The Dilemma of Guatemalan Adoptions: The Hague Convention, the CNA, and the Future of Adoptions in Guatemala

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Abstract

International adoptions between Guatemala and the United States were discontinued after the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention) went into effect in the United States on April 1, 2008. The Guatemalan international adoption system had been considered faster and easier than that of many other countries due to the nature of its private system. As the system expanded, ethical concerns were raised regarding how the adoptions were managed including the manner in which the system was a lucrative business. To the public, it appeared that corruption was pervasive within the system because of the media attention given to certain atypical cases. As a result of the ratification of the Hague Convention, Guatemala is being forced to face the issues within the system as well as the public perception. The Consejo Nacional de Adopciones (CNA) was created in December 2007 to be the central authority over adoptions in Guatemala, as required by the Hague Convention. It now has the challenge of addressing all of these roadblocks to international adoption from Guatemala. Without reforming the system and its perception, maintaining an efficient, ethical, and beneficial Guatemalan international adoption system will be impossible. It is likely that the Guatemalan system will never completely recover from the current shutdown because of the necessity of changing the perception.

The Dilemma of Guatemalan Adoptions: The Hague Convention, the CNA, and the Future of Adoptions in Guatemala

International adoptions between Guatemala and the United States were discontinued after the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention) went into effect in the United States on April 1, 2008. This was followed by Guatemala shortly thereafter halting all international adoptions from Guatemala. By 2006, Guatemala had become the second most popular country for American adoptions.[1] Unethical practices which made it easier to adopt there contributed to this. This corruption within the system needed to be addressed. However, it was not just the system itself which had been corrupted, but its perception as well.

The Consejo Nacional de Adopciones (CNA) was created in December 2007 to be the central authority over adoptions in Guatemala, as required by the Hague Convention. It now has the challenge and opportunity to address all of these roadblocks to international adoption from Guatemala for people all around the world, especially the children of Guatemala.[2] However, if the CNA cannot both reform the system and how it is perceived, it will be impossible for Guatemala to maintain an efficient, ethical, and beneficial operating international adoption system.

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1. Laura Beth Daly, "To Regulate or Not to Regulate: The Need for Compliance with International Norms by Guatemala and Cooperation by the United States in Order to Maintain Intercountry Adoptions," *Family Court Review*, 45, no. 4 (2007): 624.

2. Judith Gibbons, Samantha Wilson, and Alicia Schnell, "Foster Parents as a Critical Link and Resource in International Adoptions from Guatemala," *Adoption Quarterly*, 12, no. 2 (2009): 62.

Present State of International Adoptions between Guatemala and the U.S.

The United States and Guatemala have taken steps to address the situation between the two countries regarding international adoptions. Evidence of this was first visible in 1994 when the United States signed to become a member of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention). This Convention aims to ensure that adoptions proceed with "the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children."[3] Then, in 2000, the U.S. passed the Intercountry Adoption Act due to the heightened desire for greater oversight of international adoptions going out of and coming into the United States.[4] The act states that its purpose is:

> (1) to provide for implementation by the United States of the [Hague] Convention;
> (2) to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children's best interests; and
> (3) to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States.[5]

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3. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, http://www.hcch.net/index_en.php?act=conventions.text&cid=69 (accessed March 24, 2012), para. 5.

4. Katie Gresham, Larry Nackerud, and Ed Risler, "Intercountry Adoption for Guatemala and the United States: A Comparative Policy Analysis," *Journal of Immigrant & Refugee Services*, 1, no. ¾ (2003): 2.

5. 106th Congress, "Intercountry Adoption Act of 2000," *United States Public Laws*, October 6, 2000, http://library.childwelfare.gov/cwig/ws/library/docs/gateway/Blob/56337.pdf?w=+NATIVE%28%27sti+%3D%22Index+of+Federal+Child+Welfare+Laws%22%27%29&upp=0&rpp=-

Finally, on December 12, 2007, the Hague Convention was ratified by the U.S. and, therefore, took effect on April 1, 2008.[6]

Guatemala, on the other hand, acceded to the Hague Convention in 2003, although Canada, Germany, the Netherlands, Spain, and the United Kingdom all brought forth objections under Article 44.3. This states that "such accession shall have effect only as regards the relations between the acceding State and those contracting States which have not raised an objection to its accession…"[7] The asserted reasons for the objections were all the same: Guatemala had yet to comply with the requirements of the Hague Convention and, therefore, the children were still at risk within the Guatemalan system.[8]

In addition to the objections from several countries to their accession, the Guatemalan Constitutional Court stated that the country's accession to the Hague Convention was unconstitutional as of August 12, 2003, halting progress for Guatemala. It was argued that it was unconstitutional for two reasons: 1) Guatemala did not sign the Hague Convention prior to its ratification which made it invalid, and 2) the Guatemalan Congress abused its power in granting the President the authority to accede because that

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10&order=+NATIVE%28%27year+%2F+descend%27%29&r=1&m=23 (accessed March 4, 2012), 2.

6. Annette Schmit, "The Hague Convention: The Problems with Accession and Implementation," *Indiana Journal of Global Legal Studies*, 15, no. 1 (2008): 380.

