Guatemala Passes Domestic Legislation to Implement Hague Adoption Convention; but Does It Help the Children

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GUATEMALA PASSES DOMESTIC LEGISLATION TO IMPLEMENT HAGUE ADOPTION CONVENTION; BUT DOES IT HELP THE CHILDREN?

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I. INTRODUCTION

Generally, international adoptions are a very positive means for providing homes for unwanted children from countries that do not have the means to take care of the children, saving them from a bleak future of moving from one foster home to another, spending their lives in an orphanage, or living on the street. “Adoption is not about getting a child for a family that needs it, just like buying merchandise... It is about getting a family for a child that really needs one.”

“[I]nternational adoptive parents and children meet across lines of difference involving not just biology, but also socio-economic class, race, ethnic and cultural heritage, and nationality” which can lead some to argue that international adoption is not always the best option for children in need of a home.

Because the international adoption process has been plagued with allegations of corruption and abuse, the international community passed the Hague Adoption Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“the Hague Adoption Convention”) in 1993. Some have described the Hague Adoption Convention as “the most ambitious and monumental action taken so far regarding the need to protect children, birth parents, and adoptive par-

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ents. . . from child trafficking and other abuses.”

One of the countries seemingly plagued with abuse in the adoptions system is Guatemala. The Guatemalan Congress gave their official approval of the Hague Adoption Convention on May 22, 2007, with implementation to take place on Dec. 31, 2007, in hopes of correcting the numerous flaws in the system. While many view this as a great step forward for the children of Guatemala, others are holding their breath in anticipation of the effect the implementation will have on the thousands of children who could have been adopted under the old private adoption system, which will now be subject to governmental control.

This comment will first explore international adoption on a world stage, followed by a brief explanation of the goals and policies behind the Hague Adoption Convention. Then, the author will discuss the current practices in Guatemala, including the corruption and possible benefits the corruption actually does provide for the system. Finally, the comment will explore the possible future effects of the Hague Adoption Convention in Guatemala and what could be done to ensure that the children do not suffer due to the implementation of the very regulations that are designed to protect them and their parents.

II. INTERNATIONAL ADOPTION GLOBALLY

A. MAJOR PLAYERS IN INTERNATIONAL ADOPTION

There are two basic groups in the international adoption process, made up of “(1) countries consisting of low birth rates and small number of children in need of homes, such as the United States, and (2) countries with high birth rates and large number of homeless children.” Adoptive parents are usually “relatively privileged white people from one of the richer countries of the world,” who adopt a child from a poorer nation. “The poor countries of the world have long had an excess of children” growing up in orphanages and on the streets, while richer countries are filled with an excess of infertile adults hoping to become parents. In 2007, nearly 20,000 children were adopted and brought to the United States, the largest receiving nation of adopted children through the international adoption process. Of these 20,000 children “about 14% came from China, Russia, Guatemala, Ethiopia, Haiti, Vietnam” and numerous

7. Carlberg, supra note 5, at 121.
9. Id. at 159.
other countries whose governments do not have the resources to care for the children when their parents cannot or will not. Many people believe that the adoption by new parents in a different country is the best opportunity these children will have, but others argue that these children should remain in their home countries.

I. United States' Role

Because the United States is the receiving country for almost half of all children adopted internationally each year, no discussion of international adoption is complete without addressing how the United States regulates inter-country adoptions. Between October 2005 and September 2006, Americans adopted 20,600 children internationally. A majority of these children came from Hague Adoption Convention member countries. In 2007, Americans adopted over 19,000 children, which was more children adopted internationally than all of the other countries in the world combined. Many of the popular nations from which Americans adopt children have not agreed to the Hague Adoption Convention, including Vietnam, Russia, Ukraine, and Ethiopia. While neither Ethiopia nor Vietnam has signed the treaty, Russia is a signatory to the treaty but has not yet ratified it.

The overwhelming leader in receiving internationally adopted children, the United States was the seventy-fifth nation to join the Hague Adoption Convention. Prior to April 2008, the United States warned that it should be a red flag to parents if an American Agency is not accredited under the Hague Adoption Convention. The United States adopted the Hague Adoption Convention before ratifying it. As of April 1, 2008, the Hague Adoption Convention is fully implemented in the United States. Despite the slow implementation by the United States, the Hague Adoption Convention is a part of the future framework of the international laws of intercountry adoption because a large number of countries have
agreed to make it the regulatory framework by which they will comply.\textsuperscript{22}

2. \textit{International and domestic adoption}

International adoptions in the United States, the largest receiver of international adoptions, peaked at 22,884 in 2004 but dropped in 2007 to only 19,292.\textsuperscript{23} This decline is likely due to the decrease in availability of eligible children for adoption from China due to more stringent adoption eligibility standards put in place by the Chinese government.\textsuperscript{24} Some experts also believe the “on-and-off suspension of the international adoption program in Russia” contributed to these declining numbers.\textsuperscript{25}

While the number of international adoptions has actually doubled over the past decade, the number of domestic adoptions has actually decreased.\textsuperscript{26} Some believe a major factor in this transfer of domestic adoptions to international adoptions is due to the decrease in healthy Caucasian babies available for adoption, which has dropped to below two percent of the number of children adopted.\textsuperscript{27} Often, parents prefer the international adoption system to domestic adoptions because the birth parents are less likely to interfere after international adoptions.\textsuperscript{28} Other factors may play a role, such as “more lenient requirements for the adoptive parents” like age or sexual orientation.\textsuperscript{29}

In addition to many other international agencies, UNICEF is attempting to encourage adoptions of children in their home countries rather than international adoptions.\textsuperscript{30} But, statistics show that this goal is far from being realized. In Guatemala in 2007, 3,406 children were placed in adoption, but only thirty-six of those children were adopted by local Guatemalan families.\textsuperscript{31} While the Hague Adoption Convention does seem to encourage domestic adoptions over international adoptions, it certainly does not view international adoptions in the negative light that some other international groups do.

\textsuperscript{22} Laura Beth Daly, \textit{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; Treaty is Intended to Reduce Corruption}, 45 FAM. CT. REV. 620, 623 (2007).
\textsuperscript{24} \textit{Id.}
\textsuperscript{25} Gross, \textit{supra} note 18, at 29.
\textsuperscript{27} \textit{Id.}
\textsuperscript{28} \textit{Id.} at 630.
\textsuperscript{29} \textit{Id.}
\textsuperscript{30} Editorial, \textit{supra} note 10.
III. HAGUE ADOPTION CONVENTION GENERALLY

A. Adoption of the Hague Adoption Convention

As of now, there has been no international agreement that has "resulted in the implementation of a measure that satisfactorily addresses and effectively curtails baby trafficking."32 In 1993, "a dramatic step forward... was taken when sixty-six countries... approved the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption."33 Most of the sending and receiving countries involved in the international adoption process approved the Hague Adoption Convention.34 "In many ways the Convention represents a step in the direction of legitimizing international adoption."35 "The Hague Convention on Intercountry Adoptions of 1993 was a landmark international treaty" because for the first time in the world's history, it provided formal multi-national recognition of intercountry adoption.36 The Hague Adoption Convention "marked the first major development of international minimum standards in intercountry adoption procedures."37 It is also designed to put an end to, or at least reduce, the number of children who were being stolen to be sold to foreigners.38 The Hague Adoption Convention has a network of 200 "Central Authorities, competent authorities, and accredited bodies co-operating to protect children worldwide."39

