay of 3-7 days if you go)

VOICES FOR INTERNATIONAL DEVELOPMENT AND ADOPTION (VIDA)

AVAILABLE: 6 months-6 years and waiting children
COST: \$12300-\$13300, not including travel (less for waiting children)
TIME: often under 18 months
FACTS: single women, yes; parent(s) 25-55; couples married 1 year; travel, yes, for 3 days, or use escort

WIDE HORIZONS FOR CHILDREN, INC. (serving only CT,MA,NH,NJ,NY,RI,VT)

AVAILABLE: ages 0-5
COST: \$12250
TIME: up to 6 months to referral
FACTS: single women may be accepted; parents 25 and 50 for infants, travel 3 days for 1 or both

WORLD CHILD

AVAILABLE: infants
COST: \$16000-18000
TIME: referral in under 6 months, travel 4-6 months later
FACTS: couples 25-50 +; travel optional

(Source: Internet)

Demand

Adoptive Parents

Eighty-two percent of the adopting parents in those sample cases studied were legally married couples, with 17% being single mothers and just 1% involving single fathers.

The ages of the adoptive parents vary between 27 and 50, with only one case where the adoptive father was 64 years old (he adopted a 15 year old adolescent). The average age of the fathers is 40 and 39 for the mothers, while for the single mothers, their ages ranged between 40 - 46.

According to the parents, the reasons for adopting a child were either that they have not been able to procreate due to biological reasons, that they have procreated but wish to have an adopted child, that "their procreation time passed," or that they want their biological child to have a sibling. Such answers show that affective motives predominated in their decision to adopt a child.

CASE NO. 4

During the study, we interviewed a French couple who had adopted. They explained that they had some friends who had adopted four Guatemalan children, and that their friends provided the contact information for a lawyer so that they may attempt to adopt a child in Guatemala.

Alain and Françoise stated that the adoption process, for which they paid a little less than US\$13,000, was relatively quick since they presented their request through a Social Service Association and that they received their child, Adrian, in nine months. The couple plans to adopt another baby, but perhaps not from Guatemala. In the future they plan to talk to the child about his country and tell him the truth about his origins little by little so that when he is older, they can bring him to Guatemala.

They will be moving to another city upon their return and hope that this circumstance will not complicate the judicial adoption process they must perform in France.

Intermediaries

Courts and judges

The adoption registers in the Family Courts are incomplete, since there is no systematic record of adoptions and no files exist in the Judicial Agencies to allow the precise determination of figures and information related to sex, age, origin, ethnic background and destination of adopted children. However, the figures gathered from existing records can serve as a base for analysis of the adoption process.

The following table shows the number of adoptions corresponding to each Court according to the stated year.

Court	1996	1997	1998	1999
1 st . Family	256	349	439	303 (1)
2 nd . Family	169	153	81	51 (2)
3 rd . Family	---	245	189	76 (2)
4 th Family	---	---	499	231 (3)
5 th Family	---	505	118	108 (2)
6 th Family	---	---	6	8 (4)

- (1) Information till May 26
 - (2) Information till June 4
 - (3) Information till May 30
 - (4) This court was opened in August, 1998.
 - No information exists
- (Source: Family Courts, 1999)

As can be observed, there are significant differences between the amount of files received by each of the courts. This is due to the fact that significant gaps exist in the judicial adoption procedure, leaving each court with the possibility of establishing requirements as its own discretion. This yields a situation where some courts are quite rigorous while others are known to be more lax in their dispositions.

The 2nd Family Court, for example, is known to be more demanding in that it requires the mother's ratification and presentation of both the mother's and the child's photographs. In addition, the social workers provide substantial information to the mothers concerning the adoption in terms of its implications and consequences.

In a similar manner, the 6th Family court demands compliance with requirements that are not generally requested in other courts, such as performing a DNA exam, presenting a copy of the professional practice license issued by the State to the social worker who performs the study on the adoptive

parents, as well as the mother's ratification before a court official. This might explain why up until April, 1999 only three adoption files had been processed in this court. It is necessary to explain that the court established all of these requirements because it had encountered various difficulties. These included individuals providing false addresses in order to thwart all attempts to carry out home visits, withdrawal from the process due to the mother's indecision to deliver her child and finally because of a phrase they heard spoken by one mother: *"the money I received evaporated into thin air."*

In December, 1998, the 1st Family Court changed the requirement for ratification of adoption by the biological mother before a court official for one that accepts a voluntary statement made before a social worker during the interview. It seems that in absence of the more stringent requirement, the lawyers have tended to present cases with greater frequency before this court. In the course of 1998, 439 cases were presented while in the following year, 303 files had already been received by May 26.

The 1st Family Court indicated that social workers carry out the required socio-economic studies for the adoption process quite rapidly. In the opinion of the courts, adoptions should not pass through the Family Courts but rather through an office created for that purpose, since they must give priority to processes involving feeding, protection and, especially, the circumstances of domestic violence. The consensus of the professionals is that the adoption processes as presently constituted cause quite a few problems and take up too much of the social worker's time, making it impossible for them to perform their studies in depth or to comply with the required home visits so as to verify all pertinent information.

According to the records of various courts, the average adoption processing time takes between 15 days to a month, although the process is quicker in the 1st Family Court which generally takes between 3 and 8 days.

The researchers conducting this study were present during an interview carried out by United Nations officer Ofelia Calcetas, who met with five Family Court judges to learn more about the adoption process in Guatemala. Ms. Calcetas asked about the problematic aspects of the process, to which the judges answered as follows:

1. The judge does not have in-depth information on notarial adoptions since it does not directly participate in them. His/her function is limited to transferring the files to social workers so that they perform the socio-economic study of the biological mother and ratify the study of the adoptive parents under oath and under the social workers' own responsibility.
2. Though the judge has the legal decision-making authority when pronouncing an adoption sentence, their true impact in Guatemala is minimal since notarial adoptions are performed in 99% of the cases.
3. Adoption is a form of business for Notary Officials who negotiate the adoption of children even before they are born and offer gifts to the social workers involved.
4. The court's social service desk has no knowledge of the recommended adopters.

Moreover, the judges suggested that it would be an improvement if the file control office of the Supreme Court of Justice would deliver adoption requests directly to the courts so that no immediate "negotiation" would exist between the social workers and notaries, and that there should be supervised oversight to ensure that the social workers actually carry out their jobs.

Family Court Social Workers

Each court has three social workers who perform the necessary socio-economic studies for the adoption process. They are of special importance given the objective of placing a child in a new family, frequently abroad, and their job therefore requires a high level of ethical and professional responsibility.

Eleven social workers from the different family courts were interviewed. Only one social worker of the 5th court refused to collaborate in an interview.

Based on the interviews, it was established that there exists a whole range of different understandings and styles of work among them. While some seem to comprehend the full meaning of an adoption and all that is involved (particularly those who work in the 2nd and 6th Family Courts), the adoption process is for others nothing more than a formal procedure for which they must carry out a routine task.

The professionals indicated that no specific legal parameters guide the performance of their work and that they do not generally have enough time to carry out the home visits. However, all of them affirmed that they performed each and every visit assigned to them. Some of them stated that, upon the suggestion of the attorney, that they be accompanied by the involved lawyer during the home visits, thus taking advantage of the fact that the same lawyer will later accompany the biological mothers in the court and subsequently return them to their homes.

Their opinions are ultimately based solely on the information contained in the documents presented in the application file and on that which is expressed by the mothers. Thus, they do not perform the home visits necessary to learn of the conditions of the children under the custodian's care, which means that no real control exists to guarantee the child's welfare or to verify the reasons for which the child is being delivered up for adoption.

Departmental Courts

In order to complement the information provided by the Family Courts in the Capital City and that of the Attorney General's Office, we also visited the courts and civil registries of Quetzaltenango, Huehuetenango, Totonicapán, Escuintla and Jutiapa. To order to obtain the broadest view possible, we felt it was necessary to select different sites in the western, southwestern, southern and eastern regions of the country.

In this portion of the study, we found that there were relatively few files since court officials are more demanding in their procedures, particularly with respect to home visits. If the cases presented before the family courts (where these exist) together with the number of recorded birth certificates are analyzed, it can be observed that the number of birth certificates far exceeds that of the adoption processes. This difference is due to the fact that the adoption processes are frequently performed in the courts of the Capital, while the adoption annotations are recorded in the civil registries of the child's place of birth.

Quetzaltenango

Two social workers are employed in this court, each of which presently oversees 5 and 4 files respectively. They stated that cases are attended to according to the order in which the files enter the courts. They estimated that it takes an average of 30 days to perform the socio-economic study, except in those cases involving institutionalized children which are generally performed in less time.