7. Hague Convention, art. 44.3.

8. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, "Type," *Hague Conference on Private International Law*, July 2003, http://www.hcch.net/index_en.php?act=status.comment&csid=767&disp=type (accessed March 24, 2012).

is not a power given to the President within the Constitution.[9] Further complicating the matter was that according to the Vienna Convention,

> A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.[10]

This meant that Guatemala could not cite a conflict between the Hague Convention and its internal law as reason not to be bound to the Hague Convention since the violation was not considered of "fundamental importance"[11] to the internal law. Therefore, the United States still considered it a member country while Guatemala did not. In fact, Guatemala did not consider itself a member country until May 22, 2007 when the Congress of Guatemala approved the Hague Convention.[12] In December 2007, following its implementation, Guatemala established the Consejo Nacional de Adopciones (CNA), a central authority for adoption in Guatemala as required by the Hague Convention.[13]

Further complicating the issue, Guatemala was not in compliance with the Hague Convention at this point when the U.S. ratified the convention. Guatemala either needed to become compliant with it by April 1, 2008 or have all adoptions between the two countries cease, which is what happened. After this cessation of adoptions occurred in

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9. Sohr, Katherine, "Difficulties Implementing the Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption: A Criticism of the Proposed Ortega's Law and an Advocacy for Moderate Adoption Reform in Guatemala," *Pace International Law Review*, 18, no. 2 (2006): 569.

10. Vienna Convention on the Law of Treaties, art. 46, May 23, 1969, 1155 U.N.T.S. 331. http://www.ilsa.org/jessup/jessup11/basicmats/VCLT.pdf (accessed March 4, 2012).

11. Ibid.

12. Schmit, "The Hague Convention," 386-387.

13. Gibbons, "Foster Parents," 62.

May 2008, Guatemala stopped processing any international adoption applications until the country could review all ongoing cases.[14] It was assumed that following the cessation of adoptions between the United States and Guatemala, Guatemala would implement all the requirements of the Hague Convention.[15] There are three aspects to the Hague Convention requirements. First, there must be a central authority established which Guatemala has done through the creation of the CNA. Second, the central authority must select bodies to oversee the agencies which are accredited by the central authority to complete the adoptions. Finally, the sending country must confirm that "the child is adoptable, that intercountry adoption is within the child's best interests, that no family exists within the country to adopt the child, and that the proper consents have been given by the birth mother which were not induced by any kind of compensation."[16] The international adoption community argues that Guatemalan has not complied with the third requirement. This is where the difficulty will lie for the CNA.

Guatemala confirmed this information in a limited number of cases, mainly public adoptions which were few in Guatemala. However, the Hague Convention requires that this information be confirmed in all cases. It is the responsibility of the CNA to take greater steps towards meeting these requirements if the U.S. is ever going to be able to accept Guatemala as a Hague partner. The cessation of Guatemalan international adoptions has been a step towards reforming the system and improving the prevailing perception. In spite of the efforts made, considering the obstacles involved in meeting these requirements, it will be nearly impossible for the CNA to reform the system and its

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14. Ibid.

15. Daly, "To Regulate or Not to Regulate," 626.

16. Ibid., 622.

perception fully while still allowing it to function to the benefit of Guatemalan children. If the problems within the system are going to be rectified, the roots of how these problems originated must be understood.

History behind Guatemalan Adoptions

After suffering from the thirty-six-year Guatemalan Civil War, the peace accords were finally signed in 1996. International adoption was seen as a needed humanitarian aid for the "5,000,000 children left displaced, abandoned, or orphaned"[17] by the war.[18] Adoptions taking place between the United States and Guatemala saw explosive growth after the end of the Guatemalan Civil War. In 1995, fewer than 500 children were adopted from Guatemala.[19] By 1997, that number had increased to 788 children who were being adopted by American couples.[20] According to the U.S. State Department, this number continued its ascent, rising from 1,002 in 1999 to 4,726 in 2007. In 2008, the number of adoptions being processed began to drop due to the halt of adoptions between the two countries until it was at 32 in 2011.[21] Between 1995 and 2005, 18,298 Guatemalan babies were adopted by American couples.[22] Approximately one out of

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17. Gresham, "Intercountry Adoption for Guatemala and the United States," 5.

18. Meave Garigan, "Of Note: Guatemala's Adoption Industry," *SAIS Review*, 27, no. 2 (2007): 179.

19. Gibbons, "Foster Parents," 61.

20. Samantha Wilson and Judith Gibbons, "Guatemalan Perceptions of Adoption". *International Social Work.* 48, no. 6 (2005): 743.

21. U.S. Department of State, "Guatemala," *Intercountry Adoption*, November 2009, http://adoption.state.gov/country_information/country_specific_info.php?country-select=guatemala (accessed January 21, 2012).

22. Daly, "To Regulate or Not to Regulate," 621.

every 100 children born in Guatemala was adopted by an American couple at one point.[23] In 2006, the United States adopted 4,135 children from Guatemala in comparison to 6,493 from China and 3,706 from Russia, making Guatemala the second largest sending country for adoptions to the United States.[24] Proportionally, Guatemala's children were heading to the U.S. as adopted children much faster than the children of any other country in the world. The number of children leaving Guatemala raised concerns.

This increase can be attributed to many factors. The pervading idea was that there were children in poverty around the world and that countries such as Guatemala needed to be rescued. As described by Dubinsky, "a transnational politics of pity" had developed.[25] In addition to the effects of the Guatemalan Civil War, Guatemala has one of the highest birth rates in Latin America, with an average of 4 to 6 children per mother depending on whether she is Ladino or indigenous, nearly half of which occur out of wedlock. Also, as of 2003, Guatemala ranked second highest in the world for children suffering from chronic malnutrition. Due to this, about 36 percent of Ladinos and 70 percent of indigenous children feel the affects of stunting. Plus, there have not been many non-governmental organizations offering services for the abandoned or at-risk children in Guatemala.[26] These facts provided Westerners with another reason to flock to Guatemala for adoptions.

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23. Kelley Bunkers, V.ictor Groza, and Daniel Lauer, "International Adoption and Child Protection in Guatemala: A Case of the Tail Wagging the Dog," *International Social Work*, 52, no. 5 (2009): 655-656.