Almost all thirty-eight member states of the Hague Conference participated in the deliberations of the Hague Adoption Convention in addition to thirty non-member states that were invited because of their role in the international adoption community worldwide.40 The Hague Adoption Convention only regulates adoptions that take place between countries that have mutually decided to ratify it in their respective nations.41

“All states that sign the Hague Convention” are showing their intent to ratify it with domestic legislation, but no further action is required by the signatories.42 The nations are technically under no obligation to ratify the treaty and are therefore not bound by the obligations of the treaty even though they have agreed to comply with the policies of the Hague Adoption Convention.43 When a nation does ratify the Hague Adoption Convention, they are then legally obligated to enforce the Hague Adoption Convention in both the international and domestic laws of their

32. Carlberg, supra note 5, at 129.
33. Bartholet, supra note 3, at 172.
34. Id.
35. Id. at 154.
37. Ryan, supra note 13, at 358.
39. HCCH, supra note 19.
40. Ryan, supra note 13, at 358.
41. Bartholet, supra note 3, at 173.
42. Ryan, supra note 13, at 358.
43. Carlberg, supra note 5, at 129-30.
state. For example, the United States officially joined the Hague Adoption Convention on December 12, 2007, with domestic legislation, and the rules of the Hague Adoption Convention began governing on April 1, 2008. The adoption of children from other Hague Adoption Convention countries is smoother because the United States allows for more of those children to qualify for immigration as well as automatic naturalization.

B. PHILOSOPHY OF THE HAGUE ADOPTION CONVENTION

The Hague Adoption Convention is based on the belief that “every child should grow up in a family environment,” and that this goal can be achieved with the assistance of adoptive parents from other countries raising some of these children. Additionally, the Hague Adoption Convention seems to indicate “that in-country adoptions should be at the top of the hierarchy of options” for the children whose birth parents are not willing or able to care for them. Therefore, the Hague Adoption Convention first prefers children to stay with their biological families, followed by a preference for in-country adoptions, and finally international adoption is at the bottom of the list of preferred methods of family placement for the child. The Hague Adoption Convention recognizes that an international adoption is likely preferable to another type of in-country placement such as an orphanage or institution that does not lead to the adoption of the child, which would allow them to grow up in a home. The Hague Adoption Convention approach is in contrast with the United Nation Children’s Fund (UNICEF) approach, which places international adoption low on the hierarchy of options for children in need of care, preferring to place children within their country of origin first. UNICEF policy indicates that permanent foster care in the child’s birth country is preferred over an international adoption.

IV. REQUIREMENTS OF THE HAGUE ADOPTION CONVENTION ON MEMBER STATES

A. CENTRAL AUTHORITIES

The Hague Adoption Convention requires each nation to delegate what is known as a “Central Authority” as a body that will “establish ethical practices, require accreditation for the agencies handling the

44. Ryan, supra note 13, at 358.
46. See Burton, supra note 36.
47. Ryan, supra note 13, at 363.
49. Marx, supra note 1, at 402-03.
50. Bartholet, supra note 3, at 154.
51. Id. at 154-55.
52. Id.
adoptions, maintain a registry to receive and track complaints and create a system for decertifying agencies that do not meet the standards."53 The Central Authority is basically charged with ensuring that the member state remains in compliance with the Hague Adoption Convention on a day-to-day basis.54 Articles 6 and 7 of the Hague Adoption Convention require the central authorities of the different nations involved in the process to cooperate with each other in hopes of furthering the goals of the Hague Adoption Convention.55

1. Creation of the Central Authority

Article 6(2) does not require that there be only one Central Authority in each nation, but rather, "States having autonomous territorial units shall be free to appoint more than one Central Authority and specify the territorial or personal extent of their functions."56 The Central Authority is allowed to delegate some of its responsibilities to other agencies which must be accredited and operate on a non-profit basis.57 For example, in the United States, this Central Authority is the U.S. Department of State as a result of the International Adoption Act of 2000 (IAA).58

During the negotiation process, some "foresaw the danger that if the state was given a monopoly over international adoption in any country there was a risk that such adoption would be unduly limited or effectively closed down, given government proclivity to regulate in a negative way."59 It is also possible that some countries will interpret the Hague Adoption Convention’s requirement of a Central Authority as an instruction to implement a governmental monopoly over international adoptions.60 Obviously, countries who are trying to prevent international adoption in their states will use this interpretation in order to stop international adoptions out of their nations.61

2. Purpose of the Central Authority

This Central Authority serves the role of facilitating communication between the receiving state and the state of origin of the child being adopted.62 Article 8 charges the Central Authorities of each nation with the responsibility of taking “all appropriate measures to prevent improper financial or other gain in connection with an adoption and to de-

54. Ryan, supra note 13, at 364.
56. Hague Adoption Convention art. 6(2), supra note 4, S. Treaty Doc. No. 105-51 at 13, 32 I.L.M. at 1140.
57. Ryan, supra note 13, at 364.
59. Bartholet, supra note 3, at 176.
60. Id.
61. Id.
ter all practices contrary to the objects of the [Hague Adoption] Convention." This responsibility is the Hague Adoption Convention's general ban of "for profit adoptions or payments to birth parents" for their children. The treaty urges countries to take appropriate measures to ensure that improper payments are not connected with the inter-country adoptions in an attempt to stop what some view as a baby-trade. Also, Articles 10 through 12 of the Hague Adoption Convention require that the adoption service providers be accredited by the member states before they are allowed to participate in international adoptions.

The Hague Adoption Convention also requires "better training of social workers, officials and judges in" the countries from which the babies are being removed as well as a report drawn up about the prospective adoptive parents. These regulations will help ensure that the children being adopted will only leave their biological parents if proper and informed consent has been given by these parents. The Hague Adoption Convention also requires that these Central Authorities "provide each other with general evaluation reports about experience with inter-country adoption" as well as "reply... to justified requests from other Central Authorities or public authorities for information about a particular adoption situation."

B. Adoption Process Under the Hague Adoption Convention

1. Responsibilities of Sending Countries

Article 4 of the Hague Adoption Convention lays out the main requirements of what is expected of the Central Authorities in the states from which the children are being removed. The authorities must first establish "that the child is adoptable." Then, Article 4 requires that the competent authorities have established that possible placements in the State of origin have been considered to determine that inter-country adoption is in the best interest of the child. They must then ensure that the consent of the birth mother was not only given freely after the birth of the child without withdrawal, but also not induced by any type of payment. Finally, depending on the maturity of the child, consideration must be

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63. Hague Adoption Convention, art. 8, supra note 4, S. Treaty Doc. No. 105-51 at 13, 32 I.L.M. at 1140; Editorial, supra note 10.
64. Hague Adoption Convention, art. 9, supra note 4, S. Treaty Doc. No. 105-51 at 13, 32 I.L.M. at 1140; Editorial, supra note 10.
65. Keyes, supra note 16.
66. Hague Adoption Convention, art. 10-12, supra note 4, S. Treaty Doc. No. 105-51 at 13-14, 32 I.L.M. at 1140-41.
68. Keyes, supra note 16.
69. Hague Adoption Convention, art. 9, supra note 4, S. Treaty Doc. No. 105-51 at 13, 32 I.L.M. at 1140.
70. See id. art. 4, supra note 4, S. Treaty Doc. No. 105-51 at 12, 32 I.L.M. at 1140.
71. Id.
72. Id.
73. Id.
“given to the child’s wishes and opinions” and their consent must be given if required.74 “Once the state of origin” has ensured that all of the requirements have been met, the adoption will take place only after the country to which the child is being taken has interviewed the adoptive parents to establish that they are eligible to adopt the child as well.75