One of the social workers told of an occasion where an attorney offered to take her to perform the home visit, but that she denied the offer in order to avoid any pressure while carrying out her work. Both social workers agreed that the mothers know little about the adoption process, and that this is why they take the

time necessary to explain to the mothers what this institution is all about. They noted that in no case were they aware of a situation where the biological mother had later reversed her decision to give up their child. The reasons given by the biological mothers to place their child up for adoption were purely economic. This testifies to the ongoing violation of the child's right to remain with his or her family, since the reasons for separating the child from the family are not guided by the child's best interest but instead respond to the lack of economic means for providing for the child.

Huehuetenango

Both the Secretary and Third-in-line Officer of the Family Court in Huehuetenango indicated that adoptions are rarely processed in this court. In recent years past, not a single case was recorded while in 1999 only one case existed where a socio-economic study was performed. The file could not be reviewed, however, because it was returned to the attorney and the court had no copy of it. It also proved impossible to interview the social worker involved with the case because she was performing home visits around other matters.

The Court Secretary pointed out that when abandoned children are found in the General Hospital of Huehuetenango, the hospital director is named as the child's custodian and the case is transferred to Quetzaltenango, since no Minor's Court exists in Huehuetenango.

Upon reviewing the birth certificate records of the Civil Registry, the following information was obtained that serves as a statistical sample of adoptions performed in this department:

1992	8 birth certificates of adopted children
1993	4 " " " " "
1994	An information gap exists since the records begin and end with adoption No. 4-94.
1995	9 birth certificates of adopted children
1996	2 " " " " "
1997	8 " " " " "
1998	10 " " " " "
1999	Up to the date of examination (June 15), none recorded.

Totonicapán

According to the information provided by a Family Court official of this locality, the majority of adoptions processed in this court have been solicited by Guatemalans. When files involving foreign parents arrive, the whole process is carried out with greater care such that if any required item is missing, no matter how minor, the file is returned. Officers of the court always verify the identification data of those involved and the legality of the documents, and they act to establish whether the witnesses in fact know the parties. Incomplete files are not processed so as to guarantee the court's intervention.

This court has no precise historical data since it did not begin to keep a book of general records until 1998. However, one official had the following adoption records:

1992	1 national adoption
1993	6 national adoptions
1994	2 adoptions (one national and one international)
1995	3 national adoptions
1996	2 national adoptions
1997	1 international adoption
1998	1 international adoption

1999 1 national adoption

When the Court Commissary in charge of filling out the book of records was interviewed, she stated that she does this on her own initiative and that nobody has ever showed her how to do it. This may explain why in many cases, the name of the attorney, or the name or sex of the child given up for adoption is not recorded.

The social worker who was interviewed stated that she knows of many cases in which the husband has emigrated to the United States, while his wife enters into a relationship with another man, becomes pregnant due to carelessness, and out of fear of her husband's return, decides to deliver the child up for adoption. Most of the biological mothers are indigenous of quiche ethnicity. It was also stated by this professional that the necessary home visits are performed in all adoption cases and that there have been times in which the number of abandoned children has been high. This was especially the case at the end of the 1980's as well as during the final months of 1995. All such cases are referred to Quetzaltenango since no Minors Courts exist in Totonicapán.

Visit to the Civil Registry:

1996	4 adoptions (two national and two international)
1997	5 adoptions (four national and one international)
1998	2 adoptions (one national and one international)
1999	1 adoption (national)

Escuintla

Previously, the Family Court operated in unison with the locality's Labor Court but they were formally separated on June 1, 1999. For this reason, there is no information on the adoption processes previously handled. However, the court judge stated that they had handled few adoptions since *"the attorneys prefer to carry out the adoption process in the courts of the Capital City."* The social worker could not be interviewed since she was out performing home visits.

Visit to the Civil Registry:

1995	29 birth certificates of adopted children
1996	39 " " " " "
1997	60 " " " " "
1998	69 " " " " "
1999	31 " " " " " (up until June 15)

Jutiapa

According to the records, the Family Court only processed 2 extrajudicial adoptions, one in 1998 and another in 1999. Both cases were sent on to the Attorney General's Office for approval.

Visit to the Civil Registry:

1997	11 birth certificates of adopted children
1998	15 " " " " "
1999	8 " " " " " (up until July 1)

The Magistrate for Minors

This Magistrate is charged with coordinating the nine Minor's Courts presently operating in the Republic of Guatemala, which together process the declarations of abandonment.

Article 47 of the Minor's Code defines children in state of abandonment as " 1. Those who lack parents and who have no other person in charge of caring for them. 2. Those who due to the negligence of others have become dedicated to vagrancy or begging." In these cases, the Minor's Magistrate is in charge of receiving the child, placing the child in a facility for his/her protection, and coordinating with social workers so as to confirm the level of risk or lack of family protection for the child. Since this practice does not at present contemplate recourse to or support of the family that has abandoned the child, the process that begins with the information gathered by the Minor Court's social worker culminates with a ruling of abandonment. Once abandonment is declared, the tutelage of the child is granted to the director of the orphanage or other facility which thereby puts the child in a state of adoptability.

There is a legal gap that arises with respect to this issue insofar as the parents do not formally lose *patria potestas* over the child, even when a formal ruling of abandonment has been issued. There is considerable confusion on this issue and a lot of resulting contradictions in the collective practice of attorneys, judges and authorities involved in the adoption process. Some argue that when the child is declared in abandonment, the parents do forfeit their *patria potestas* while others consider that is necessary to pursue the process of this forfeiture, and still others have not even considered this issue.

According to the information provided by Minor's Magistrate Lic. Isabel Prem, approximately 300 legally established homes exist in Guatemala in which children are placed according to their age and sex as well as the institution's capacity. Ms. Prem stated that these institutions are presently full due to the very slow nature of the abandonment process.

The Minor's Magistrate has no specific record of the number of institutionalized children to this date, since that office keeps no separate statistics of children in the situation of abandonment, cases of abuse, and requests for placement. Between 10 and 15 formal complaints are received by the institution on a daily basis.

The Office of the Attorney General

Under Legislative Decree 18-93, a Constitutional Reform was enacted which delineated the existing functions of the Public Ministry and the Attorney General's Office. The latter, by virtue of Article 252 of the Political Constitution of the Republic of Guatemala, is in charge of advising and counseling on behalf of the institutions of State and of representing the State before the larger society.

Based on this constitutional reform, the remission made by both the Civil Code and the Regulatory Law of Notarial Processes in Matters of Voluntary Jurisdiction for the intervention of the Public Ministry is understood to be presented before the Attorney General's Office. This entity, in turn, must issue a favorable report on any adoption being processed. In reality, however, these tasks are little more than pro forma processes, given that no field investigation is conducted so as to verify the information presented. When coupled with the fact that the biological mother's presence is not required, there exists no firsthand verification of the motives for which she has sought to surrender her child and to ratify her decision. In similar fashion, the socioeconomic and psychosocial background of the adoptive parents is never completely certain since they need not be present before the authorities involved in the adoption process.

The Office of Migration

Once the Attorney General's Office has issued a favorable opinion on the adoption, the notary must proceed to the Guatemalan Migration authorities so as to obtain a passport for the child. This process involves

presenting a copy of the file which includes the Notarial Act of Consent for the adoption, the certification of special Judicial Mandate with representation, the two birth certificates (the original stating the name of the biological parents and the other where the child now appears as the son/daughter of the adoptive parents), recent photographs of the child, and the request form. Once the documents have been examined and the child's fingerprints are taken, the file is transferred to the Judicial Council for the issuance of its sentence. Once sentence is delivered, it is subsequently sent on to the Assistant Director of Migration who signs and delivers the passport.

Between six and ten requests for adoption passports enter the Migration Office daily, although there are some days when as many as eighteen are received. While the normal time for processing and issuance of a passport for the adopted child varies between four and five days, officials from a children's home indicated that the delivery of passports has sometimes taken up to 15 days.

During 1998, 1883 passport requests for adopted children entered the Migration Office while in 1999, 828 requests had been presented up until July 19 of that year.

Around 1997, the Migration Authorities established a series of control measures in order to guarantee the transparency of all filed documents, such as the requirement that the attorney perform the process, that he/she be present with the child and custodian and that the Chief of Passports personally deliver the passport to the attorney.

Adoption Costs

Valuable information was obtained from the International Social Service (SSI) Geneva, with respect to those countries who have processed direct adoptions with Guatemala.

