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Guatemalan Adoption Mills Continue To Churn Out Children For International Market As Legislation Stalls

by Mike Leffert

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Among the chief causes of Guatemala's legendary widespread violence is the recurring theme of child stealing. This past April saw the lynching of a man and a woman accused by an enraged mob of attempting to steal local children. Some 5,000 locals of the municipality of Sumpango Sacatepequez witnessed and encouraged the lynchings. At the root of the accusations is the ease with which children and infants can be sold into adoption mills run or financed by powerful people who have for years been able to prevent meaningful legislation that would end these practices.

In October 2004 Guatemala was called the worst country in the world for adoption practices at a forum sponsored by UNICEF. Rosa Maria Ortiz, a member of the UN Committee on the Rights of the Child, said at the time that the lack of legislation had allowed the practice to grow into a profitable business. Amnesty International (AI) says the adoption trade dates back to the days of the 36-year civil war that ended in 1996.

The orphans of thousands of people murdered by troops and others in the state national security apparatus became the spoils of war. These children became the domestic servants of the upper classes or were sold to child traffickers. The traffickers eventually developed the adoption racket and expanded the means of obtaining children to include direct kidnapping and deception of unsuspecting but desperately poor mothers. These new means survived the war and mushroomed as childless North Americans and Europeans increasingly discovered quick, easy, and relatively uncomplicated international adoption.

Nearly 90% of the adoptions are by US citizens. In 1996 there were 427; in 2005 the number had grown to 3,783, say UNICEF records. It is easy to qualify. Any couple or single woman is eligible to adopt in Guatemala. All that is needed is money. Secretary-general of the Procuraduria General de la Nacion (PGN) Rene Chinchilla Barrientos put the current price at between US\$15,000 and US\$30,000. Most of the money goes to the lawyers.

The Instituto Latinoamericano para la Educacion y la Comunidad (ILPEC) says some of these lawyers see profits of US\$750,000 a month. The people who procure the children through swindles and other trickery get about US\$500 a child. The tricks include telling a mother that a baby died in childbirth. Those who take care of the children during the adoption process get about US\$100 a month per child. Usually the adoption is legal. It is the means of acquiring the children that is criminal.

This is an especially irksome point for Nidia Aguilar Cid, child advocate with the Procuraduria de los Derechos Humanos (PDH). She stresses, "The problem is the origin of the children. We have serious problems because an immoral market has been generated...." Immoral it is, but criminal only

in the sense that not all crime is illegal. Bills introduced, but still no law Little disposition exists to do anything about this in Guatemala. An adoption bill was introduced in the legislature in 2002 but never passed. Later that year, Guatemala signed on to the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. The Convention came into effect in March 2003, but in August of that year the Corte Constitucional (CC) ruled the act illegal because the Guatemalan Constitution does not authorize the president to sign treaties of this kind (see NotiCen, 2003-10-09).

In 2005, another bill was introduced, and in September the legislative Comision del Menor y la Familia approved it. This bill would create a national adoption agency that would operate as an agency of the PGN. The agency would handle all filings and paperwork, effectively reducing the transaction times from the current four months to 60 days. It would simplify the process and strengthen controls. It would also end the practice of having biological parents decide on the adoptive parents, a source of corruption. Prospective adoptive parents under the current system can bribe the biological parents, who in turn can extort the adopters.

The new bill would also require that only couples could adopt, eliminating the eligibility of single women. Said Marvin Rabanales of the bill, "The adoption law reproduces the principles of the Hague. It is urgent that a law exist in Guatemala that guarantees that the origin of the child be ethical and free from purchase, robbery, or deceptions." The bill passed two readings on the floor, but failed a third, when several deputies who had previously supported it backed off, calling for reforms.

Victor Gudiel, secretary of the Comision Nacional de Ninez y Juventud del Congreso and of the Sociedad Civil para el Desarrollo de la Juventud (SODEJU), said these deputies have personal interests in the adoption business. "The process has been drawn out because the members of Congress have interests in the law. There are delegations that have not wanted the law approved in the third reading, among them the Unionistas, Unidad Nacional de la Esperanza (UNE), the Frente Republicano Guatemalteco (FRG), and the Partido Patriota (PP). There are deputies linked to lawyers who do adoptions and who have made adoption a business," he charged.

Aguilar Cid of the PDH confirmed the charge. "There are deputies who obstruct the process. The central point of the law is that there be a specific unit to investigate the origins of the child. If adoption were clear and transparent, they wouldn't mind if the law was passed." There is nothing particularly new in this kind of self-interest manifesting against laws that cost those who profit from the exploitation of children.

The Ley de Proteccion de la Ninez y la Adolescencia took 12 years to pass. Widely supported though the latest bill is among child advocates, it does nothing to criminalize the actual taking of children by nefarious means. These organizations want a companion bill criminalizing that practice in the penal code. Hector Dionisio, coordinator of the legal program of Casa Alianza, pointed out that several articles of the code are in need of reform. "At present, child-stealing only gets a penalty of three years, which is nothing. A crime that carries a penalty of less than five years can be commuted with a fine of 5,000 quetzals [US\$659]. The penalties have to be much stronger."