2. Responsibilities of Receiving Countries

The Central Authority in the receiving country plays a similar, but different role in the adoption process. First, the Central Authority must determine that the potential parents are “eligible and suited to adopt” and prepare a report with information “about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to understand an inter-country adoption, as well as the characteristics of the children for whom they would be qualified to care.”76 The receiving nation must then send this “report to the Central Authority of the state of origin.”77 Only after reviewing this report and ensuring that the child can leave the state to reside permanently in the receiving state can the nation of origin approve the inter-country adoption.78 These steps help ensure that the prospective parents do meet the standards of both the nation of origin and the receiving nation in hopes of decreasing the amount of adoptions that are halted at the very last stages after a significant investment of time, money and emotions.79 For example, beginning in April 2008, Americans trying to get a visa to adopt a child from another country such as Guatemala must show (1) that the “parents have given their informed consent;” (2) “that a home country adoption has been considered;” (3) that the child has been cleared for adoption in their home country; and (4) the future parents must receive counseling concerning raising an orphan.80

3. After the Adoption

Article 23(1) of the Hague Adoption Convention provides that all inter-country adoptions completed in accordance with the Hague Adoption Convention’s conditions are to “be recognized by operation of law in all” other member countries who have also entered the Hague Adoption Convention into force in their nations.81 This provision means that the child does not need to be re-adopted in the receiving country and that the receiving state can only refuse the adoption of a child if “the adoption is

74. Id.
75. Croft, supra note 56, at 630.
76. Hague Adoption Convention, art. 15, supra note 4, S. Treaty Doc. No. 105-51 at 14, 32 I.L.M. at 1141.
77. Id.
78. Hague Adoption Convention, art. 18, supra note 4, S. Treaty Doc. No. 105-51 at 15, 32 I.L.M. at 1141; Ryan, supra note 13, at 364.
79. Ryan, supra note 13, at 364.
81. Daly, supra note 22.
manifestly contrary to its public policy, taking into account the best interests of the child.”

V. THE FUTURE OF THE HAGUE ADOPTION CONVENTION

A. PROBLEMS WITH THE HAGUE ADOPTION CONVENTION

Although the Hague Adoption Convention lays out specific requirements that the member states must comply with in order to carry out the ultimate goals of the Hague Adoption Convention, it fails in several respects. While the Hague Adoption Convention implements rules that should prevent the trafficking of babies, it does not actually make the baby trade illegal. The Hague Adoption Convention does not implement any type of punishment for member nations that are found to be participating in the sale of babies either into or out of their countries, which leads many to question how effective the agreement will actually be in stopping people who are not in fear of facing any consequences. Even if the Hague Adoption Convention does deter the sale of babies, it does not provide the member states with any means with which to discover the corrupt adoption services providers among those which are complying with the Hague Adoption Convention.

Additionally, the Hague Adoption Convention does not provide for any type of international body to oversee all of the member states. This lack of an oversight body will likely prove to be very problematic as each country is much less likely to abide by the restrictions of the Hague Adoption Convention without a body to hold it accountable. Unless the Hague Adoption Convention encourages the nations to police each other and impose penalties against each other for non-compliance, the Hague Adoption Convention could prove to be completely without teeth.

Another major drawback of the Hague Adoption Convention “is its failure to prohibit inter-country adoptions” between countries who are members and those that are not. Therefore, these adoptions would not have to comply with the standards imposed by the Hague Adoption Convention because either the sending or receiving country is not bound by them. It is possible that the language in the domestic legislation implementing the Hague Adoption Convention in each individual country prohibits this practice, but it would certainly be more advantageous to have it in the international agreement.

82. Hague Adoption Convention, art. 24, supra note 4, S. Treaty Doc. No. 105-51 at 16, 32 I.L.M. at 1142; Croft, supra note 56, at 630.
83. Croft, supra note 56, at 635.
84. Id.
85. Id.
86. Id.
87. Marx, supra note 1, at 406.
88. Carlberg, supra note 5, at 134.
89. Id.
B. A Possible Solution to Fix a Flaw in the Hague Adoption Convention

Many solutions have been suggested to fix the flaws in the Hague Adoption Convention. Some believe it should be modified to be more similar to the Uniform Adoption Act (UAA), which was promulgated by the United States in 1994 as a domestic attempt to make the adoption laws uniform among the fifty states in the United States. The UAA also provides for a 192 hour period during which the birth parents can revoke their decision to give their child up for adoption and then followed by an irrevocable adoptive status of their child. Allowing the birth parents to have time to change their mind after giving birth to their child will add further assurance that the mother's consent was freely given and not coerced. This extended time span would likely also allow more birth mothers to change their minds when they have received consideration for giving up their child, rooting out those adoption services which are selling babies in the baby trade.

As this paper will next discuss, the new Guatemalan law prohibits the birth parents’ giving their final consent to give up their child before the child is six weeks old. While these 42 days are not as significant as the 192 provided for by the UAA, at least, the parents will be afforded some amount of time to decide what is really best for their child.

Regardless of its flaws, the Hague Adoption Convention has the “potential to provide a uniform international and intergovernmental set of minimum standards that members countries must adhere to in order to complete an inter-country adoption.”

VI. INTERCOUNTRY ADOPTIONS IN GUATEMALA

The amount of children being adopted and removed from Guatemala each year is staggering. In 2005, 98 percent of the adoptions that took place in Guatemala were inter-country adoptions, leaving a mere two percent of adoptions that kept the adopted children in their birth country, Guatemala. Even more surprising is the path that takes the children from their mothers to a new family in a new country. But, in late 2007 the Guatemalan government passed a new law that will bring it into compli-

91. UAA §2; Croft, supra note 56, at 646.
92. Croft, supra note 56, at 646; UAA, supra note 91.
93. Croft, supra note 56, at 646.
94. ld.
96. Carlberg, supra note 5, at 133-34.
97. HCCH, supra note 6, at 11.
ance with the Hague Adoption convention, and hopefully, make the adoption process a more pleasant one for all parties involved.