Information from the United States (Source: Embassy Officials)

It is estimated that the average cost of an adoption is between US\$23,000 to US\$ 25,000.00, which includes the following:

Attorney	US\$ 15,000
Adoption agency	4,000
DNA, petition, visa,	
Travel, hotel, etc.	<u>4,000</u>
Total	US\$ 23,000

Information from Australia (Source: Legal Counsel, International Civil Procedures Unit, Australia, June, 1999).

Hogar Vida Nueva (Children's Home)	US\$ 11,500 (1 adoption)
	US\$ 10,500 (2 adoptions)

This price covers all costs except for additional medications, delivery of documents, visas, passports and travel costs for delivery of the child. This institution recently informed that the price per "baby" would be US \$14,000.

Hogar Rafael Ayau (Children's Home)	US\$ 10,000.
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Information from Switzerland (Source: Family Association for Inter-country Adoption, FFIA, Switzerland, June, 1999)

Swiss reports indicate two differentiated sets of costs respectively totaling US\$ 7,932 and US\$ 12,500 which are distributed as follows:

(1) Administration (includes salary of representative in Guatemala, telephone, fax, the child's passport, visas, etc.)	US\$1,688
Child support (care of the child, clothes, medicines, vaccinations, medical checkups, etc.)	US\$4,577
Legal costs and lawyers fees	<u>US\$1,667</u>
	US\$7,932
(2) Expenses incurred in by the Attorney/Mandate	US\$6,000
Delivery costs	US\$5,000
Child support US\$300 for 6 months	<u>US\$1,800</u>
	US\$12,800

Information from Luxembourg: (Source: Central Authority, Family Ministry, Luxembourg, June, 1999)

Mother's medical exams, HIV analysis, birth delivery, translation and processing expenses, notary expenses, attorney expenses, court expenses, child's passport	US\$10,500
Child's expenses during 4 months (US\$450 per month), food, shelter, physician, vaccinations	<u>US\$ 1,800</u>
	US\$12,300

Travel is paid by the adopting parents

Information from Spain (Source: Labor and Social Affairs Ministry, General Secretariat of Social Affairs, July, 1999)

Support for the child's welfare and support prior to adoption (including medical certificate)	US \$5,000
Lawyer	US \$1,000
Notary	US \$1,000
Processing of file, passport, and document legalization	<u>US \$1,000</u>
	US \$8,000

In Spain, there is an accreditation system for adoption agencies which was recently created, known as ECASI (Collaborating Agencies for International Adoption). In 1997 and 1998, Guatemalan adoptions were performed through the General System of Requests for International Adoptions, directed by the Minor's Services of each Autonomous Community. Presently, there is only one adoption agency in Spain, ADOPTA, which is located in Barcelona and whose representative for Guatemala is Attorney Julio Roberto Palencia.

Information from Denmark (Source: Ministry of Justice Department of Private Law, Denmark, June, 1999)

The International Child Support Adoption Center of the Danish Ministry of Justice works directly with Casa Guatemala. The reported costs are US\$10,000, which cover support and maintenance of the centers in the Capital City and Rio Dulce, medical costs, including medicines and examinations for minors in the adoption process, administrative processes, transfers and lawyer fees.

Role Played by Embassies

In order to learn about the operations conducted by the Embassies in the adoption process, officials from the Embassies of France, Canada, Italy and the United States were interviewed. These are the countries that adopt the greatest amount of children.

French Embassy

Those mothers who deliver their children for adoption must present themselves in person at the Embassy to explicitly state their wish. At the time of the interview, the mother must present the child's original birth certificate, the identity cards of both parents and/or of the mother, and a photograph of both parents and/or the mother and the child. There was only one case where the mother did not arrive to the embassy to make her declaration and the adoption was cancelled as a result.

According to the information provided, mothers justify delivery of their children for reasons such as "scarce economic resources" and "that they already have other children to support." On her own initiative, the embassy official asks mothers if they have received any money in exchange for their child and in all cases, the answer has been negative.

Since 1986, the French Embassy also began to demand that the adoptive parents personally appear before the Consul to receive the child, during which time they must present an French Adoption Agreement, as well as photographs that fully identify the child being delivered to them at that moment. When the child arrives in France with his/her adoptive parents, they must initiate an additional written adoption process before the French Government.

Visas for adopted children must be requested directly from France, the process of which takes approximately 10 days. It was estimated that about 8 - 10 visas of this type are issued per month.

The French Government's Office of Social Assistance follows up on all adoption cases until the children reach the age of 18. France does not carry out processes through Adoption Agencies. According to information obtained from the embassy, one French woman adopted a child in Guatemala and it is she who, through a permit from her government, is in charge of making contact with the attorneys to begin the adoption process. All such applications must pass through the Office of Social Services of the respective locality in France.

Canadian Embassy

In Canada, it is the Canadian Ministry of Social and Family Services who intervenes in the adoption process of Guatemalan children, performing the socioeconomic, psychological and medical study of the future adoptive parents and obtaining their police records. The documentation is sent to the Embassy where the attorneys involved with the adoption can retrieve it.

The Embassy conducts an interview with the biological mother, at which time she must present an authenticated photocopy of her identity card, the birth certificates of the parents and/or mother and the child, and photographs of the biological mother and the child. The Embassy officials indicate that the mothers always express the same reasons for delivering their children up for adoption: a) they do not have sufficient economic resources to maintain another child; b) their parents are unaware of the pregnancy, and/or c) the children are not accepted at their place of employment. All mothers deny having been remunerated for the delivery of their child. During the last three years, the Embassy knows of five cases in which the mother later regretted having delivered her child and the child was consequently returned.

In Canada, there are legally established adoption agencies which are authorized by the State to advise families wishing to adopt Guatemalan children. There is, however, no national law that provides follow-up for children once adopted, thereby leaving this up to the discretion of each Canadian province.

This is one of the two embassies that presently require a DNA exam for the adoption process. To this end, specific days have been established for the taking of blood samples and the lawyers involved with the adoption process select from these the date in which the biological mother and child will be present. At the laboratory, the mother must verify her identity with her National ID Card, corroborated with a recent photograph. Two Embassy officials are present at the laboratory to supervise the process, and to manage and identify the tubes where the blood sample is deposited.

The lab then delivers these samples to the Embassy which in turn sends them to authorized laboratories in Canada where the appropriate tests are performed. The results are later received by the Embassy within 3 - 4 weeks. Through this process of scrutiny, it has been possible to detect in various cases that the "mother" was in fact a surrogate.

According to the opinion of the Embassy official interviewed, *"it is evident that adoptions are a business in Guatemala."*

CASE No. 5

The Canadian Embassy filed a formal complaint with the Attorney General's Office concerning the adoption cases of Juan Carlos Mazariegos, Flor de María Soto and Yaqueline Ramírez, since the DNA exam results proved to be negative. The Embassy also informed the Attorney General of the case of Esvin Orlando and Selvin Alexander Laparra, twin siblings who did not undergo the DNA exam but who were returned under the same circumstances to the presumed mother.

Investigators from the Attorney General's office traveled to Santa Catarina, San Marcos, to verify the return of the children. On July 11, 1997, they found one of the Laparra children in the National Hospital of San Marcos. The National Police Force raided Verónica Soto Hernández's house where they found the other sibling. Soto affirmed that Mrs. Laparra had given the child to her without signing any documents and both women were subsequently detained by the Police.

Subsequently, they searched for Flor de María Soto. The presumed mother informed that she did not have the child and that the child was not her daughter but had been given to her by Lucinda Bautista, who was imprisoned in San Marcos. Yolanda Soto said that she received Q300 to present herself as Flor de María's mother, that Nieves Barrios delivered the affidavit to record the child's birth certificate as her own (Nieves Barrios has been in jail, convicted of trafficking children, since April 10, 1997) and that she was threatened and therefore forced to deliver the child in the Capital.

They looked for Lucinda Bautista who said that María Isabel Montiel had the child in Pajapita, San Marcos and that the child was Mexican and was the daughter of a woman who sold candy in the City of Hidalgo. María Isabel Montiel indicated that the child was in la Gomera, Escuintla. The little girl was found, identified by Ms. Soto Hernández and placed in the Quetzaltenango Children's Home.

Kevin Francisco, one and a half years of age, was rescued from the El Ferrocarril neighborhood of Pajapita San Marcos, where he was being abused. The child's origin is unknown but it is thought that he is Juan Carlos Mazariegos due to the similarity observed through photographs. The child was placed in the San Juan de Dios Hospital for treatment due to malnutrition and abuse.

Yaquelin Ramírez was not found and it is suspected that she crossed into Mexico with the presumed parents.