24. Daly, "To Regulate or Not to Regulate," 624.

25. Karen Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas* (New York, NY: New York University Press, 2010), 97.

26. Bunkers, "International Adoption and Child Protection in Guatemala," 650-651.

Another reason for the increased popularity of international adoptions was due to the easy accessibility to birth control within the United States which limited the domestic supply of children.[27] From 2002 to 2010, the number of children in the American foster care system waiting to be adopted dropped from 133,894 to 107,011.[28] Parents wishing to adopt had to look towards adopting internationally. Also, Asian countries began to restrict international adoptions due to elevated criticism[29] as evidenced by the drop in children adopted from South Korea by Americans between 1999 and 2011 from 1,994 to 736.[30] Therefore, demand increased for adoptable children in other countries such as Guatemala.

Guatemala also had desirable young children to offer due to the shorter waiting period of the private system. These children were also healthier than children adopted from other countries due to the Guatemalan foster care system. Added to the close proximity to the U.S and the lax rules concerning adoptions, these factors made Guatemala an attractive country to adopt from for Americans.[31]

The rapid expansion of the system during the 1990s caused the United States to face the problem of questionable practices in international adoptions. The United States passed legislation to address issues within the country while lobbyists pressed for greater

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27. Garigan, "Of Note: Guatemala's Adoption Industry," 179.

28. U.S. Department of Health and Human Services, "Administration for Children and Families," *U.S. Department of Health and Human Services,* June 2011, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/waiting2010.pdf (accessed April 1, 2012).

29. Gresham, “Intercountry Adoption for Guatemala and the United States,” 3.

30. U.S. Department of State, "South Korea," *Intercountry Adoption,* January 2012, http://adoption.state.gov/country_information/country_specific_info.php?country-select=guatemala (accessed April 8, 2012).

31. Gresham, “Intercountry Adoption for Guatemala and the United States,” 4.

regulations abroad, especially in Guatemala.[32] However, these concerns did not prevent the processing of adoptions until the Hague Convention went into effect in the United States in 2008.

The overall structure of the Guatemalan adoption system, especially the private system varied greatly from those in other countries. Although popular with many prospective parents, it was the cause of great concern to the international adoption community. Ultimately, this led to the diminished perception of the system and the cessation of Guatemalan international adoptions. The weakness of the private system must be examined if the CNA is going to have any possibility of complying with the Hague Convention in the coming years.

The Weaknesses of the Guatemalan Private System of International Adoptions

International adoptions from Guatemala could be processed privately or publicly. The Guatemalan private adoptions were highly desirable, unlike the public adoptions. The ease and speed of private adoptions not only made them more attractive than public adoptions, but also more than those from other countries.

The public system attempted to do whatever possible to keep children with their birth families and if that was not possible, then with relatives. If family could not be found, the child was permitted to be placed for adoption, first with a Guatemalan family, and lastly, if no Guatemalan family could be found, the child could be placed for international adoption. The Hague Convention now expects this. However, this process tended to take more time than the private system because it went through the public adoption agencies and orphanages and required more work of the Guatemalan courts.

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32. Anne Collinson, "The Littlest Immigrants: Cross-Border Adoption in the Americas, Policy, and Women's History," *Journal of Women's History,* 19, no. 1 (2007): 132, 137.

Public adoptions required a court decree stating that the child had been abandoned rather than relinquished. This added up to seven years to the length of the adoption process. In 1995, the average length of an international adoption from Guatemala varied from three to six months in the private system to one to two years in the public system due to the added requirements in the public system.[33] This added to the frustration involved in a potential international adoption and made the private system more appealing.[34]

However, it was the problems within the private system which were debated in adoption circles. In contrast to the public system, the private system did not go to great lengths to keep the children in Guatemala since there were many people abroad willing to adopt them. Adoptions through the private system did not require as much effort and were also more profitable. Children in the private system did not have to be considered abandoned through the Guatemalan judicial system. Guatemalan attorneys were in charge of Guatemalan private adoptions and they only had to obtain a signed document stating that the birth mother was relinquishing the child. Therefore, the private system reduced the number of steps between receiving the child and being able to prepare him for international adoption.[35] The difference in ease and speed made private adoptions preferable to public adoptions.[36]

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33. U.S. Department of State, "International Adoption: Guatemala," 1995, http://dosfan.lib.uic.edu/ERC/population/children/adoptions/Guatemala.html (accessed April 1, 2012).

34. Gresham, “Intercountry Adoption for Guatemala and the United States,” 4-5.

35. Ibid.

36. Daly, "To Regulate or Not to Regulate,” 624.

Up to ninety-nine percent of adoptions in Guatemala were processed privately.[37] Due to this fact, the private system was truly the face of Guatemalan international adoptions. This was also the system that caused immense controversy in the international adoption community.

There were several characteristics of the Guatemalan private system which distinguished it from other international adoption systems while making it a cause for concern. Some of these characteristics included intermediaries, foster parents, DNA testing, and the oversight of the *Procuraduría General de la Nación* (PGN). While all of these could have been greatly beneficial to the system, in Guatemala, they were made corrupt rather than ideal.

Generally, the birth mother did not directly communicate with a Guatemalan attorney in order to relinquish a child. An intermediary, always a woman, was used. She acted as a liaison between the Guatemalan attorneys and the birth mothers.[38] She went out into the country and the mountains in order to make contact with pregnant women who could potentially want or be willing to relinquish their children for adoption.[39] These women were not always acting in a coercive manner. Some sincerely wanted to help women who found themselves unable to care for their children.[40] However, the gained a reputation for coercing women into relinquishing their children in order to make a profit.

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37. Gresham, “Intercountry Adoption for Guatemala and the United States,” 5.

38. Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 108.

39. Daly, "To Regulate or Not to Regulate,” 624.

40. Jacob Wheeler, *Between Light and Shadow: A Guatemalan Girl's Journey Through Adoption*. (Lincoln: University of Nebraska Press, 2011), 32.