A. CURRENT ADOPTION PRACTICES IN GUATEMALA

Under the old system in Guatemala, an unregulated network of attorneys and notaries were the main body of people running the adoption system.98 Guatemala's privately run adoption system was being operated by a network of nearly 500 attorneys, "notarios, baby brokers, pediatricians and foster mothers."99 This private system, which was in place before the new law changed the process, differst from most other countries where the adoptions are handled by a centralized government agency.100 First, the baby brokers, known as jaladoras, took the babies from the mothers, and transferred the children to the lawyers and notaries who place the children either in an adoption home or with foster mothers until they can place the child with a family.101 Then a notario (notary) would take the children and exchange money with the biological parents, the mother's parental rights were terminated and the notary had custody of the child until it is adopted.102 The children were then placed in foster homes until the legal process was concluded and the adopting parents could come to Guatemala to take their new child home.103 Usually, these foster families had one or two infants that they care for at a time, which is obviously a better environment for a baby than an orphanage.104 But, reports have shown that "there seem to be about 500" foster homes that cared for nearly 10,000 children, none of which were subject to any government supervision, which could easily lead to various problems in the care of the children.105

The prospective parents usually paid between $25,000 and $30,000 to cover the travel expenses, paperwork, and legal costs of adopting the child.106 But, the cost of each adopted child sometimes reached nearly $40,000.107 This cost is nearly twice the cost parents pay to adopt children from China and Vietnam where the government oversees the adoption system.108 While most of the money did go "to the notaries, lawyers and other intermediaries," some women have also received between compensation in return for giving up their child.109 These jaladoras would often

98. Congress Passes Bill, supra note 38.
99. See Daly, supra note 22.
101. Benitez, supra note 31; Daly, supra note 22.
102. Daly, supra note 22.
103. Daly, supra note 22, at 624.
104. Id.
“convince poor young pregnant women to stay in fattening houses” until their baby is born. In exchange for providing the expenses of the pregnancy and the birth of the baby, the women gave up their babies for adoption.

The baby brokers search Guatemala for pregnant women and often pay the birth mothers between $200 and $2,000 for their babies under the pretense that they are paying for her “medical expenses, but in reality it is hush money meant to silence her about the way in which she gave up her child.” Giving up their child is usually an attractive option to young mothers who do not have enough money to raise their unborn child. This reaction is not surprising considering that of the approximately 430,000 babies born in Guatemala every year, almost half of these babies, 230,000, are born to families living below the poverty line. In Haiti, the poorest country in the western hemisphere, twenty-five percent of the children under five suffer from malnutrition; UNICEF found that almost seventy percent of the indigenous Guatemalan children under five are suffering from malnutrition. For a poor woman in Guatemala the money they receive as compensation is a relative fortune. Of Guatemala’s thirteen million population, between fifty percent to eighty percent of the people live below the poverty line. This poverty leads many of the future mothers to believe that their babies will have a better chance at a healthy life if they were adopted by an American family rather than being raised in Guatemala with their biological families.

The adoption process in Guatemala took no longer than one year; often as short as nine months. The rapid pace with which children were adopted is essentially unheard of in the realm of international adoptions, but it did allow for the children to move quickly to a new family rather than spending a longer time in an institution. Because the process was managed through private notaries instead of judges, the process was completed much faster than international adoptions in other nations.

More likely than not, the family adopting the child will be from the United States. These potential American parents “will travel to Guatemala specifically to adopt” the child. About 20 percent of children

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110. Id.
111. Id.
112. Daly, supra note 22, at 624.
113. Id, at 620-21.
114. Thomson, supra note 2.
115. Id.
117. Id.
118. Daly, supra note 22, at 620-21.
120. Bartholet, supra note 3, at 190.
121. Id. at 624.
122. See Daly, supra note 22, at 621.
123. Id. at 624.
adopted by American families came from Guatemala last year, with 4,135 children being adopted from the country with a population of just over thirteen million people.\textsuperscript{124} Not surprisingly, in 2005, Guatemala placed a higher percentage of its native-born children that year into homes with American families than either China or Russia.\textsuperscript{125} In 2005, births in China totaled 17.3 million with .04\% or 7,939 adopted by U.S. citizens.\textsuperscript{126} The 4,652 children adopted from Russia made up three percent of that nation’s births, but the 3,748 babies adopted from Guatemala made up a full one percent of the births that year.\textsuperscript{127}

B. Guatemala’s Liberal Adoption Policies

Critics have often labeled Guatemala as a “baby farm where adoptions are too easy and prone to corruption.”\textsuperscript{128} Many countries with high adoption rates like Guatemala had are setting limits on international adoptions because of a reluctance to be “seen as too poor to raise their own children.”\textsuperscript{129} While this notion may seem admirable, many countries realistically do not have the means to provide homes or respectable orphanages for their children in need of them.\textsuperscript{130} The defenders of the old Guatemalan practice argue that these children are being offered a brighter future and the “legal corners are cut only to spare the Guatemalan women the stigma of unwed motherhood or relieve them of another mouth to feed.”\textsuperscript{131} But, the problem with the liberal policies is that the process provided essentially no protection for the children, the biological parents of the child, or the adoptive parents.\textsuperscript{132}

The adoption requirements in Guatemala were relatively liberal, allowing for adoptive parents to be up to fifty years old and either married or single; but Guatemala forbid the adoption of a child by homosexuals.\textsuperscript{133} There was also no maximum amount of children already being raised by the adoptive parents that would disqualify them from adopting another child.\textsuperscript{134} The new law does not change these social requirements; it simply requires that a man or woman be married or in a de facto union or in the case of single person, the adoption is allowed when it is in the best interest of the child.\textsuperscript{135}

\textsuperscript{124} Thomson, \textit{supra} note 2.
\textsuperscript{126} \textit{Id}.
\textsuperscript{127} \textit{Id}.
\textsuperscript{128} \textit{Id}.
\textsuperscript{129} Editorial, \textit{supra} note 10.
\textsuperscript{130} \textit{Id}.
\textsuperscript{131} Llorca, \textit{supra} note 127.
\textsuperscript{132} Thomson, \textit{supra} note 2.
\textsuperscript{133} Children’s Home Society & Family Services, \textit{supra} note 102.
\textsuperscript{134} \textit{Id}.
C. Corruption in the Current System

There has been growing concern for some time that the lenient laws in Guatemala have allowed for the creation of a multi-million dollar baby trade run by the local lawyers paying "women to give up their babies." Among the many people crying out against the current practices in Guatemala is UNICEF, which claimed for years that the adoption system in Guatemala was suffering from corruption, and promoted reform laws that would shut down much of the international adoption from the nation. In some countries, the situation has gotten so bad that the tort of wrongful adoption has even been created for international adoptions because of the large amount of corruption by international agencies relating to adopted children's health problems.

Before the new legislation was passed in order to bring Guatemala into compliance with the Hague Adoption Convention, there were no judges, courts, or bureaucrats involved in the Guatemalan adoption system. The notaries were left to run the system as they wished, without having to answer to a higher authority for corruption in their practices. These notaries and lawyers were responsible "for all three parties in the adoption process: the child, the biological parents," and the adoptive parents. The only oversight exercised by the Guatemalan government was that of an official charged with the duty of finalizing these inter-country adoptions. But, this government official only stopped "adoptions that are clearly fraudulent, such as" adoptions that were being carried out with obviously false paperwork. This gross lack of checks on the system led to the corrupt practices that plagued the Guatemalan adoption process.