(Source: Attorney General's Office. Aristides Natanael Ayala G., 1997)

Italian Embassy

The requirements demanded by the Italian Embassy are less formal than those imposed by the Embassies of France, United States and Canada. For example, Italy approved a law which considers that adopting parents may be older than 40 years of age and which does not stipulate an age limit for these parents. The presence of the adoptive parents is not required when picking up the child, but instead, the child can be delivered by the agent. When performing the interview with the biological mothers, the only requirement is that they present their Identity Card and the mothers are never questioned as to whether they have received any sort of payment for delivering their child.

The required documentation, such as the socio-economic study, the medical and psychological exams, and the criminal records of the future adoptive parents all come from Italy. While these documents may be managed by an Adoption Agency, they must always be registered in the Minor's Court of the respective province.

The Italian Consul verbally expressed that the reasons given by all of the mothers for placing their children up for adoption were economic in nature.

United States Embassy

The interview with the Immigration Officials of the U.S. Embassy confirmed various aspects relative to the payment received by biological mothers, the existence of intermediaries, the frequently unethical practices of social worker's and attorneys, the expenses involved with adoption cases, and the costs related to DNA tests.

Previously, one of the Embassy's main demands was ratifying the mother's will to deliver her child. Due to the problems in Guatemala with respect to the transparency of adoptions, the supervision and control process for the United States was changed as of October 1, 1998. At that time, it was decided to require a DNA test along with the mother and child's photographs and the child's original birth certificate. In addition, a social worker and a psychologist who are licensed to practice in the United States must perform a psychosocial evaluation based on two visits to the future adoptive parents and their families along with fingerprint tests so as to verify their criminal records.

The DNA verification is paid for by the adoptive parents in the United States who send the payment receipt to the authorized physician (in Guatemala, the only Doctors authorized to obtain blood samples from the mothers and children are Dr. Alberto Viau, Dr. Ernesto Vassaux and Dr. Romeo Vásquez) so that he can take the blood samples and send them to the Embassy along with the appropriate documents. The DNA testing is performed in fully certified and reliable laboratories in the United States, with results returned between 12 - 15 days after sending the samples. The cost is approximately US\$ 380 but if the results are

needed in less time (within 2 - 3 days), the cost is increased to US\$ 600. At the other end, the cost of extracting and handling the samples is Q. 1,000.

In order for this test to be considered positive, its reliability must be greater than 99.34, since this indicates with certainty the relationship of biological maternity. If the figure is less, it could imply the existence of a blood relationship with the supposed mother and the child, where the tested woman is a family member other than the mother.

During the period between October, 1998 and July, 1999, the Embassy learned of 9 negative DNA tests, whereupon the attorney and presumed mother was contacted to determine the child's actual origin and for referral of the cases to the Attorney General's Office. Most cases revealed that relatives have tried to pose as the biological mother, with only one case where the child had not been delivered by a relative. In this instance, it was the child of a young, mentally ill woman whose grandparents had arranged for another person to deliver the child.

CASE No. 6

In August, 1998, Arely Godinez Osorio visited Attorney Ernesto Pineda to give up her daughter Lesbia Dalila Godinez Osorio for adoption, ostensibly due to the lack of economic means for supporting her. In December, the negative DNA results were received and the case was referred to the Attorney General's Office in order to determine the criminal liability of the presumed mother and to establish the young girl's biological origin.

The investigation team from the Attorney General's Office traveled to Retalhuleu to interview the presumed mother. She informed them that the true mother of the child was her aunt, Matilde Godinez Sun de García, who has 12 children and who could not maintain this last child. This is why she falsely gave the information of her niece when leaving the hospital so that the child would be registered at the onset as being the daughter of her niece.

Matilde Godinez Sun de García, 38, married to Mr. Emilio García and separated from him 3 years ago, stated that she had too many children and that this child was procreated with another man.

The woman stated that *"I personally investigated the possibility of giving my child for adoption on my own, but they told me that I could not travel to the U.S. because I was married ... other attorneys asked me to give her to them so that they could find her a home, but so that she would be sent to other countries; I did not want to deliver her because I wanted her to go to the U.S. This is why I thought of providing the information of my niece when I gave birth so that she could deliver the child as her own and not as mine. I begged her to do me this favor and she accepted. The woman who works as an intermediary between mothers and attorneys, Juana Chocoj, who lives in San Antonio, Suchitepequez visited us and she was the person who accompanied my niece to deliver the child to the attorney Pineda."*

The child is presently at the Amanecer de Amor Home, located in Guatemala City.

(Source: Attorney General's Office, Aristides Natanael Ayala G., 1999)

CASE No. 7

Olga Marina Salam visited the offices of Attorneys Gladys Alvarado and Aura Leticia Montes, saying that she did not have the means to support her son, Erick Eduardo Salam Gudiel, and that she wanted to put him up for adoption. Ms. Salam showed them the child's Birth Certificate, recorded in Retalhuleu. When the results of the DNA test proved to be negative, the case was brought before the Attorney General's Office to determine the true biological origin of the child.

The investigators of the Attorney General's Office established that Olga Marina Salam had delivered her daughter, Alba Liliana Salam Cuyuch, for adoption in 1997 to a couple in the United States.

Upon visiting the Civil Registry of Retalhuleu, it was established that the midwife, Genoveva de León López, had issued the evidence of birth. The midwife stated that the child's true mother was a person who suffered mental illness, who had been raped and who lives with her 80 and 90 year old grandparents; that the father is a young man and an alcoholic, and that the mother abandoned the child when he was a year old. The midwife indicated that *"I extended the birth certificate in the name of another woman for humanitarian reasons so that she would be the child's legal mother, at the request of the grandparents."*

The investigators of the Attorney General's Office found that María Elena Velásquez Vicente, age 17, lives in Aldea San Luis in Retalhuleu, and suffers from a mental illness. Her father, an alcoholic farmer, age 49, indicated that María Elena had given birth in Mazatenango, Suchitepéquez and that Mrs. Odilia Hernández had presented herself there, stating that she was interested in María Elena's child. They consequently agreed to arrange the "transfer."

The child had been registered in Mazatenango under the name of José Carlos Velásquez Vicente. At present, the child has two birth certificates and two different mothers.

(Source: Attorney General's Office, Aristides Natanael Ayala G., 1999)

The officials of the U.S. Embassy stated that they do not have concrete proof of the money transactions between attorneys and mothers, but that they estimate that the mother receives around Q.6,000 - Q. 7,000. During Embassy interviews, three mothers acknowledged that they had received Q. 1,000 and indicated that they would receive more at the end of the process, although they were uncertain as to exactly how much.

The Embassy believes that the mothers are fully instructed on the responses they should give to the question "Why are you delivering your child?" They generally respond with phrases such as *"because I don't have the economic resources to support him/her"* or *"because I know that others will be able to provide what I cannot."* Most display indifference and show little emotion at the time of ratifying the delivery of the child. According to the available information concerning some of these cases, the women work in prostitution and feel that they cannot raise a child in this environment. In other cases, there are women with already more than four or five children who live in extreme poverty and simply prefer to deliver their child for adoption so that someone with greater means can assume responsibility.

Of the approximately 500 cases seen during the last year, three of the mothers have later regretted the delivery of their children. In one case, the mother changed her mind at the point when they were going to

take her blood sample for the DNA test and the blood was therefore not extracted. In the other cases, the officials requested that the lawyer deliver the child to his/her mother at the Embassy.

The adoptive parents must be present at the Embassy to receive the child and also at the Consulate in order to process the visa. Once they are in the United States, they must undergo an additional process so as to gain recognition of the international adoption. This is conducted through the Department of Social Services of the respective state in conjunction with a state appointed judge.

Although no additional follow-up is carried out after the adoption of a child, the Embassy authorities feel that those children who are adopted enjoy a better life since the psychosocial studies performed and the references provided testify to the quality of the adoptive parents. According to the information provided, there is no law in the U.S. with respect to a maximum or minimum age, or of the civil status of the adopting parents. It was said that more than 85% of adopting parents are professionals with masters and doctorate degrees.

The inhabitants of the Eastern states of the country adopt more children than those in the Western states, and prefer international adoptions because national adoptions are more difficult to finalize and take longer. This is said to be due to the existence of support policies and institutions that allow mothers to keep their child with them. Throughout the judicial adoption process, the biological mother retains the possibility of reclaiming her child (the period of time varies in each state) and this inspires uncertainty in the adoptive families.