These intermediaries did fill various roles in the adoption process. Often, they provided for the birth mother during the pregnancy while making sure she filled out all the necessary paperwork. At times, this required bringing her to Guatemala City.[41] Ultimately, she brought the birth mother to the attorney at which point the child was handed over to an institution or to foster parents until they could be placed with adoptive parents.[42] Intermediaries allowed for the expansion of the Guatemalan adoption system since they could make contact with women whom the Guatemalan attorneys could not have made connections with otherwise.

Foster parents were also important to Guatemala in making the international adoption system thrive. Unlike foster parents in the U.S., the role of foster parents there was not to take care of children who were pulled out of their homes due to some issue within the family, such as abuse or neglect. Rather, they provided care for children after relinquishment and prior to the adoptive parents taking custody of them which meant that rather than the child being institutionalized for an indefinite period of time, the child received individual care. This was attractive to prospective adoptive parents.[43]

Foster parents generally took care of these children during infancy, "a critical period for cognitive and emotional development."[44] Once these children arrived in the U.S., they tended to be healthier and to have developed better than those who lived in

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41. Patricia Goudvis, Alice Stone, and Claudio Ragazzi, *Goodbye Baby Adoptions from Guatemala*, [Harriman, NY]: New Day Films, 2005.

42. Daly, "To Regulate or Not to Regulate," 624.

43. Ibid.

44. Gibbons, "Foster Parents," 64.

institutions according to a study in the *Pediatrics Journal*.[45] Foster parents provided greater stability for the children.[46] In addition to the care they provided, they generally attended the family court interview, the DNA testing, and the medical examination at the U.S. Embassy. Foster parents did positively impact the lives of these adoptive children. However, that does not mean that foster care was without its problems.

There was not much regarding government oversight in the Guatemalan foster care system. Guatemalan attorneys recruited foster parents who generally lived near the capital for easy accessibility. According to one study, "98% of the caregivers were unlicensed private persons…"[47] They were legally restricted to a maximum of two foster children at a time although foster children were generally cared for in addition to biological children.[48] Regulation did not greatly impact the Guatemalan foster care system.

Another issue involved with the Guatemalan foster care system was the fear that the foster parents had to live with due to the Guatemalan perception of international adoptions. Foster parents did not want to be seen as being involved in international adoptions. According to an interview from the documentary *Goodbye Baby*, "[w]orking as a foster mother is risky. You're seen as a criminal. They say you form part of a network of child traffickers, but you just keep on going."[49] Therefore, whenever foster

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45. Laurie Miller, Wilma Chan, Kathleen Comfort, and Linda Tirella, "Health of Children Adopted From Guatemala: Comparison of Orphanage and Foster Care," *Pediatrics -Springfield-*. 115, no. 6 (2005): 715.

46. Gibbons, "Foster Parents," 62.

47. Ibid., 63.

48. Ibid., 62-64.

49. Goudvis, *Goodbye Baby*, Film.

parents met with adoptive parents, it was done in a hotel room or lobby. Meeting at the home of a foster parent could have endangered that family due to fears within the community regarding child trafficking. While it seems that foster parents were glad to help care for the children and were proud to be involved in the process, foster parents were also given reason to fear being involved in the process.

In addition to the significance of the intermediaries and the foster parents, the requirement for DNA testing in the majority of Guatemalan adoptions reinforced the perception of the system within the international adoption community rather than improving its image as a whole. The United States, Canada, United Kingdom, and Ireland required a DNA test to be performed in cases of relinquishment as of 1998.[50] Both Canada and the United Kingdom later objected to Guatemala's accession to the Hague Convention on the grounds of its lack of compliance with the Hague Convention.[51] The fear regarding women posing as birth mothers of kidnapped children in order to make a profit was the explanation behind this requirement. The U.S. wanted to confirm that the woman relinquishing a child was in fact the birth mother and had the authority to relinquish the child. While this could not ensure that birth mothers were not being forced to relinquish their children, it at least proved maternity[52] which satisfied the United States government's concern regarding stolen babies.[53] While DNA testing in itself was not an issue, it was not necessarily serving its supposed purpose. The need for

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50. Chantal Saclier, "The Rights of the Child and Adoption in Guatemala," *International Childrens Rights Monitor,* 14, no. 3 (2001): 18; Goudvis, *Goodbye Baby,* Film.

51. Hague Conference on Private International Law, *Report Of A Fact-Finding Mission To Guatemala,* The Netherlands: Permanent Bureau, 2007, 15.

52. Gresham, "Intercountry Adoption for Guatemala and the United States," 4-5.

53. Goudvis, *Goodbye Baby,* Film.

DNA testing is an indication of the overall health of the system. Changes to the DNA requirement would be addressing an effect of the problem, not the problem itself.

The *Procuraduría General de la Nación* (PGN) was the Guatemalan equivalent of the Solicitor General's office and the former central authority for Guatemalan international adoptions. This was an infamous aspect of the Guatemalan system amongst the international adoption community. Having an adoption approved by PGN was the last big hurdle for prospective adoptive parents and the most stressful step in the process.[54] At times, prospective parents would move to, or at least make an extended visit to, Guatemala during this step with hopes of speeding up the process by being present although this was not required. An adoption would have been assigned to a reviewer who ultimately was responsible for approving or denying the adoption. Bribery of PGN employees, in order to have adoption files processed, was an alleged response to the frustration involved in this step of the process according to an investigation by the Hague Convention.[55] PGN was responsible for any regulation which took place prior to the creation of the new central authority. Therefore, it had the potential to extend the length of an adoption indefinitely. When the CNA addresses the issues which were faced by the PGN, it will need to do so in a way which will not lengthen the time frame for adoptions indefinitely.

The system of international adoptions in Guatemala developed to feed a vast market. However, in doing so, aspects of the system meant to benefit the children, birth parents, and prospective parents were twisted into being unethical. This system led to the

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54. Gresham, "Intercountry Adoption for Guatemala and the United States," 5.