1. Types of Corruption in Guatemala

The illegal activities in Guatemala included imposters claiming to be the birth mothers of children and parents were deceived in order to get them to put their child up for adoption. There were even reports of some kidnappings taking place in order to meet the demand of the numerous parents willing to pay for a new baby. While there are numerous adoption agencies that have made positive contributions to the adoption system in Guatemala, there are many others who have taken

136. Thomson, supra note 2.
137. See Bartholet, supra note 3, at 156.
138. Manley, supra note 26, at 631.
139. Daly, supra note 22, at 624.
140. Id.
141. Id.
142. Id.
143. Id.
144. See id.
146. Thomson, supra note 2.
advantage of the weak system in Guatemala and have taken a lot of money from hopeful adoptive parents, some of whom never even received a child.\textsuperscript{147}

There have even been cases reported where couples purposely tried to become “pregnant in order to give up their children” to earn money.\textsuperscript{148} Even more shocking are the cases of “parents who encourage[d] their teenage daughters to get pregnant” in order to gain financially from the sale of the child.\textsuperscript{149} Many of these women who gave up their children are indigenous or mixed race.\textsuperscript{150} Historically, the indigenous people have suffered great “discrimination in Guatemala, and most of them live in poverty.”\textsuperscript{151} Interestingly, in 2005, 1,700 Guatemalan children were declared abandoned by what was likely a family who was too poor to care for them but only 3 percent of them were adopted.\textsuperscript{152} Statistics like this one seem to indicate that there is a very strong likelihood that the baby trade in Guatemala was a reality. If these private adoption agencies were working to place all of Guatemala’s needy children, the abandoned ones would likely have mixed in with the other babies.

2. \textit{International Reaction to Guatemala’s Corruption}

Some other member nations, Canada, Germany, the Netherlands, Spain, and the United Kingdom all objected to Guatemala’s participation in the Hague Adoption Convention and stopped adoptions from the country because the current adoption practices in the nation were “not in compliance with the treaty.”\textsuperscript{153} While the United States threatened to suspend adoptions because of the accusations of corruption, it did not do so.\textsuperscript{154} The U.S. Department of State did warn American citizens that inter-country adoptions between the United States and Guatemala could be halted in 2007 if there was not reform in the Guatemalan adoption system.\textsuperscript{155} The United States responded by requiring “a second DNA test, to verify that the adopted child for whom an immigrant visa is being requested is the same child matched at the beginning of the adoption process with the birth parent.”\textsuperscript{156}

As recently as May 17, 2007, the U.S. Citizenship and Immigration Services (USCIS) issued a release stating that the United States was going to increase the amount of scrutiny with which it reviews Guatemalan orphan

\textsuperscript{147} Larsen, supra note 147.
\textsuperscript{148} Benítez, supra note 31.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} See HCCH, supra note 6, at 12.
\textsuperscript{153} Benítez, supra note 31.
\textsuperscript{154} Keyes, supra note 18.
\textsuperscript{155} Daly, supra note 22, at 621.
\textsuperscript{156} Benítez, supra note 31.
petitions.157 Then on August 6, 2007, the United States began requiring a second DNA test to “verify that the child who took the first DNA test is the same child” at the interview for a visa into the United States.158 If that second DNA test did not match, then the U.S. Department of State would no longer process the immigrant visa for the child.159 The United States cited its concerns about the adoption process in Guatemala as the reason for the increased degree of scrutiny placed on adoption cases coming out of Guatemala.160


Despite all of the alleged corrupt practices in Guatemala, Susana Luarca, a well-known adoption lawyer in the region, defends the old system because she believes that it provided good homes for children that keep children off the streets.161 Luarca even argues that many of the instances in which mothers claim their babies have been stolen are actually situations where they have chosen to give their babies up for adoption and later changed their minds, claiming their child was stolen in order to have it returned.162 She believes that she and other lawyers picked up where the Guatemalan government failed its people.163 It is true that women are forced to give their babies up because they cannot support them, but when the judicial system fails them and the government will not support them, the private sector is available to take care of the children.164 While some like Luarca continue to argue that adoption is necessary for the nation, the private sector in Guatemala turned the adoption business into a trafficking of persons, which the majority of the international community would view as an inhumane practice that had to end.

Additionally, the media can often have a profound impact on the adoption practices of countries. Often, when the public gets wind of the possibility of corrupt practices in nations or large numbers of children leaving one nation, the government is placed under severe pressure from the international community and the public.165 The nations are often forced to react by either limiting the children placed into international adoption or shutting down the process completely.166 This reaction leaves many children who could have been placed with loving parents left orphans, but

158. U.S. Department of State, supra note 46.
159. Id.
161. Thomson, supra note 2.
162. Id.
163. Id.
164. Id.
165. See Marx, supra note 1, at 395.
166. Id.
the media does not seem to be as concerned and does not create a public outcry when thousands of children are left to grow up in dismal conditions.\textsuperscript{167} Often the opponents of international adoption “grossly exaggerated the scope of these problems” and use these exaggerations to promote their anti-adoption sentiment in order to bring stricter adoption rules to a country.\textsuperscript{168} Ironically, the press seems to leave a community after exposing the corruption and fails to report the terrible conditions in which the children are forced to grow up because they cannot be adopted.\textsuperscript{169} While taking children from their parents as a result of improper financial pressures is wrong, the sweeping elimination of these practices usually has a profound negative impact on the children as well.\textsuperscript{170}

Even the argument that the adoption system is run by a network of seemingly greedy attorneys and shady businessmen can be partially rebutted. This is because the business may not be as profitable as people suspect, due to the large costs for foster child care dealing with two languages, and hiring two lawyers for every case.\textsuperscript{171} Many claim that the estimated $5,000 profit on every adoption is an exaggeration.\textsuperscript{172} But, this does not stop the lawyers and notaries from often being described as “mafiosos” by activists and human rights groups.\textsuperscript{173} They fend off these attacks by questioning what will happen to the thousands of babies born into poor families who can no longer be adopted and given a better life.\textsuperscript{174}

\section*{E. Effect of Guatemalan Adoption Policy in the United States}

A growing number of American families have turned to Guatemala as their best hope for adopting a child.\textsuperscript{175} The streamlined adoption process in Guatemala can often move as quickly as six to nine months, much shorter than the years of waiting in countries with stricter intercountry adoption laws.\textsuperscript{176} Because of the lenient adoption laws in Guatemala, it has moved past Russia to become the country that is the most popular source for international adoptions to the United States, after China.\textsuperscript{177} This statistic also makes Guatemala the leader in children placed in adoption in proportion to its population, according to UNICEF.\textsuperscript{178} Statistics show that one out over every 100 children born in Guatemala are

\textsuperscript{167} Id. at 395-96.
\textsuperscript{168} Bartholet, supra note 3, at 195.
\textsuperscript{169} Marx, supra note 1, at 395.
\textsuperscript{169} Bartholet, supra note 3, at 194.
\textsuperscript{170} Thomson, supra note 2.
\textsuperscript{172} Id.
\textsuperscript{173} Benítez, supra note 31.
\textsuperscript{174} Id.
\textsuperscript{175} Thomson, supra note 2.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} Benítez, supra note 31.
adopted and raised by American families.179 But, the United States was one of the last of the major receivers of internationally adopted children to implement the Hague Adoption Convention itself.180 The long delay of the United States implementation of the Hague Adoption Convention was mostly due to conflicts between the State Department and the adoption community about the best way to implement the regulations of the Hague Adoption Convention and the IAA.181

The Attorney General’s office in Guatemala reported that 5,110 adoptions took place between January 1, 2007 and December 3, 2007.182 They also estimate that ninety percent of these children were adopted by American families.183 According to the U.S. Department of State, the number of immigrant visas issued to Guatemalan orphans to enter the United States has been steadily increasing from 2,419 in 2002 to 4,135 in 2006.184