While Guatemala awaits the outcome of the battle between advocacy groups and entrenched interests, most of the countries on the receiving end of this international adoption traffic have moved against it. Canada, Germany, Spain, France, the Netherlands, and the United Kingdom all have suspended adoptions from Guatemala.

The sole laggard is the largest recipient, the US. US carries, adoption market flourishes The US signed the Hague Convention early in 2004, but ratification was put off until 2007. In the meantime, the business continues apace, with Web sites advertising children ready for shipment. Island Coast International Adoptions (ICIA), for instance, responds to requests for information with news that they have available "newborns and toddlers, healthy male and female," at a total price of US\$23,940, broken down as "ICIA fee, US\$4,000; country fee, US\$19,500 plus US\$440 for DNA testing." The agency says that most babies are born in the hospital, most babies are placed in foster homes, and all children receive regular medical checkups. But this agency does not mention how the mothers got to the hospital, how the children got to the foster homes, who owns the homes, or any other information relevant to the issues contemplated in the Hague Convention or in the pending legislation.

What is stressed in the many testimonial letters posted on the Web site is the seamlessness with which the new parents get the children and are escorted through the paperwork at the US Embassy and sent on their way home. There is no waiting list, but "adoptions from Guatemala generally take 4-6 months from the time of referral. Referrals can take up to three months for infant females and up to two months for infant males." For US couples who find it difficult to come up with the money, the US mainstream press provides stories with suggestions.

An article in the May 14, 2006, Arizona Republic, for instance, tells the reader, "Adoption fund-raising is becoming increasingly popular throughout the United States." The article goes on to recount the ways of doing that, including "carwashes, silent auctions, and 'adoption garage sales.'" Elsewhere in the US press, an advice column advises on the social etiquette of requesting donations in lieu of wedding presents. There is little coverage of the means by which children for adoption in Guatemala are obtained.

Closer to the problem, the Guatemalan press has covered the adoption racket on and off for many years. In addition, a recent article points out another facet of the issue there is no culture of adoption in the country, hence the high incidence of demonstrably abandoned children leaving the country. Another impediment to local adoption is that the requirements for Guatemalan adoptive parents are far more difficult to meet than the requirements for foreigners.

For Guatemalans, prospective parents must pass socioeconomic, psychological, and medical evaluations. The PGN requires personal data on the attorney and on the child as well. Birth certificates of the biological parents must be submitted as well as those of the candidate parents. The candidates must also submit verification of income and official affidavits of clean police records. Compared with the total of 4,204 official foreign adoptions, Guatemalans adopted only 72 children. The process can take as long as a year. US citizens must also comply with a host of documentary regulations, but they can count on paid intermediaries to provide it in an institutional environment much friendlier to the assembly of a dossier.

Nancy Amaya of the adoption section of the Secretaria de Bienestar Social (SBS) acknowledges that the stringent requirements make adoption excessively difficult for most Guatemalans, but, she said, "We consider these requisites necessary because we have to assure ourselves that the child remains in good hands." These children available to Guatemalans are a different population from those put up for international adoption. These children are not lodged in private facilities and come under the jurisdiction of SBS because they are certifiably unwanted or abandoned. SBS maintains a program of foster homes for children in the adoption process, once they have been declared abandoned by a judge.

Josefina Arellano, head of the Seccion de la Ninez of the PGN, said that her agency and the SBS would be starting a campaign aimed at motivating and facilitating national adoption. "We think it is better for the child to stay in its country, because that way it doesn't lose Guatemalan culture and customs," she said, adding that it is also easier for the state to keep track of them and their welfare.

One of the hurdles a national adoption would have to confront, not mentioned by Arellano, is the social stratification and historical racism the country suffers. Susana Luarca, a lawyer with the Asociacion de Defensores de la Adopcion, an organization dead-set against the contemplated legislation, hammers home this last point. "In Guatemala, the people who have the economic means to adopt have racism on the tip of their tongues," she said. "The daughter of President [Oscar] Berger adopted two girls from Ukraine because of the question of race. Here they don't want swarthy children with the characteristics of Guatemalans."

The comparative advantage for US adopters may soon shrink. US consul in Guatemala John Lowell has informed his hosts that his government might suspend adoptions if Guatemala does not pass an adoption law that guarantees the legality of the child's provenance. He emphasized that this would become mandatory when the US ratifies the Hague Convention. "We exhort Guatemala to pass a law that fulfills the requirements of the Hague Convention because we would not like to suspend Guatemalan adoptions," he said. The US State Department has posted its intention to ratify the Hague Convention on its Web site and warns that, when that happens, "all intercountry adoptions between the US and parties to the Convention must comply with the Convention, the Intercountry Adoption Act of 2000 (IAA), and applicable regulations."

The posting explains that Guatemala has not implemented the Convention and that, if it does not do so before it goes into effect in the US, "it would be difficult to complete adoptions between Guatemala and the US. This situation would most hurt Guatemalan children in need of permanent family placements. The United States seeks to avoid this situation." It also cautions US adoption-service providers to seek accreditation under the IAA. The Web site of the agency cited in this article makes no mention of such accreditation nor do any of ten others in a quick sampling of the sites.

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