55. Hague Conference on Private International Law, *Report Of A Fact-Finding Mission To Guatemala*, 14.

development of concerns regarding Guatemalan international adoptions. These concerns included: 1) the system being a business for those providing children for adoption abroad, 2) lax adoption laws, 3) the treatment or mistreatment of birth mothers, and 4) outright kidnapping of children for adoption. These concerns created a fear of the system.

The corruption led to the development of more corruption within the system due to the potential to make money. With such a high demand for Guatemalan children, especially by Americans, the system became a lucrative business with its own set of problems and, ultimately, corruption. This fed the perception which caused the greatest problems for the Guatemalan system.

Adoption as a Lucrative Business

According to *Outsiders Within*, "adoption has … become big business. Go to any adoption conference for the first time, and you'll be surprised by the numbers of 'advertisers'—agencies, facilitators, magazine publishers, insurance companies, greeting card vendors, and toy manufacturers – seeking to sell you their services."[56] International adoptions in Guatemala became a lucrative business because: 1) the demand was present and growing,[57] 2) Guatemala had a supply of children able to be adopted, and 3) prospective American parents were willing to pay high sums of money in order to adopt.[58] This led to the treatment of the system like a profitable business.

Getting a young and healthy child, and getting the child quickly, came at a cost in Guatemala. The average cost of adopting from Guatemala for an American was

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56. Jane Jeong Trenka, Julia Sudbury, and Sun Yung Shin, *Outsiders Within: Writing on Transracial Adoption* (Cambridge, Mass: South End Press, 2006), 89.

57. Ibid., 95.

58. Gresham, "Intercountry Adoption for Guatemala and the United States," 8.

somewhere between US$23,000[59] and US$27,000 [60] though this number went as high as US$30,000[61] or US$40,000.[62] According to a report completed by the Hague Convention in 2007, US$15,000 of this total cost went to the attorney and the rest covered the adoption agency fees, travel costs, visa, DNA, and petition. The amount paid to the attorney by an American citizen was greater than the total average cost of a Guatemalan adoption by an Australian (at most US$14,000), Swiss (US$12,800), Luxembourger (US$12,300), Spaniard (US$8,000), or a Dane (US$10,000).[63] This was in contrast to the substantially lower cost of a domestic adoption in Guatemala of US$300.[64] Both Guatemalan attorneys and even U.S. adoption agencies, as seen in *Mamalita*,[65] have swindled American couples out of thousands of dollars.[66] For everyone involved, there was a considerable amount of money to be made.

The cost that American couples were paying for adoptions from Guatemala was also substantially higher than the actual cost of processing which was less than US$5,000.[67] The difference between the cost paid by the American couples and the cost

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59. Hague Conference on Private International Law, *Report Of A Fact-Finding Mission To Guatemala,* 11.

60. Bunkers, "International Adoption and Child Protection in Guatemala," 655.

61. Gresham, "Intercountry Adoption for Guatemala and the United States," 5.

62. Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 108.

63. Hague Conference on Private International Law, *Report Of A Fact-Finding Mission To Guatemala,* 11-12.

64. Gresham, "Intercountry Adoption for Guatemala and the United States," 6.

65. Jessica O'Dwyer, *Mamalita: An Adoption Memoir*, Berkeley, Calif: Seal Press, 2010.

66. Garigan, "Of Note: Guatemala's Adoption Industry," 180.

67. Trenka, *Outsiders Within*, 95; Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 108.

of processing was used to pay off several people involved in the system including foster parents, intermediaries, birth mothers, the attorneys, and even U.S. adoption agencies. These are the people that saw international adoption as a lucrative business.

The amount that various people involved in Guatemalan adoptions were paid varied greatly. Foster parents were typically paid between US$50 and US$200 per month in addition to having the child's expenses covered. This cost was included in the fees which the adoptive parents paid.[68] However, this figure did not include anything that the adoptive parents may have given them, i.e., gifts or money, while they were picking up their child. Paying intermediaries was also an accepted practice although some women would perform this service for the satisfaction of helping a child. Determining how much intermediaries received for their services is a difficult task although the Hague Convention stated that some intermediaries "seek to obtain significant financial gains."[69]

The offering of inducements to birth mothers was also a popular practice and a major cause for concern. Inducements included anything offered to birth mothers to influence their decision about making a plan to adopt such as money, goods, or promises. Jessie Garcia indicated that Guatemalan women understood that they could receive money for relinquishing their children for adoption. Stella Garcia, who directed the Guatemalan program for U.S. adoptions for 10 years before resigning, explained that many Guatemalan women would go to multiple attorneys in order to get the best offer. These payments or gifts would vary from US$50, to become pregnant with a child to be

68. Gibbons, "Foster Parents," 63.

69. Hague Conference on Private International Law, *Report Of A Fact-Finding Mission To Guatemala*, 9.

placed in an international adoption,[70] to US$3,000 for these babies.[71] The amount given to a birth mother was even affected by the gender of the child because girls were more desired than boys in international adoptions. This was Ms. Villatorro's experience when she spoke to an intermediary. "She [an intermediary] said they'd give me $640 if it was a girl and $380 if it was a boy," emphasizing the fluctuations within the market.[72] Women relinquishing their children for adoption and not seeking a financial gain were few. Potentially, only 20 percent of women were not seeking money for their children.[73]

Whenever birth mothers were offered inducements for their children, it was offered in payments. If she wanted all the money, she had to show up to sign all the paperwork to relinquish and surrender her rights to the child.[74] If she ever attempted to change her mind, she was told she had to pay back the money that had been given to her. This made it extremely difficult for a birth mother to change her mind, especially when so many of these women live in poverty.[75]

In 1992, one of the first reports was released about women being paid for their children. This report came from a Guatemalan woman who went to the police after not receiving money for her child as supposedly promised.[76] Women have been known to

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70. Trenka, *Outsiders Within*, 95.