CASE No. 8

The 5th Family Court received an application presented by Attorney Susana González Muñoz for the delivery of the child Rolando Coc, son of Angelina Coc. The soliciting family in the United States, whose last name was Coyle, did not qualify for the adoption since Mr. Coyle had previously entered prison six times on charges of sale of marihuana, use of marihuana, postal fraud and disorderly conduct while intoxicated.

(Source: Fifth Family Court).

IV. TRAFFICKING OF CHILDREN AND ADOPTION IRREGULARITIES

Trafficking of children in Guatemala refers to the excessive number of children who leave Guatemala through international adoption, without efficient control, transparency, regulation over prices, and a clear knowledge of the child's origin.

The existence of trafficking shows that no efforts are being made to deliver children for national adoption, one of the demands of the Convention on the Rights of the Child (Article 21) and the Hague Convention (Preamble, Section 3, Article 4-b), according to which international adoption must be subsidiary to national adoption. In other words, it must be a priority to seek placement of those children in need of a family within his or her own country, in a cultural, linguistic and religious environment similar to his or her surroundings of origin. International adoptions should proceed only if it is not possible to find a solution within the child's country of origin.

Given that adoption is nothing other than a protective measure for the child, it is likewise essential that it not give way to economic benefits (Articles 21 and 35 of the Convention on the Rights of the Child; Articles 1, 11

and 32 of the Hague Convention). Despite the absence of objective proof and concrete figures concerning the commercialization of adoption, the information provided by diverse sources (social workers of the Family Courts, embassy personnel, judges of the Family Courts, lawyers, and some mothers) clearly indicates the existence of the commercialization of children and the fact that significant sums of money are paid in dollars for international adoptions. It is therefore clear that adoptions have become a commercial transaction in which various persons, such as custodians, mothers, and lawyers are involved, with many gaining substantial profit from providing their services for adoption.

Due to the considerable number and particular characteristics of international adoptions of Guatemalan children, it can be said that adoption has become transformed into a business with lucrative profits in dollars, thus losing in the process its character as a social institution which offers protection to children (Cadena, Ramón, UNICEF, 1994). The high international demand for children and the poverty experienced by most Guatemalan families has created a situation where the processing of adoptions occurs according to the "laws of supply and demand," effectively resulting in the trafficking of children.

Robert Brown, director of an adoption agency in the United States, pointed out that *"Guatemala is one of the few countries in the world—if not the only one—in which the legal possibility exists of formalizing an adoption without mediation by a judicial resolution"* (Revista Domingo, Prensa Libre, October 5, 1997, p. 10). These circumstances have, in large measure, generated the widespread trafficking of Guatemalan children.

According to the summary of an Interpol report presented in Santiago, Chile during the Intergovernmental Conference on International Adoption held March 2-5, 1999, Guatemala is the 4th largest supplier country in the world for delivering children into international adoption, exceeded only by Russia, China, and South Korea. This is further confirmed when comparing international adoption figures of other countries in the region with those of Guatemala.

In Honduras, for example, there have been 224 total (national and international) adoptions of children between the ages of 1 and 3 during the last 5 years. Only 45 children were delivered for international adoption in 1997 and 33 in 1998, while in Guatemala, the corresponding figures rise to 1278 in 1997 and 1370 in 1998.

In Ecuador, a country which can be considered similar to Guatemala both in terms of the significant portion of the population living in extreme poverty as well as its diverse ethnic composition, only 89 international adoptions were performed between January, 1998 and October, 1999.

The high international demand and lucrative profits that can be obtained from adoptions have caught the attention of various attorneys. With respect to this issue, the press has pointed out that the adoptions performed in Guatemala in 1997 have produced 126 million quetzals which constitutes *"... sufficient motivation for dozens of Guatemalan lawyers to convert the adoption of children on the behalf of citizens of other countries into a successful business, flourishing even more in 1998"* (El Periódico, April 13, 1998).

Mario Taracena Díaz-Sol, a representative of the Central American Parliament, affirmed that *"Although the majority of adoptions in Guatemala are legal, there are always some that are handled in an illegal manner..."* (Revista Domingo, Prensa Libre, October 5, 1997).

INTERPOL has seriously criticized the sector of Guatemalan lawyers that profits from adoptions. Prices vary from between US\$ 15,000 to US\$ 30,000 per adoption (Exposition by Madame Fournier, International Convention on International Adoptions, Santiago, Chile, 1999).

CASE No. 9

After more than 15 months of suffering, the Minor's Court of Chimaltenango ordered that the Los Niños de Guatemala Home return a baby who was undergoing an international adoption to her humble mother in a case being processed by Attorney Susana de Umañar.

In October of 1997, Mrs. Iris Xiomara Borraro was taken to the hospital and she left her baby under the care of neighbors. During her stay in the hospital, the neighbors delivered her 8 month old child to the Minor's Court Judge. The judge declared the child, Marlen Sofía Díaz Borraro, in the "state of abandonment" on February 13, 1998. The baby was delivered to the orphanage "Los niños de Guatemala" and they immediately sought to place her in adoption to a family in the United States.

Desperate to recover her baby, the mother stated her opposition on May 19, 1998 and requested revocation of the abandonment sentence through the 2nd Court of Minor's. In the ruling pronounced a day later, the Court accepted the request for revocation of the abandonment sentence and ordered the President of the "Los Niños de Guatemala" Home to consider the previous ruling invalid. The Court also ordered the attorney involved with the adoption process to suspend activities.

In an attempt to recover the baby's eligibility for adoption, the Los Niños de Guatemala Home pursued a motion for protection of the child before an Appeals Court in opposition to the revocation ruling of the lower court, an action which was denied on July 22 due to its procedurally flawed nature. Despite this denial, the Home presented a motion for protection before the Constitutional Court, which on December 1, 1998 ruled that the "motion for protection should not proceed."

Based upon all of these legal procedures and on the legal council offered by the Casa Alianza's Legal Support Office, the Judge of the Minor's Court of Chimaltenango ordered the Los Niños de Guatemala Home to deliver the child to her mother on February 17, 1999.

(Source: <http://www.casa-alianza.org>)

Presently, there exists a sector of middlemen or "jaladoras" who act as intermediaries in the trafficking of children, actively seeking out pregnant women in the markets, parks, buses, or among groups of street girls and offering them sums of up to Q. 5,000.00 for their future baby. They propose the caretakers for the children and contract the notaries and agents necessary for completing the legal documentation. It is estimated that the notaries and agents provide their written witness for the sum of US\$ 2,000, which includes being present in the Migration Office where the child's passport is issued and in the Embassy so as to deliver the documents required to obtain the visa. In addition, some attorneys "go hunting" in towns within the interior of the country, seeking out young women of scarce resources who are experiencing grim economic situations. The deal is simple with respect to those women who want "easy money" or to those who due to their extreme poverty become pressured to hand over their own children for economic relief (ILPEC, 1996). All of this was confirmed during the course of this study (1999) through interviews with social workers, judges and directors of orphanages and children's homes.

A national periodical with large-scale circulation reported that "...mothers receive an average of US\$ 500 in aid, an amount which is delivered to them in parts so that they won't disappear with their child. Some

women in labor are taken to the public hospitals, but others are attended to in private clinics where the lawyer absorbs the doctor's expenses as well as those of the delivery room. The fees vary between Q. 1,000 and Q. 1,500 (El Periódico, April 13, 1998, P. 3).

Up until two or three years ago, the majority of children delivered for international adoption were from the southern coast and western portions of the country. Today, even though the mothers originate from these regions, the majority of infants are premeditatedly born in the Capital City so as to facilitate the adoption process.

The majority of names given to the children to be delivered for adoption, such as Misrael Alexander, Angeli Damaris, André, Josías Daniel, Sacha, Enxo, Alexis Michell, Carla Samantha, Keyli Elisa, Noah Josphe, Alian and Melisa, are different from those commonly chosen in Guatemala. This suggests the notion that the mother actually does not decide her child's name, but that it is instead selected by others who could be the prospective adoptive parents, attorneys or intermediaries. In summary, it affirms the idea that in many cases, Guatemalan children are earmarked for adoption before even being born.

Officials at the United States Embassy indicated that they knew of cases in which young mothers have delivered up to 4 children. When this observation was presented to an attorney, she responded that *"there is no existing law which indicates that they cannot do so."*

CASE No. 10

Irma Elizabeth Cantoral Guzmán, biological mother of Claudia del Rosario, delivered her child to Attorney Luz Estela Cuevas de Chavarría for adoption by a foreign family. As the application was being processed, César Augusto Marín Ramírez visited the Civil Registry and recognized the child as his daughter. He proceeded to file a complaint with the National Police against the lawyer.

The investigator from the Attorney General's Office visited the address provided by the complainant which led to a mechanics shop where Marín Ramírez had once worked but no one there of his whereabouts.