An indicator of the interest the United States government is placing in the Guatemalan adoption system, Representative Dan Burton of Indiana wrote to both the Guatemalan President at the time, Berger, and the leadership of UNICEF about the issues faced by parents in the process of adopting children from Guatemala.185 He also spoke with representatives from the Guatemalan Embassy in the United States, who assured him that the Guatemalan Congress would consider wording the Hague Adoption Convention enacting legislation to allow for the current law to be applied to adoption applications already filed before January 1, 2008.186 Embassy officials explained that they believed this approach would “not only allow for sufficient time for Guatemala to implement a long-term solution, and also ensure that many orphaned children working their way through the system do not remain outside the care of a family for many years.”187

Another U.S. legislator, Senator Norm Coleman, actually went to Guatemala in November 2007 in order to push for the implementation of the Hague Adoption Convention there.188 Senator Coleman also advised hopeful parents to wait to try to adopt from Guatemala until after January 1, 2008, the time that Guatemala was expected to have finally come into compliance with the Hague Adoption Convention.189 He expressed his concern, as well as the parents’ concern that adoptions that were in

179. New Rules, supra note 121.
180. Daly, supra note 22.
181. Id.
182. Adoption Law, supra note 109.
183. Id.
185. See generally Burton, supra note 36.
186. Id.
187. Id.
189. Id.
progress when Guatemala’s new legislation was enacted would either be voided or dramatically slowed down to comply with the new regulations. Generally, the United States has tried to influence the Guatemalan government to comply with the Hague Adoption Convention, but to do so with a transition period which would allow for the adoptions currently in process to continue under the old law.

VII. GUATEMALA AND THE HAGUE ADOPTION CONVENTION

The Congress of Guatemala ratified the Hague Convention on Intercountry Adoptions on May 21, 2007 and issued Guatemalan Decree Number 77-2007 in 2007, a domestic legislation that would enact the Hague Adoption Convention in Guatemala. The Hague Adoption Convention thus entered into force in Guatemala on December 31, 2007. The Hague Adoption Convention itself was largely viewed as a positive step for the nation since the treaty is designed in hopes of ensuring “that international adoption takes place in the best interests of the child, with respect for their fundamental rights, and to prevent the abduction, sale, or traffic in children.” The implementation of the Hague Adoption Convention in Guatemala hopefully will “provide political cover for leaders in sending countries” who want to further enable international adoption in their country, believing it to be in the best interest of both the children and the government. Leaders are often hesitant to promote international adoption of children out of their countries because of the backlash from the international community suspecting them of selling children or wasting what is considered to be a country’s most precious resource.

A. NEW GUATEMALA LAW

On December 11, 2007, the Guatemalan Congress passed Decree Number 77-2007, “requiring more stringent regulation of adoptions.” This new law “brought Guatemala into line with the Hague Adoption Convention on Intercountry Adoption.” Guatemalan lawmaker Rolando Morales stated, “starting December 31, the business of adoption is

190. See id.
192. Thomson, supra note 2; Benítez, supra note 31; Fact-Finding Mission, supra note 6, at 15; Decree 77-2007, supra note 97.
193. Fact-Finding Mission, supra note 6, at 15.
196. Id.
197. Congress Passes Bill, supra note 38; Decree 77-2007, supra note 97.
198. Congress Passes Bill, supra note 38.
According to Attorney General Mario Estuardi Gordillo, the new law will make the adoption process more transparent. Until this new law was enacted, adoptions were not governed by a regulatory authority nor were there laws specifically dedicated to adoptions. Rather, it was covered by the Civil Code, the Law on Integral Protection for Children and Adolescents, and the United Nations Convention on the Rights of the Child. The Guatemalan courts and government officials are expected to be overwhelmed with the amount of work required by the new requirements.

The Guatemalan government is hoping to stop the corruption by completely starting over and eliminating the private adoption system that has been in place. In this private adoption system, mothers gave their babies to lawyers who represented the adoptive parents and the child during the process. Most importantly, the Guatemalan government is hoping that the new law will “provide standardized, transparent procedures for everyone involved.”

B. Effects of Decree 77-2007

1. Creation of Central Authority

The new law requires both the creation of a Guatemalan authority to oversee adoptions and mandates that all private orphanages be registered. The law provides for the creation of the National Adoption Council (CNA), which is an “autonomous regulatory agency made up of representatives of different public institutions that will ensure that children placed in adoption are protected, promote intra-country adoptions, and match each child with the right family.” Guatemala did establish the Central Authority that the Hague Adoption Convention requires to oversee the accrediting entities and the Adoption Service Providers (ASPs), but the Guatemalan Authorities, which were incorporated under the same entity, have not yet approved the Guatemalan ASPs to “perform inter-country adoptions under the Hague Adoption Convention.”

The CNA, overseeing the adoption system, will consist of representatives from Guatemala’s Foreign Ministry, the Supreme Court, and the President’s Secretary of Well-Being. As required by Decree 77-2007,

201. Id.
203. Larsen, supra note 147.
204. Id.
205. Thomson, supra note 2.
206. Larsen, supra note 147.
207. Benítez, supra note 31; CNA stands for the “Consejo Nacional de Adopciones”; Decree 77-2007, supra note 97, at art. 60.
208. Daly, supra note 22.
209. Adoption Law, supra note 109.
the Guatemalan Supreme Court, Ministry of Foreign Affairs, and Bienes-
tar appointed their representative officials Rudy Soto Ovalle, Anabela
Morfin, and Marvin Rabanels to the CNA on January 11, 2008.\(^{210}\) This
appointment actually took place earlier than the fourteen business days
allowed for the appointment of these officials.\(^{211}\) For many, the early
appointment of these officials was viewed as an encouraging sign for the
CNA.\(^{212}\)

But, in February 2008, two members of the CNA were forced out of
their positions, which allowed for the adoption reform measures in Guate-

tela to press forward.\(^{213}\) When President Alvaro Colom took office,
he fired Morfin and Rabanels, who in turn appealed his decisions and
kept working.\(^{214}\) The two resigning officials declared "it is clear the Su-
preme Court decisions are politically motivated, and we realize that it
was legal battle that was lost from the start."\(^{215}\)

2. The Prohibition of Payments for Children

One of the most important provisions of the new law makes payment
to birth parents for their children illegal.\(^{216}\) Article 10 of the new law
prohibits both the biological parents and institutions or authorities in-
volved in the international adoption process to reap an economic gain or
other material benefit.\(^{217}\) The hope is that these new prohibitions will
eliminate the economic incentives of adoption that have lead to the al-
leged baby trafficking, which Guatemala has been subject to in the
past.\(^{218}\) Along the same lines, Article 6 of the new legislation in Guate-

mela states that extreme poverty will not be a satisfactory reason to give
up a child in adoption.\(^{219}\) Additionally, counseling for the biological
mothers and foster homes registered with the central agency must be pro-
vided under the new law.\(^{220}\) These provisions combined should at least
slow the rush towards the economic incentives dangled in front of the
pregnant woman in need of assistance.