71. Garigan, "Of Note: Guatemala's Adoption Industry," 180.

72. Catherine Elton, "Adoption vs. trafficking in Guatemala. (Cover story)," *Christian Science Monitor*, October 17, 2000., 1, *Academic Search Complete*, EBSCO*host* (accessed January 21, 2012).

73. Goudvis, *Goodbye Baby*, Film; Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 119.

74. Schmit, "The Hague Convention: The Problems with Accession and Implementation," 379.

75. Bunkers, "International Adoption and Child Protection in Guatemala," 654.

76. Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 113.

relinquish multiple children for payment as was the case in *Between Light and Shadow*.[77] It was even said that women were allegedly getting pregnant for the purpose of relinquishing them for adoption and, ultimately, payment.[78] Reports such as these led a Guatemalan former vice-president to assert that "Guatemala exports children."[79]

The Guatemalan international adoption system was a lucrative business not only due to amounts paid by Americans per adoption. It was also due to the sheer number of adoptions being processed and the fact that the vast majority of adoptions in Guatemala were international adoptions. According to Bunkers, "[i]n 2005, 98 percent of adoptions were international and 2 percent were domestic adoptions by Guatemalans."[80] The majority of these international adoptions were by American parents. In 2006, 5,024 Guatemalan children were adopted abroad and 4,135, or approximately eighty-two percent, of these children went to the United States.[81] Therefore, the majority of people adopting from Guatemala were American citizens. When the United States first threatened to halt adoptions between the two countries, they were threatening to nearly single-handedly halt the entire Guatemalan adoption system which earned nearly US$500,000,000 between 1995 and 2005, considering the average cost of a Guatemalan adoption by Americans.[82] In the future, ending the created perception regarding

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77. Wheeler, *Between Light and Shadow*.

78. Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 118.

79. Gibbons, "Foster Parents," 61.

80. Bunkers, "International Adoption and Child Protection in Guatemala," 653.

81. Garigan, "Of Note: Guatemala's Adoption Industry," 179.

82. Daly, "To Regulate or Not to Regulate," 621.

Guatemala running a business exporting babies will be understandably difficult, especially considering the money involved.

The numbers associated with international adoptions coming out of Guatemala have been a substantial part of the controversy regarding the system that was in place there. However, this was not the only aspect of the system contributing to the perception that was formed. They were not captivating the world as did other ethical concerns.

Other Unethical Practices

Unethical practices in Guatemalan adoptions ranged from those seen in specific, highly publicized cases to those which were more subtle, but equally problematic. All of these impacted the perception of Guatemalans, Americans, and the international adoption community. However, some practices did this faster than others.

There were a few unusual cases of coercion, bribery, trickery, and kidnapping that brought light to the issue without subtlety. Such incidents included women reportedly signing relinquishment papers while in a drug-induced state and birthmothers being lied to about the health of their children or even made to believe that their children were dead.[83] A more common form of this coercion was the description of the contrast between the typical American and typical Guatemalan lifestyles. Although not inaccurate, this implies the requirement of economic status in order to be a fit parent. This contrast made adoption a hard offer to refuse[84] like it was for Ellie's mother as described in *Between Light and Shadow*.[85] However, cases of kidnapping gained media

83. Gresham, "Intercountry Adoption for Guatemala and the United States," 7.

84. Bunkers, "International Adoption and Child Protection in Guatemala," 655.

85. Wheeler, *Between Light and Shadow*.

attention faster than any of the above, especially when discovered after the adoption had been completed. Timothy and Jennifer Monahan adopted Anyelí Liseth Hernández Rodríguez, who became known as Karen Abigail Monahan, in 2008 after being kidnapped in 2006. A Guatemalan court has since ordered that the child be returned to Guatemala to her birth mother. This created a dilemma for the United States and Guatemala regarding what is best for the child who has spent much of her young life in the United States and is now an American citizen.[86] Although these practices could not be considered widespread within the system, they did shape the perception and actions of the international community.

Some of the practices were more subtle than the cases of kidnapping that were in newspapers around the world. This included the lack of oversight and the lax nature of Guatemalan adoption laws. The problem was not that numerous illegal adoptions were being processed. According to Guatemala's response to the Committee on the Rights of the Child, only 50 illegal adoptions were even reported in 2006 when close to 5,000 adoptions were processed in Guatemala.[87]

> "Everyone says they are letting illegal adoptions go through," says Juan Francisco Flores, a lawyer with the federal attorney general's office. "That's not true. The problem is that they are legal." "We don't know which adoptions are legal and which are not," says Elizabeth Gibbons, UNICEF's representative in Guatemala. "The

86. Ewen MacAskill and Jo Tuckman, "US Caught Up in Legal Battle over Guatemalan Child." *Guardian News*, August 30, 2011.

87. Guatemala, *Written Replies by the Government of Guatemala Concerning the List of Issues (CRC/C/OPAC/GTM/Q/1) Received by the Committee on the Rights of the Child Relating to the Consideration of the Initial Report of Guatemala Under Article 8(1) of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC/C/OPAC/GTM/1)*, Geneva: UN, 2007, 4.

> legal system is so intransparent that legal adoptions go through, and so do illegal ones."[88]

Guatemala's adoption laws were the weakest of any Latin American country, not even making child trafficking illegal.[89] Payments were typical. Also, falsified documents were pushed through as well as, on rare occasions, kidnapped children. According to Hector Dionicio who works as a lawyer at Guatemala's office of Covenant House-Latin America, a children's rights organization, "Our laws don't put many requirements on adoptions, making it as easy as possible for people to adopt."[90] These practices, although more slowly than the public cases, eroded the public perception and opened the door for rumors to spread regarding Guatemalan adoptions which is precisely what happened.

