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Guatemala May Pass Adoption Law to Stop Abuses

by LADB Staff

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Guatemala exported 2,109 babies in 2001, making it the fourth-largest trafficker in international adoptions, legal and illegal. Only Russia, China, and South Korea surpass Guatemala. Statistics supplied by congressional Deputy Carlos Mauricio Valladares de Leon, president of the women, minors, and the family committee of the Congreso Nacional, indicate that in 1997 there were 1,265 adoptions, in 1998 there were 1,347, and by 2001 the number of children exported from the nation's supply of about 1.8 million children under the age of four was 2,109.

By contrast, Honduras recorded only 78 adoptions between 1997 and 1998. Ecuador, with a population roughly similar to Guatemala's, and a comparable ethnic, socioeconomic situation, saw 80 adoptions during 1998 and 1999. Most Guatemalan adoptions, legal and illegal, are of children under the age of 18 months, and most of the international deals cost the buyers more than US \$25,000. Valladares has introduced a bill for a Ley de Adopciones that would regulate this activity.

The legislator contends that, as a function of total population, the number of babies adopted in Guatemala puts his country first, not fourth, in the world, and, with an increase in illegal adoptions that have reportedly cost as much as US\$80,000, the time for strict regulation has come. Valladares said that, under present law, the state does not protect children sufficiently and that, despite the "transcendence and nobility" of adoption, the rights of the children are being violated by the present practice. He said that adoption has become, for Guatemalan society, synonymous with "illegal traffic in children" for which there has been, until now, no legislative response. The abuses include, but are not limited to, outright theft of babies, coercion of mothers to give them up for adoption, and payments to women to get pregnant for the sole purpose of selling their babies.

Proposed law would safeguard children

The proposed law acknowledges that child candidates for adoption have certain rights and can be heard on their preferences on adoption or anything else that concerns them when they are of sufficient age to express those preferences. When able, the child must consent to adoption. The law would also make clear that poverty, or lack of economic resources, does not of itself constitute a reason for a parent's loss or suspension of parental custody or other rights. It would become illegal for children to be declared adoptable solely because their parents are poor. Children have been taken from parents and put up for adoption on this pretext.

Once adopted, the child would have the right, under this law, to know his or her origin and history, and the adoptive parents would have the obligation to provide the child with this information when the child reached 14 years of age, if the child wanted to know. Until that age, that information would not have to be given the child if it would lead to emotional or other personal problems, unless ordered by a judge. The law would also protect children from being sold, prostituted, or used in

pornography, forced labor, or any other activity or omission that would injure their physical, moral, or spiritual integrity.

The law would enforce rights guaranteed in the Constitution, the International Convention on Children's Rights, of which Guatemala is a signatory, and other international conventions that recognize these rights. The law would also prevent the child from losing Guatemalan nationality, regardless of the nationality of the adoptive parents.

If the bill survives negotiations between the women's committee and the legislation committee, it will be reported out for a floor vote. Said Valladares, "We hope there is a consensus for the final bill to be reported out favorably, both in my committee and in the legislation committee." Veteran human rights advocate and Alianza Nueva Nacion (ANN) Deputy Nineth Montenegro sees the bill as an important one, and advocates its quick passage. "There is no internal instrument that regulates adoptions to avoid irregularities," said Montenegro. "That's why it is indispensable that the Congress immediately approve this bill." Guatemala has for years been singled out as a country where adoption abuses abound and where powerful people have profited hugely from the quasi-legal traffic in children.

Children's advocate Nidia Del Cid, of the Procuraduria de los Derechos Humanos (PDH), points out that she and others have been waiting for four years (see NotiCen, 2000-03-02) for this law to emerge from the Congress, "and now we are worried that the sessions will end without passing the law." National elections are scheduled for November.

Costa Rican connection

The rush to do something about adoptions in Guatemala is coincident with the discovery in Costa Rica of nine Guatemalan babies in an unregistered international-adoption agency in La Uruca, San Jose. New concerns that Costa Rica is being used as a transit country for child trafficking have prompted concerns there about the adequacy of laws regarding international adoptions. Costa Rican police and authorities arrested seven suspects and took the nine babies into state custody after a raid on an apartment prompted by complaints from neighbors.

Just two days later, they raided another house in the same neighborhood in eastern San Jose, this time taking three more Guatemalan children, while making no arrests. Those arrested in the first raid included one Honduran and five Guatemalans, one of whom was the mother of one of the children. The seventh person was Costa Rican lawyer and banker Carlos Hernan Robles. He was found guilty in June 2001 on 17 counts of embezzlement in connection with the collapse of the country's oldest state bank, the Banco Anglo Costarricense. Robles was free while that verdict was being appealed.

On the day following this recent arrest, his prior conviction was upheld, and he was sentenced to 24 years in prison. Robles' relationship to the unlicensed adoption agency was not known to authorities at the time of the arrest, but he had, on July 24, formally sought an operating license for a Florida based operation, International Adoption Resource Inc.

Patronato Nacional del Infancia (PANI) president Rosalia Gil said Robles requested the license from the National Council of Adoptions (see NotiCen, 2003-09-11). The International Adoption Resource claims on its Web site to be licensed, with offices in Colombia, Panama, Guatemala, Costa Rica, Romania, India, Cambodia, and Russia. But Gil said that the company never got permission to operate in Costa Rica because of "suspicion of irregularities" and was therefore "illegal." Gil's statement, however, contradicts an earlier PANI press release that said the National Adoption Council was still processing the license request and had, on Sept. 12, requested additional documentation. Gil said she has been in contact with Guatemalan authorities and is trying to find out from immigration authorities how the children entered the country.

These events have placed the adequacy of the Costa Rican law on international adoption in doubt. Costa Rica ratified the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption in 1995. Costa Rica is not a member state of the Hague Conference. In ratifying the convention, it designated PANI's National Adoption Council as the government's central authority on the regulation of international adoptions. The convention provides that the "central authority" can only authorize international adoption when a child cannot be placed in the country of origin. Since its formation in 1996, the National Adoption Council has accredited 12 international adoption agencies from Spain, the US, and Germany.

In August 2002, the PANI and the Costa Rican Asamblea Legislativa attempted to close a legal loophole allowing direct international adoptions mothers who authorize the adoption of their child without going through a registered agency. Law 8297 was approved by the Assembly, modifying the Family Code to make direct adoptions illegal. But in July 2003, the Corte Suprema overturned that reform. Casa Alianza, the international child-advocacy organization, said that the ruling created the exact situation the reform was designed to avoid. Director Bruce Harris said it left a "legal void" that could set the stage for the "commercialization of children" by poor parents selling their kids to US and European buyers. Gil said PANI has proposed another bill in the Asamblea Legislativa that will pass constitutional muster. She said she was meeting deputies to move the bill along.

In the meantime, news media have located at least ten international agencies offering services for adoption of Costa Rican children, none of which are in any way accredited within the country. They operate by contracting local lawyers who push the deals through family courts. Gil said, "All operations of this kind are absolutely illegal, because it is unknown where these little ones end up since there is no follow-up by authorities of each country [to which they are sent]." Gil said an investigation of the Internet agencies is planned. These are shameless marketplaces where pictures and medical records of the human merchandise are on display, along with prices. Gil said that many of the lawyers involved in this trade solicit pregnant women to sell their babies. Even though the end result of this business can be called "adoption," she said, it is nothing other than traffic in children.

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