3. Preference against International Adoption

The provisions of this new law will put Guatemala in compliance with
the Hague Adoption Convention. The law "favors family preservation

\(^{211}\) Id.
\(^{212}\) Id.
\(^{213}\) Juan Carlos Llorca, Guatemala Adoption Officials Resign, abcnews.com, Feb. 6,
28, 2008).
\(^{214}\) Id.
\(^{215}\) Id.
\(^{216}\) Congress Passes Bill, supra note 38.
\(^{217}\) Benitez, supra note 31.
\(^{218}\) Id.
\(^{219}\) Id.
\(^{220}\) Thomson, supra note 2.
first, then adoption by relatives, followed by domestic adoption.”221 It is only after these options have found to be unavailable or in conflict with the child’s best interests that inter-country adoption is to be considered.222 This policy preference follows directly with that of the Hague Convention and brings Guatemala’s goals in line with other member countries.223

C. Issues with the New Law and Pending Adoptions

The new bill includes Article 56, commonly referred to as the “grandfather clause,” which allows exemption of nearly 3,700 children who are currently in the process of being adopted.224 When the new law went into effect on December 31, 2007, it still allowed for the processing of adoptions currently pending under the old Guatemalan laws for those who had a “Guatemalan Power of Attorney” prior to that date and had registered their adoption with the Guatemalan Central Authority within thirty business days of the new law going into effect on January 1, 2008, which would have made the deadline for registration February 12, 2008.225 Before this new law was passed, the Joint Council on international children’s services (JCIS) developed the “Guatemala 5000 Initiative” in response to the Guatemalan President Oscar Berger’s announcement of plans to suspend all inter-country adoptions on January 1, 2008.226 The goal of the campaign was to encourage the United States government to ask the Guatemalan government to continue to process the adoption cases still pending under the old law before January 1, 2008.227

1. Registration Process

On Jan. 18, 2008, Guatemala’s Central Authority released the new forms that would be required for the registration process required in the new law.228 Then, on February 8, 2008, Guatemala’s National Council for Adoptions (CNA) announced to the public that any adoption cases pending in Guatemala before December 31, 2007 would need to be registered

221. Larsen, supra note 147.
222. Id.
223. See id.
227. Adoption Program Update, supra note 227.
with the CNA office before February 12, 2008. The registration “Aviso” needed to be filed with the CNA; thereafter, the CNA would issue a confirmation of registration known as a “constancia.” The U.S. Department of State advised that cases would have to be registered unless they had “already received a favorable opinion from the Guatemalan Solicitor General’s office (PGN)” in order to be processed under the old law. The Guatemalan government also advised the notaries who had previously presented their cases to the earlier CNA to bring their previous registration back and be re-issued a new registration number. On February 12, 2008, the CNA announced that the registration period was over and that 2,900 cases were registered successfully. It is believed that these registrations included most of the cases initiated under the old system. The CNA then informed the public that registration certificates constancias were not issued to all registered parties. The Guatemalan government will use the “avisos” that were filed, numbered, and signed by Guatemalan officials as proof that a particular case did get registered.

2. Registration Confusion

The U.S. Citizenship and Immigration Services (USCIS) issued a release on January 25, 2008, regarding this new legislation. The USCIS specifically reminded the public that “it is the responsibility of the proper Guatemalan authority, and not USCIS, to determine how Article 56 and other provisions of the new Guatemalan law will be applied to a specific adoption case.” This warning was issued because there was some concern over the actual meaning of registering a pending adoption, which led the U.S. Embassy to encourage adoptive parents to keep in contact with their adoption service provider to ensure that they have been filing all of

230. Registering, supra note 227.
233. State Department Guatemala Update: The Registration Period has ended for Registering In-Process Cases with the National Adoption Council... [hereinafter Guatemala Update].
236. Id.
238. Id.
the necessary paperwork for their adoption.\textsuperscript{239}

Adding to the confusion over what needs to be done to "register" a case in order to have it fall under the grandfather clause are the recent elections in Guatemala that have left a "void in leadership within the Guatemalan government," making it difficult to obtain clear instructions from officials with the power to make those decisions.\textsuperscript{240} The bottom line is that any adoptions that are not registered with the new Guatemalan Central Authority may not be approved under the old law process and be subject to the new laws, which are not as amenable to international adoption as the old laws.\textsuperscript{241}

D. RECOGNITION OF POTENTIAL PROBLEMS INTERNATIONALLY

As early as March 17, 2007, the U.S. State Department issued a notice about Guatemalan adoptions that emphasized the significant increase in time expected for adoptions, which is caused by the increased scrutiny that will be placed on every application.\textsuperscript{242} At that time, the State Department encouraged parents to look for children to adopt from other countries because of the uncertainty in Guatemala.\textsuperscript{243}

Even more recently, there was some concern being expressed by the U.S. Department of State in a release on January 9, 2008, which advised potential parents of some issues with the new law.\textsuperscript{244} Mainly, Article 39 of the decree provides that "in international adoptions, the persons who wish to adopt a child must initiate the process through the Central Authority of their country of residence, which will forward the request and appropriate certifications to the Guatemalan Central Authority."\textsuperscript{245} This language seems to prohibit international adoptions with other nations that have not instituted the Hague Adoption Convention into practice. The United States will not be in full compliance with the Hague Adoption Convention until April 1, 2008.\textsuperscript{246} The combination of the language in Article 39 and the later implementation of the Hague Adoption Convention by the United States led the Department of State to believe that the new law does not "appear to contemplate U.S. adoptions until after April 1," when the United States will also be processing adoptions in compliance with the Hague Adoption Convention through its own Cen-


\textsuperscript{241} Adoption Program Update, supra note 227.

\textsuperscript{242} Daly, supra note 22.

\textsuperscript{243} Id.

\textsuperscript{244} State Department Warning: Adoptions Initiated on or after December 31, 2007 in Guatemala, http://travel.state.gov/family/adoption/intercountry/intercountry_3927.html (last visited Feb. 29, 2008) [hereinafter Warning].

\textsuperscript{245} Id.; Decree 77-2007, supra note 97, at art. 39.

\textsuperscript{246} Warning, supra note 246.
The U.S. Department of State also posted an advisory to warn the public that once the Hague Adoption Convention enters into force in the United States on April 1, 2008, there is a possibility that the United States will not be able to approve adoptions from Guatemala unless Guatemala is in full compliance with the provisions of the Hague Adoption Convention on that date.248 Because the Hague Adoption Convention requires that its member countries process adoptions only from member countries that are in compliance, the United States and the other member countries will have to determine if Guatemala is in line with the Hague Adoption Convention at the time that they themselves become members.249 Therefore, even if the new Guatemalan law does allow for the adoptions to continue with the United States despite Article 39, there is still a possibility that the adoptions would be stopped by the United States on April 1, 2008.250 Until the uncertainties surrounding how the implementation of the Hague Adoption Convention in the United States and Guatemala will affect the adoption process clears up, some U.S. adoption agencies are suspending their programs to adopt children from Guatemala.251

E. CRITICISMS OF GUATEMALA'S NEW LAW

The implementation of new adoption laws in Guatemala have been met with mixed reviews.252 While some believe it to be long overdue because of the illegal activities taking place, others are reluctant because of the impact it will have on adoptions currently in process and the children that will suffer the consequences of the transition.253