The Public Perception of International Adoptions in Guatemala

A bleak perception developed of the Guatemalan adoption system. This view was based on several beliefs including the following: 1) that the adoption system was a business which did not even help the children who needed families, 2) that coercion and kidnapping were integral to the system's survival, and 3) that the system was even used to provide wealthy Americans with organs. The international adoption community now insists that children need to be protected from the system which was allowing Americans to take advantage of their youth and ultimately, their poverty. The roots of this perception, in addition to the corruption, must be addressed.

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88. Elton, "Adoption vs. trafficking".

89. Gresham, "Intercountry Adoption for Guatemala and the United States," 7.

90. Elton, "Adoption vs. trafficking," para. 6.

The number of children leaving Guatemala for the United States (18,298 Guatemalan babies between 1995 and 2005)[91] and the amount of money profited through the system (as much as US$200 million annually) was at the heart of the belief that adoptions through Guatemala were solely a business.[92] The CNA must focus on assisting the needy children. Out of the 1,700 children who had been declared abandoned in 2005, only 3% of them had been adopted as of 2007.[93] Children often were forced to wait years just to be declared eligible for adoption. According to a report done by The Hague, "90% of adopted children are less than one year old" meaning that by the time they were declared adoptable, they were past their prime for adoption.[94] Therefore, children were being found elsewhere to feed the demand for young children.[95] The CNA needs to ensure that while reforming the system, the length of the process does not increase. Otherwise, the CNA could prevent the children who need families from ever attaining one because of the desire for young children. This must be done in addition to addressing the money made through the system. If done, complying with the Hague Convention would affect the perception of the system being a business. This belief will be the easiest to attack because of the more objective foundation.

The other two beliefs involved in the created perception of Guatemalan adoptions will be harder to affect because these have been ingrained into the thoughts of

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91. Daly, "To Regulate or Not to Regulate," 621.

92. Erin Siegal, *Finding Fernanda: Two Mothers, One Child, and a Cross-Border Search for Truth*, (Oakland, Calif: Cathexis Press, 2011), 44.

93. Hague Conference on Private International Law, *Report Of A Fact-Finding Mission To Guatemala*, 11.

94. Ibid.

95. Elton, "Adoption vs. trafficking".

Guatemalans and people around the world for years. Widespread fear of kidnapping children for adoptions came from the influence of the media such as with the Monahan couple. Newspapers publicized warnings to parents about parks and markets being dangerous places for children and about hospitals being infested with child-snatchers.[96] Foster parents were forced to keep low profiles due to fear that someone would suspect that they were involved in kidnapping children. The media made it seem as if kidnappings were a pervasive problem.

However, "the Baby Parts Myth," as Dubinsky refers to it, shocked people around the world more than any other factor affecting the system's perception starting in 1987."[97] It asserted that children were being adopted or kidnapped for their organs. Europe and the United States never found evidence of an organ trade after investigating the matter in the late 1980s. In fact, no credible evidence has been produced to support this belief.[98] However, the rumor has taken on a life of its own, "[i]n this sense, the Missing Baby joins the vampire, the *sacaojos*, the gringo chicken, and the *chupacabra*: symbols which reveals the 'slippery relationship between myth and reality'…"[99] In 1994, *Prensa Libre*, a well known newspaper in Guatemala, published an article titled, "Buying Children to Mutilate Them is Common." It included prices for different organs

96. Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 112.

97. United States Information Agency, "The Baby Parts Myth, The Anatomy of a Rumor," *Archive*, May 1996, http://www.america.gov/st/pubs-english/1996/May/20050114161620atlahtnevel0.422909.html (accessed January 21, 2012).

98. Ibid.

99. Karen Dubinsky, "Babies Without Borders: Rescue, Kidnap, and the Symbolic Child". *Journal of Women's History.* 19, no. 1 (2007): 145.

on the international market such as US$100,000 for lungs and US$150,000 for a liver.[100] This story made its way into the minds of Guatemalans through newspaper articles, television segments, and radio announcements.[101] This had disastrous consequences for Westerners in Guatemala and for international adoptions.

Even though there was no evidence of an organ trade in Guatemala, the resulting hysteria and violence was a reality to be faced. June Weinstock, a fifty-one-year-old American journalist from Fairbanks, Alaska was attacked in San Cristóbal, Alta Verapaz on March 29, 1994 after a child she had taken a picture of went missing. She was left physically and mentally incapacitated and now requires 24-hour nursing care.[102] A few weeks prior to the attack on Weinstock, a New Mexican woman was attacked due to accusations of her trafficking children. A Swiss man was also injured by villagers who made the same accusations of him.[103] Following these attacks, the U.S. Embassy in Guatemala organized a televised-panel to explain what was involved in adoption and organ donation to Guatemalans with the hopes of calming some of their fears.[104] However, these attacks still ultimately led to a U.S. State Department issued travel advisory in 1994, “limiting all trips to Guatemala to necessary visits and to avoid all contact with local children.”[105]

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100. Goudvis, *Goodbye Baby*, Film.

101. Collinson, "The Littlest Immigrants,” 136.

102. United States Information Agency; Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 110-111; Collinson, "The Littlest Immigrants,” 135-136.

103. Collinson, "The Littlest Immigrants,” 135-136.

104. United States Information Agency; Dubinsky, *Babies without Borders: Adoption and Migration Across the Americas*, 111.

105. Collinson, "The Littlest Immigrants,” 136.

The rumors will be one of the most difficult aspects of the perception to change. To affect this perception will require a renewed trust in the countries' governments and, ultimately, the system of international adoption. Fixing the problem with the system, if possible, will not be easy. The CNA not only has to address the existing problems, but the perception which grew out of those problems.