The investigator tried contacting Ms. Cantoral Guzmán at the address she had left at the Court, but no one there knew of her.

As it was later established, Ms. Cantoral Guzmán had given all her children up for adoption: Victor Augusto Cantoral (1992), Augusto Salvador Cantoral (1993), Oralia Elizabeth Alonzo Cantoral (1994), Simón John Cantoral (1995) and Ana Melissa Cantoral (1996).

(Source: Attorney General's Office, Aristides Natanael Ayala G., 1998).

Due to the demand on the part of adoption agencies for children under the age of one, there are very few children among those declared in the state of abandonment who leave through international adoption since they are generally more than a year old when their sentence is pronounced.

During the first half of 1999, the following ad appeared in the national press:

"ARE YOU UNEXPECTEDLY PREGNANT?
Do you face problems as a result?"

Do not despair, WE CAN HELP YOU.
Call us at: 362-1809”

(Prensa Libre, Friday, July 23, 1999, Classified ads, p. 7).

Various persons called this phone number and the response was surprising: *“If you do not want your child or are unable to support him/her, we will receive the child for adoption. In order to do so, we must set up an appointment... .”*

As proof of the existence of an international adoption market, a list of U.S. adoption agencies obtained by Internet was included in Chapter III of this study. The list shows that adopting parents may choose the sex, age, and, in some cases, even the race of the children. In this way, the institution of adoption has become degraded and transformed into its opposite, serving the needs of adoptive parents rather than fulfilling its proper role in meeting the family needs of children.

V. VIOLATION OF THE RIGHTS OF THE CHILD DURING THE ADOPTION PROCESS

The preamble of the Convention on the Rights of the Child (CRC) points out that the family is the natural environment for the growth and well-being of children and that it must receive the protection and assistance necessary for fully assuming its responsibilities within the community. The CRC likewise recognizes that for the full and harmonious development of the child's character, he or she must grow up within the safety and warmth offered by the family in a happy, loving and understanding environment.

In the same sense, Article 9 of the CRC establishes the child's right not to be separated from his/her parents unless competent authorities determine that this is necessary and in the higher interests of the child.

In order to guarantee the unity of the family, the Convention specifies clear mechanisms for family protection and support. With respect to this, Article 18 obliges States Parties to the Convention to offer proper assistance to parents so that they may properly perform their functions in the upbringing of their children. Article 19 commits all States Parties to establish social assistance programs for children and their caretakers. Article 27 urges the adoption of appropriate measures for helping parents to provide for the right of every child to an adequate quality of life for his/her physical, mental, spiritual, moral and social development and to provide material assistance and support, particularly with respect to nutrition, clothing and housing.

All of this notwithstanding, it can be observed in the present study that the majority of adoptions are performed due to poverty, such that families usually deliver their children because they do not have the material means necessary to adequately maintain them. This is largely due to the fact that the State does not have protection, assistance and support policies for the poorest sector of families (83% of Guatemalan children live in poverty; of these, 70% live in conditions of extreme poverty)⁶ that could help preserve the integrity of their family ties and in this manner help avoid separations of children from their parents due to purely economic reasons.

On the other hand, the CRC recognizes that in some cases, children may find themselves temporarily or permanently deprived of their family environment, either because of the parent's incapacity to keep them or because the child's best interests demand that he or she not remain with their family. In this regard, Article

⁶ “Entre el Olvido y la Esperanza. La niñez en Guatemala”, PRODEN, 1996.

20 points out that children shall have the right to special protection and assistance from the State and that they may be placed in institutions with adequate protection, attending to the continuity of the child's education and to his or her ethnic, religious, cultural and linguistic traditions. In reference to such institutions, Article 3 of the Convention obliges States to guarantee that all services and facilities responsible for the care and protection of children conform to minimal regulations, especially in the areas of security, sanitation, number and suitability of staff, and competent supervision.

Despite these stated obligations, no administrative or legislative authority has, as of yet, established the minimum security and sanitation regulations for institutions charged with the protection of Guatemalan children. Such institutions are not adequately and periodically supervised in order to guarantee the well-being of the children who remain under their care.

Also, the State does not offer adequate protection programs for children nor support for the mothers who are in need of prolonged care of their children. While in theory, the State offers such services through the Social Welfare Secretariat, our visit to the Elisa Martínez Home (a public institution operating under the Secretariat) showed it to be in a sorry state of deterioration. The home's infrastructure is inadequate for providing for the children's well-being and appropriate hygiene, much less for occupational programs for children who will be living there for an extended period or even permanently.

With respect to international adoption, the illicit transfer of children abroad, and the sale, kidnapping, or trade of children, the Convention urges all States Parties to adopt the necessary measures to combat illicit transfers and to guarantee the transparency of international adoptions. This should be accomplished through the development of bilateral or multilateral agreements as well as through compliance with all existing agreements, among other measures (Articles 11 and 21).

As mentioned earlier, however, Guatemala has not ratified the Hague Convention, the purpose of which is to *"...organize the cooperation between the States that participate in international adoption procedures."* In addition, the family courts do not demand the mother or father's judicial ratification of the voluntary delivery of their child, which facilitates the sale, kidnapping and trade of the children in Guatemala.

In conformity with Articles 3 and 21 of the Convention on the Rights of the Child, adoption must be driven by the child's best interests as its primary consideration. Seeking the best interest of the child implies evaluating and applying solely those measures which may best satisfy the needs of the child as individually considered and in accordance to his or her specific situation. In this way, the best solution for a child in need of a family can be sought, rather than a solution for families who are in search of available children, something which is more typically the case at present.

Given the way in which adoptions have been and continue to be performed in Guatemala, the institution of adoption is overwhelmingly preoccupied with satisfying the demands of the parents. This is evidenced by the lack of verification that occurs with respect to the psychological and sociological conditions of the adopting family (testimonies from persons chosen by the adopting parents are accepted along with a study sent from abroad) and in the options offered to the parents in choosing the kind of child they wish to adopt. After various medical exams are performed on the children who are "candidates for adoption," the parents can generally select the sex, age and ethnic background of the children that they adopt.

With respect to the biological parent's decision to deliver their children for adoption, the Convention on the Rights of the Child, in Article 21, points out that States Parties, through their designated authorities, shall ensure that *"the persons involved have given their informed consent to the adoption, supported by such counseling as may be necessary."*

The requirement that consent of the biological parents for an adoption be a well-informed consent is absolutely legitimate, given that once an adoption is granted, a permanent separation of the parents from the child will exist. The social workers of the family courts admitted that the majority of mothers have little or no knowledge about the institution of adoption and its consequences. Although they therefore try to inform the mothers in this respect, it remains obvious that in most cases no adequate counsel (either psychological or legal) exists for these mothers. Indeed, in many cases there isn't even the possibility for the social workers to provide this most basic information to either of the parents since the mothers simply visit the law offices and deliver their child without anyone fully explaining to them the consequences of their decision.

According to Article 21 of the CRC, national adoptions should have priority over international adoptions. In effect, this norm recognizes that *"...inter-country adoption may be considered as an alternative means of child's care, but only if the child cannot be placed in a foster or adoptive family and cannot be cared for in any suitable manner in the child's country of origin."*

The figures presented in this study have demonstrated that in Guatemala, international adoptions far exceed national adoptions. Of a total of 1370 adoptions for 1998, only 23 involved national placements which accounted for 1.68% of the adoptions performed in the country.

With respect to this issue, all those interviewed agreed that national adoptions are well below international adoptions at present. For their part, the attorneys reason that national adoptions *"take too long."* The institutions and residential facilities seek to justify the practice by arguing that they have had *"painful experiences concerning national adoptions"* while court officials explain that *"the attorneys prefer being paid in dollars."* Everyone seems to forget that in decisions related to adoptions, it is the child's welfare which must prevail. Adoption by persons who speak the same language and who are situated in an environment that is ethnically and culturally similar to that of the child makes it easier for the child to adapt.

If it can be authentically determined that international adoption is the only possibility for the well-being of a child who requires protection, international adoptions should nonetheless require follow-up in the child's destination country, this as in accordance to Article 21 of the Convention on the Rights of the Child.

Such follow-up seeks nothing more than to guarantee the welfare of the child who is placed through an international adoption. However, only two of the institutional homes that process international adoptions perform any type of follow-up for those children under their care who have been sent in placement abroad. This fact demonstrates that children who leave the country are subsequently forgotten. There are no institutions that are charged with verifying their well-being and evaluating whether the child is being respected, loved and appreciated by his or her adoptive family, or, in the final instance, if the child feels comfortable in the new environment to which he or she must adapt.