1. Slowing the Process Hurts the Children

The critics of the new law include Guatemalan lawyers, adoption agencies, and the potential adoptive parents.254 Because of the already limited social welfare services in Guatemala, many argue that this reform is idealistic and the Guatemalan government will not have the resources to assist the struggling families or children abandoned as a result of the new law.255 The Guatemalan government will not be able to provide the same amount of resources to manage all of the cases that the notaries and attorneys have been handling, especially with the added inspection mea-

247. Id.
249. Warning, supra 246.
250. Id.
252. Larsen, supra note 147.
253. Id.
254. Id.
255. Id.
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sures for each case.\textsuperscript{256} Those opposing compliance with the Hague Adoption Convention fear that the country’s current system is so far out of line with the requirements of the Hague Adoption Convention that it will take too long for the nation to transition into compliance.\textsuperscript{257} These factors will necessarily lead to a sharp decrease in the number of children adopted from Guatemala.\textsuperscript{258} They argue that the corruption will be stopped at the price of the discontinuance of inter-country adoptions.\textsuperscript{259} Many believe this “excessive red tape” required for nations such as Guatemala to comply with the Hague Adoption Convention will mainly hurt the orphans who could have had a brighter future if they had been adopted by a family in another nation.\textsuperscript{260} Some argue that “the only players to largely escape takedown were the American agencies that facilitated these adoptions in the first place.”\textsuperscript{261}

Additionally, many people feel that an increase in regulation of the adoption system in Guatemala will actually have a negative effect on the quality of foster care provided to children before they are placed with families. Somewhat surprisingly, because of all the bad press coverage of the Guatemalan adoption system, Guatemala was actually known for being one of a few countries that did provide decent foster care to children before they were adopted.\textsuperscript{262} An increase in regulations would force children to be held in more damaging foster care institutions for two to three years before they are adopted.\textsuperscript{263} The restrictive regulations, which provide for a state monopoly over the process, do away with the foster care system now in place, which will likely do more harm than good to the children who will now have to spend years in intuitions instead of with foster families that provide a more normal life.\textsuperscript{264}

Critics argue that while the government is working to implement the different requirements of the Hague Adoption Convention, children in need of homes will be the ones punished and forced to wait longer than they would under the old system to be placed in a home with a family which has the resources to care for them.\textsuperscript{265} People generally view adoption as a better alternative for orphaned children than living on the street, since parentless children are much more vulnerable to starvation, homelessness, and poor sanitary conditions, among other problems.\textsuperscript{266} As a result of the slowdown in adoptions, more children grow up in orphanages until they are older, which often leaves them with disabilities that

\textsuperscript{256} New Rules, supra note 121.
\textsuperscript{257} Daly, supra note 22.
\textsuperscript{258} New Rules, supra note 121.
\textsuperscript{259} Larsen, supra note 147.
\textsuperscript{260} Benítez, supra note 31.
\textsuperscript{261} Larsen, supra note 147.
\textsuperscript{262} Bartholet, supra note 3, at 157.
\textsuperscript{263} Id.
\textsuperscript{264} Id. at 191.
\textsuperscript{265} Daly, supra note 22.
\textsuperscript{266} Manley, supra note 26, at 631.
make them much harder to parent later in life if they are adopted.\textsuperscript{267} This will be a continuation of the already bleak conditions in which children who are slightly older live in orphanages while new babies are sought after at a high price.\textsuperscript{268} It is a difficult task to balance the dangers of the number of children and parents harmed in a society that trades babies for money against the alternative of children wandering the streets or dying of starvation because those parents who would have given them up cannot care for them.\textsuperscript{269} Websites, like www.guatadopt.com are urging hopeful parents to be careful of new scams arising from the passage of Guatemala’s new law. It cautions parents that adoption agencies who are still taking applicants for Guatemalan babies are “premature and worrisome” because these agencies must be Hague accredited in order to perform adoptions in Hague countries, which Guatemala is now one of, and which the United States will join in April 2008.\textsuperscript{270} Warnings like this should remind everyone that no system will ever be free from corruption.

\section*{VIII. The Future of the Hague Adoption Convention in Guatemala}

Not surprisingly, lawyers have announced that they intend to contest the constitutionality of the new law similar to the challenge that was brought regarding the constitutionality of Guatemala’s initial signing of the Hague Adoption Convention itself.\textsuperscript{271} But, just as the Guatemalan Constitutional Court found that the accession to the Hague Adoption Convention was not a violation of the Guatemalan Constitution, the new law will likely not be found to be unconstitutional either.\textsuperscript{272}

The adoption process in Guatemala will be dramatically slowed once the Hague Adoption Convention is fully placed into effect, which will lead parents hoping to adopt to look to other nations for children to adopt.\textsuperscript{273} Additionally, if adoptions are not completely shut down, adoption agencies will need to find staff that is culturally competent enough to ensure both the U.S. and Guatemalan families of where all of the money, spent in the process, went.\textsuperscript{274} These criticisms are similar to those that argue that “UNICEF’s obsession with preventing corruption at all costs often results in countries adopting such restrictive regulations that foreign

\begin{thebibliography}{99}
\bibitem{267} No Place Like Home, \textit{supra} note 110.
\bibitem{268} \textit{Id.}
\bibitem{269} Manley, \textit{supra} note 26, at 631.
\bibitem{271} Adoption Law, \textit{supra} note 109.
\bibitem{273} Benitez, \textit{supra} note 31.
\bibitem{274} Larsen, \textit{supra} note 147.
\end{thebibliography}
adoptions are reduced to a trickle.\textsuperscript{275}

Many people are left wondering if the enforcement of the Hague Adoption Convention should be delayed in Guatemala for the benefit of the thousands of children in need of homes.\textsuperscript{276} But, one major advantage of the Hague Adoption Convention, and the new laws in Guatemala, is that parents adopting children can have the peace of mind of knowing that they are both acting in the best interest of the child and respecting the wishes of that child's biological parents when they bring their adopted child home with them.\textsuperscript{277} Many experts do believe that the implementation of the Hague Adoption Convention by the United States will provide a decrease in violations and lead to a more ethical international adoption community as a whole.\textsuperscript{278}

Additionally, the Guatemalan government is currently estimating the cost of adoptions will drop from the current $35,000 price to nearly $500-$750 per child.\textsuperscript{279} While this does seem to be too optimistic of a drop in price, one would hope that the adoption expenses in Guatemala would become more comparable to that of other nations whose prices are about half of those in Guatemala because the government oversees the system rather than leaving it up to a private network of individuals.\textsuperscript{280}

\textbf{IX. CONCLUSION}

There are certainly drawbacks and improvements that could be made to both the Hague Adoption Convention and Guatemala's Decree 77-2007. But, overall, the implementation of the new policies in Guatemala should benefit the children, the biological parents, and the adoptive parents in the long run. While the near future could prove to be problematic for the children, some amount of difficulty must be overcome in order to secure a better future for the thousands of other children who will follow.

\begin{thebibliography}{9}
\bibitem{275} No Place Like Home, supra note 110.
\bibitem{276} Daly, supra note 22.
\bibitem{277} Editorial, supra note 10.
\bibitem{278} No Place Like Home, supra note 110.
\bibitem{279} Congress Passes Bill, supra note 38.
\bibitem{280} No Place Like Home, supra note 110.
\end{thebibliography}