The Efforts of the CNA

Some changes have taken place within the system though they still have work to do. On May 6, 2008, Guatemala stopped processing any international adoption applications until the CNA could review all ongoing cases.[106] As of 2009, "10 percent of the first 150 cases had questionable records and 40 percent of birth mothers did not participate in the hearings to ascertain whether coercion or inducements influenced their decision to adopt."[107] Even though the review, at that point, had demonstrated a lack of integrity in the system, the remaining 3000 pending cases had yet to be conducted.[108] Not long after launching this investigation, the CNA published new procedures which went into effect on July 13, 2010.[109] After these new procedures were passed, American adoptive parents who had registered their adoptions before the system came to a halt were no longer permitted to use Guatemalan attorneys to process their adoptions.[110]

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106. Gibbons, "Foster Parents," 62.

107. Bunkers, "International Adoption and Child Protection in Guatemala," 653.

108. Ibid.

109. U.S. Department of State, "Publication of Adoption Law Regulations," *Intercountry Adoptions*, July 1, 2010, http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=alerts&alert_notice_file=guatemala_6 (accessed January 21, 2012).

110. U.S. Department of State, "Reminder - CNA Rules and Procedures for Guatemala Adoptions," *Intercountry Adoption*, July 1, 2010,

In spite of the efforts of the CNA, in October 2010, the United States decided it was still not interested in participating in a pilot program to resume the processing of a limited number of international adoptions between the two countries. The development of this program was announced in November 2009 by the CNA, but the United States, understandably, still had concerns regarding Guatemala's ability to meet with the standards of the Hague Convention. The U.S. also asserted that the CNA needed to implement more safeguards within the system and provide details about how the cases would be processed under the pilot program with the new procedures.[111]

As of December 12, 2011, the CNA had agreed to "a process for certain adoption applications pending under the CNA's processing authority."[112] Under this process, the United States will contact those families affected and provide them with information regarding future steps to be taken. The system has not been opened for new adoptions though it is clear that the two countries have been working toward reforming the system and improving the overall perception of it though there is still much work to be done.

The Ability of the CNA to Reform the Guatemalan System

Guatemala's adoption system has had to confront many forms of corruption. This has led to a perception of the system which exacerbated the difficulties for Guatemala and their international system of adoption. These problems have made it impossible for

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http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=alerts&alert_notice_file=guatemala_5 (accessed January 21, 2012).

111. U.S. Department of State, "Alert: Guatemala Pilot Program," *Intercountry Adoption,* October 5, 2011, http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=alerts&alert_notice_file=guatemala_8 (accessed January 21, 2012).

112. U.S. Department of State, "Notice: Processing Plan for CNA Cases," *Intercountry Adoption,* December 12, 2011, http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=guatemala_8 (accessed January 21, 2012), para. 2.

the system to function smoothly and to support those people who could truly benefit from a system of international adoptions.

The CNA has been given the challenge of not only reforming the system as required by the Hague Convention, but more importantly, changing the prevailing perception of the Guatemalan international adoption system. Due to the nature of the requirements of the Hague Convention as well as the perception which has been ingrained in the population and the international community, the possibility of Guatemala's international adoption system ever completely recovering is slim. The unlikelihood of a full recovery of the Guatemalan system is due to a few reasons.

In order to comply with the Hague Convention, specifically the third requirement, more time is going to be added to the length of the process. This will prevent many children from being adopted who would be if the adoptions were processed quicker. Prospective adoptive parents desire young children as evidenced by the fact that 90% of children adopted are under the age of one.[113] By the time all of the necessary steps are taken for each case to comply with the Hague Convention, the children will be undesirable because of their age.

Another point which also must be taken into consideration is the Hague Convention's requirement to confirm that there are no families within Guatemala willing to adopt a child before allowing him to be adopted from abroad. Domestic adoptions consisted of only 2% of children adopted in previous years. This is due to the belief that the indigenous population is inferior to the ladino population. The indigenous population would not have the money to adopt. Therefore, the prejudice of the ladino population

113. Hague Conference on Private International Law, *Report Of A Fact-Finding Mission To Guatemala*, 11.

combined with the cost of adopting prevents many children from being adopted domestically.[114] Requiring a search for prospective parents amongst a population who has shown little interest in the past in adopting, when there are parents trying to adopt, is not only wasting valuable time, but an unnecessary step in the process.

In addition to these reasons, Guatemala does not have the resources that the United States has to comply with the requirements. Even the United States was not able to comply with the requirements until 2007 even though they signed the Hague Convention in 2003. To expect Guatemala, a country with more limited means, to be able to comply faster than the United States is unrealistic.

Also, in the same way that prospective parents flocked to Guatemala when Asian countries reduced the rate of adoptions being processed, prospective parents have now gone elsewhere for adoptions. If Guatemala does start processing international adoptions again, many people may not return to Guatemala because another country will have filled the role that was formerly filled by Guatemala. Guatemalan children may not be adopted because the prospective parents may go elsewhere.[115]

Finally, to make achieving and maintaining an efficient, ethical, and beneficial adoption system in Guatemala possible, the CNA would have to alter the perception of a people. Even if the CNA is able to make the Guatemalan system comply with the Hague Convention, that will not necessarily result in an immediate change in the perception within Guatemala and the international adoption community. Time will certainly affect this perception, but time will cost the opportunity for many children and parents to enjoy the benefits of adoption.

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114. Wilson, "Guatemalan Perceptions of Adoption," 748-749.

115. Sohr, "Difficulties Implementing the Hague Convention," 580.

If the CNA is able to reform the system, the question will not be about whether the system has been rid of corruption or whether it is running efficiently, but rather, whether it is perceived to be at that point. Part of that question will become whether Guatemala, the United States, and the rest of the world trust the system of international adoptions from Guatemala. However, the world will have to set aside pre-conceived beliefs regarding the system in order to have a system that can help people around the world. The United States and Guatemala should not expect this to happen in the near future.

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