Finally, Article 21 of the Convention on the Rights of the Child urges that States Parties *"... take all the appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it..."*

The principle that international adoptions should not be permitted to generate inappropriate financial benefits is designed to avoid the scenario whereby adoption becomes converted into a business, with children being turned into merchandise. In Guatemala, however, one finds the so-called "jaladores" who seek out pregnant women and offer them up to Q. 5,000 for their child, while arranging for the child's new caretakers and contracting the notaries and agents required to sign the legal documentation at a price of around US\$2,000. This occurs while the mothers receive between US\$ 100 and US\$1,000 as *assistance* and the attorneys receive fees which vary between US\$ 1,000 and US\$ 5,000. All of evidence uncovered testifies to the reality that adoptions in Guatemala have become transformed into a commercial transaction, with children serving as a commercial object, and significant financial profits rebounding to the various parties involved.

VI. PROPOSAL FOR ADOPTION LEGISLATION IN GUATEMALA

Principles

The Convention on the Rights of the Child ratified by Guatemala on May 10, 1990 does not prohibit child adoption, but does establish certain requirements that must be followed in cases of adoption. In the opinion of UNICEF, adoption is a right of those children who need it, that is to say, for those who have no other option such as orphans who have no other extended family members available or children who are demonstrably unwanted by their mother and other family members.

The State must respect the family's right to nurture and educate its children. In that sense, a distinction must be made between those *families that cannot* continue to maintain their children and those *families that do not want* to have their children with them. Those families who cannot keep them should be assisted with family support programs geared towards maintaining family unity and helping caring families to provide for their children. Adoption due to poverty has no place in a framework that respects the human rights of children. In those relatively few cases where families don't want their children, adoption should be considered as a noble solution, following a procedure that respects the rights and the dignity of the child.

The problem with adoptions in Guatemala is not isolated from the larger ethical values and social conditions of the population. For this reason, the State must first seek to legislate a new law which offers integral protection for children, defining those mechanisms which can be used to protect child rights. Such a law can also establish decentralized, institutional levels that incorporate the participation of social organizations and state institutions in the promotion of public support policies to the poorest families. This can help to guarantee the child's permanence with his or her family and facilitate an effective prohibition on adoptions due to poverty. On the other hand, the State must sponsor through formal and informal education, the construction of new values oriented towards the respect for human rights and the elimination of social stigmas linked to single mothers in Guatemala. This should include the obligatory incorporation of sexual education into school curricula beginning in the early years of primary education.

According to Article 21 of the Convention on the Rights of the Child, laws which regulate national and international adoptions must be based upon the following principles:

The best interests of the child: In practice, this translates into considering adoption as an individual response to the case of a child lacking a family. It is an institution that addresses the child's right to a family through a process which implies finding the ideal family for the child, rather than a process of finding children for those families who desire children (as was shown to be commonplace in the present study).

Authorization by competent legal authorities: Competent authorities through a due legal process, must determine the child's adoptability. No other persons, except those as established by law, can be permitted to perform adoptions.

Counseling: The competent legal authorities must seek out and provide for adequate counseling for the biological parents, which must be made available before they give their informed consent to the adoption.

Preemptive solutions to adoption: Before delivering any child for adoption, the placement of the child with relatives or other appropriate solutions should be sought out, with national adoption having priority over international adoption.

Improper financial gain: The adoption of a child should not be turned into a profit-making enterprise for those involved nor should it involve high costs since this implies the transformation of children into merchandise.

Agreements between countries: In the case of inter-country adoptions, nations are obliged to sign bilateral or multilateral agreements in order to guarantee the child's well-being in another country.

Legal Dispositions and Procedures

It is urgent to create and approve an adoption law which guarantees that the operation of administrative and judicial environments are based upon the Convention on the Rights of the Child and by those principles set forth by the Hague Convention.

It is also necessary to create a global adoption file on behalf of the Judicial Branch that allows for the precise determination of data and information related to the sex, age, origin, and ethnic background of adopted children so as to facilitate the subsequent follow-up of adoption cases.

The adoption law must establish clear procedures that give coherence to the family court's actions and which contain concrete parameters aimed towards organizing the social workers' tasks before the courts.

The law must also specify that the Attorney General's Office is to carry out field visits for each part of the adoption process, allowing for verification of the information placed into the files. Likewise, it must require that the biological mother appear before the court so as to freely present her reasons for delivering the child. Finally, it must require the presence of the adoptive parents in order to more accurately assess their psychosocial conditions.

These regulations must at minimum contain the following elements:

- a) The definition of adoption as a child protection mechanism must be developed within the framework of the child's best interests and be formulated so as to guarantee the child's rights.
- b) With respect to the eligibility of children for adoption, it must be established that all possibilities of placing the child with his or her extended family relatives have been exhausted.
- c) With respect to establishing the overall suitability of the adopting parents, there must be more than just a socio-economic study. In-depth psychological and social studies must be performed in order to evaluate the appropriateness of the adoptive parents and that of their family circle (grandparents, siblings, uncles, etc.), all with respect to their capacity to satisfy the emotional needs of the adopted child. In addition, an awareness must be generated among future adoptive parents concerning the fact that parenthood through adoption implies obligations and duties over and above those associated with biological paternity.
- d) With respect to the biological parents, it is particularly important to create mechanisms which ensure that those who deliver their children are actually the real parents of the child and that they have freely given their consent. This would include, for example, verification of the fact that no financial coercion has taken place.
- e) The development of mechanisms that permit a full knowledge about the child's origin.
- f) The establishment of measures which assure that priority is given to reintegrating the child into his or her nuclear or extended family. If no possibility to do so exists, there must be an established priority given to national adoptions and to adoption by those families of the child's country of origin, such that international adoption is contemplated as a last recourse.
- g) The requirement must be established for a personal appearance of the adopting parents before the Judge of the Family Court in order to receive the child.

- h) The creation of a specific entity or institution in charge of adoptions in Guatemala, with multiple institutional insertions and links that permit it to inspect and control adoptions at the national and international level. This regulatory body must accredit those adoption agencies in the country which display the necessary ethical and moral characteristics to practice and it must be verified that they do not profit from adoptions.

With respect to international adoptions, the following additional aspects must be considered:

- That the adopting parents not reside in a country where racial discrimination exists.
- That adequate follow-up for child adoptions exist, carried out by a specialized institution or some kind of national adoption agency in the recipient country for a period of at least five years.
- That the necessary reports with respect to the child's development be provided.
- That it be prohibited for non-accredited adoption agencies to carry out adoptions.

Finally, the regulatory mechanisms must address and resolve the existing legal gap related to the loss or retention of the *patria potestas* of the biological parents when the child has been declared to be in a state of abandonment.

Until such time that an adoption law becomes a reality, it is recommended that all direct and private adoptions be suspended so as to favor the large number of institutionalized children. The period of time during which notarial adoptions are suspended would allow for the evaluation of judicial procedures of the minor's and family courts. This would also promote a more successful transition to the new measures which would be dictated by the law. This would be especially the case with respect to mechanisms designed to establish the child's origin, to require a specific license for those professionals practicing in the field of adoption, and to allow for the possibility of creating a new family court specifically for adoptions, with trained personnel who are aware of what the institution represents.

VII. CONCLUSIONS

Adoption as a socio-legal institution of family integration through which the adopter takes a child in need of a family as his or her own, is a complex process in Guatemala due to the intervention of axiological, educational, economical, work, emotional and legal factors.

From a legal standpoint, the problem with adoption procedures in Guatemala is that they are not in agreement with the Convention on the Rights of the Child (CRC). The gaps which exist are fundamentally related to the practices utilized in establishing the child's origin and in the lack of adequate, post-adoption follow-up, all of which prevents the attainment of transparency in adoption processes.

In the public and private children's homes or orphanages, the population of children ranges between 15 and 170. In all of Guatemala, there are approximately 300 institutions, housing an estimated 23,000-25,000 children, the majority of whom have been abandoned alongside of some who have been placed temporarily as a protective measure.

These institutions are saturated with children who are not being adopted. It would be worthwhile to further investigate this circumstance since those actually being adopted are, to a large extent, being "produced" for this end, while those who are truly in need of a family are being condemned to institutionalization until they reach the age of adulthood. It is also necessary to consider that the majority of institutionalized children are awaiting a formal abandonment ruling which can take up to seven years. This fact dramatically reduces

their possibilities of being integrated into a family, particularly since most prospective adopters tend to seek children with less than one year of age.

At present, the time it takes to deliver an abandonment ruling for children institutionalized in state or non-profit homes is different compared to the period of time it takes for private institutions. Here it is easy to see how even the courts are able to streamline the legal process when the case is being managed by private institutions and economically influential individuals.

Direct or private adoption processes exist through which the mother delivers her child to an attorney without the supervision of a competent legal authority to verify the reasons which have led the mother to make this decision.

Due to the fragility of the existing laws in Guatemala, adoptions constitute a "business" where the economic aspects of "supply and demand" actively intervene. In this sense, the investigation mechanisms aimed at the child's family must be modified so as to ensure that anomalies do not exist with respect to the child's real origins and that poverty does not come to constitute the justification for the delivery of children.

The economic management of adoptions has created a labor market in which mothers, intermediaries, custodians, translators, lawyers, adoption agencies and some children's homes charged with child protection seek to obtain significant financial gains. The existence of intermediaries or "jaladoras" who seek out pregnant woman and offer them money in exchange for their babies and which subsequently propose the caretakers for the children while contracting notaries and agents to sign off on the legal documentation, is a special issue of great concern.

Publicity on adoption that uses children as the object of commerce appears both on the Internet and in national newspapers. The web pages advertise the availability of children for adoption, indicating their characteristics such as age, sex, ethnic background and the conditions of their biological parents, just as the characteristics of any commercial product would be presented.

According to the way that the process is presently developed, the economic circumstances of the adopting parents are more important than their moral and psychological qualities. This situation puts national adoptions at a serious disadvantage since prospective parents do not have the sufficient resources to compete with foreign families who pay in dollars. Faced with the impossibility of legally adopting, Guatemalan families more frequently resort to the process of adoption by supposition of birth where they gain recognition as if they were the actual parents. Due to the characteristics in Guatemala's rural areas, the mayor of the municipality performs an act of adoption with the participation of the biological and adopting parents, through which the child's new birth certificate is recorded in the civil registry.

The adoption records in the Family Courts are incomplete, since no systematic record of adoptions or judicial branch files exist that can permit a precise determination of data and information related to the adopted children's sex, age, origin, ethnic background, and destination.

The six Family Courts utilize differing criteria in performing their tasks. Some of them, like the 2nd and 6th Courts, maintain "ratification of consent for adoption" on behalf of the child's biological mother before a court official. In the other Courts, the mother expresses her will in the presence of a social worker. The attorneys in turn choose the less demanding courts for presentation of their cases. For this reason, the 5th Family Court received 499 files during 1999, while the 2nd Court received 81.

In extrajudicial adoption processes, the participation of the Family Courts is purely formal since no ruling from the judge is put forth. Rather, the social worker presents the socio-economic study of the biological

mother upon his or her responsibility and under oath, and summarizes the documentation presented by the adoptive parents.

In the Courts of the Departments of Huehuetenango, Totonicapán and Jutiapa, between 1 and 3 adoptions are performed per year while in the Departments of Quetzaltenango and Escuintla, up to 10 are carried out. In general, lawyers prefer taking the applications to the Capital City in order to process the cases with greater ease. For that reason, there are more birth certificates filed for adopted children than adoption certificates throughout Guatemala's rural areas.

According to the information provided by foreign institutions, embassies, adopting parents, Interpol and various children's homes, the cost for an international adoption of a Guatemalan child can range between US\$8,000 to US\$ 30,000. According to the statistics of recent years, those countries receiving the greatest number of adopted children begin with the United States, followed in descending order by Canada, France, Italy and Spain.

The process of issuance of passports for children destined for adoption abroad has been criticized because of inconsistencies in data. While the records for 1998 indicate that 1,883 passports were issued, this figure does not correspond to the number of international adoptions approved by the Attorney General's Office (a significant difference of 536 passports exists). The precise reasons for this discrepancy must be determined by the relevant legal authorities.

Though adopting parents in foreign countries normally show interest for the child's welfare and intend to guarantee an adequate quality of life for their adopted children, a post-adoption follow-up should be performed so as to establish the actual conditions of those children who have left the country. Presently, this is only performed in France through the Social Assistance Agency of the French Government.

Based on the various problems surrounding international adoptions in Guatemala, the Canadian and U.S. Embassies decided to require DNA testing. At least 14 cases are known where the DNA test proved to be negative, resulting in embassy contacts being established with the attorney processing the adoption and formal complaints being lodged with the Attorney General's Office so that a full investigation could be conducted.

In order to resolve the adoption problems in Guatemala, it is urgent that the State subscribe to the Hague Convention, legislate a new law which regulates the transparency of the adoption process, and implement policies which support and strengthen the family and which provide access to appropriate sexual education for the population.

BIBLIOGRAPHY

Cadena Rámila, Ramón.

"Nuevas formas de violencia sobre la niñez: Informe sobre el tráfico de Niños/Niñas, Trasplante ilegal de órganos y Adopciones Internacionales en Guatemala". UNICEF. Guatemala, 1994.

Comisión Pro-Convención sobre los Derechos del Niño – PRODEN

"Entre el Olvido y la Esperanza". La niñez de Guatemala. Red Barnet de Dinamarca. Editorial Serviprensa Guatemala, 1999.

Fondo de las Naciones Unidas para la Infancia – UNICEF

"De la Convención a la Acción: Aportes Metodológicos para el Análisis y Reformulación del Marco Jurídico

Nacional a la luz de los Derechos Humanos de la Niñez". Ediciones Don Quijote. Guatemala, 1994.

González, Sancicho Mileidy y Eida Vique Chávez.

"Los Derechos de la Niñez", una propuesta metodológica para su vivencia en el proceso educativo de aula. (Cuaderno educativo No.16, Colección Derechos Humanos. CSUCA. San José, Costa Rica, 1998.

Sistema de las Naciones Unidas de Guatemala.

"Guatemala: los contrastes del desarrollo humano". PNUD. Guatemala, 1998.

**Instituto Latinoamericano para la Educación y la Comunicación –ILPEC-
Servicio Social Internacional – SSI Ginebra**

"Prácticas de Adopción en Guatemala". Industrias Gráficas –Indugrafic. Guatemala, 1996.

Oficina de Derechos Humanos del Arzobispado de Guatemala – ODHAG

"Informe sobre la situación de los derechos de la niñez en Guatemala 1998". Editorial Serviprensa. Guatemala, 1999.

Procurador de los Derechos Humanos. Defensoría de los Derechos de la Niñez.

"Normas internacionales relativas a los derechos de la niñez y juventud". Serdiver. Guatemala, s.f.

Procurador de los Derechos Humanos. Defensoría de los Derechos de la Niñez.

"Doctrina de Protección Integral para la Niñez y Juventud". Normativa nacional e internacional. Talleres Gráficos San Juan. Guatemala, 1997.

PRODEN

"Entre el Olvido y la Esperanza. La niñez en Guatemala". s.e. Guatemala, 1996

PRONICE

"La Adopción en Guatemala". Cuadernos Divulgativos, No.17. s.e. Guatemala, 1997.

Sagastume Gemmell, Marco Antonio.

"La protección Internacional de los Derechos de la Niñez". Cuaderno Educativo No.8. Colección Derechos Humanos. CSUCA. San José, Costa Rica. S.f.

Servicio Social Internacional. Secretario General –Ginebra-

"Directrices para procedimientos de adopción internacional". Espace graphique. Ginebra, 1993.

The Swedish National Committee. Adoption Centre. SIS. ILPEC

"El Derecho del Niño de Crecer en una Familia". Pautas para la práctica en adopciones nacionales e internacionales & en atención en hogares sustitutos". Bangalore, India, 1997.

Documents and Pamphlets:

Cardoza, Miguel Angel.

"La Adopción Internacional en El Salvador". San Salvador, El Salvador, 1999.

INTERPOL

"Regional Conference on Inter-country Adoption. Santiago, Chile, March, 1999.

Instituto Interamericano del Niño. OEA.

"Convenio sobre Protección de Niños". Conferencia de la Haya de Derecho Internacional Privado"

(Adoptado el 19 de octubre de 1996).

Internet. Alta Vista.

Found 117190 Web pages. Adopción internacional Honduras Adopciones Internacionales solidaridad derecho. 1999.

Ministerio de Trabajo y Asuntos Sociales.

"Cuestionario sobre Guatemala". Madrid, España. Julio de 1999.

Raudales Bogran, Mercedes.

Actuación del Instituto Hondureño de la Niñez y la Familia (IHNFA). Tegucigalpa, Honduras, 1999.

Saclier, Chantal.

"Conferencia Intergubernamental sobre adopción internacional". SSI. Santiago de Chile, marzo de 1999.

