

Guatemalan Adoption Policies: Who Are They Protecting?

Julie Pitel

Faculty Sponsor: Deb Hoskins, University Honors Program

ABSTRACT

The Hague Convention has been ratified in Guatemala without the government having the means to follow through on the requirements of the Convention. This has upset the adoption process and has interfered with many American families bringing their adopted children home. While the Convention is designed to protect the adopted children, countries that have not ratified the rules stated in the Convention are not held to the same standards as those who have. Guatemala was under pressure to become Hague compliant, but without the means to carry out the standards presented in the Convention, adoptions from Guatemala have virtually stopped. This is resulting in more children being abandoned in the country and leaving children in foster homes and orphanages, eventually making the transition into a new home more traumatizing. Could the adoption process be made both secure and easier?

INTRODUCTION

In the 21st century, Guatemala is the third most popular country for international adoptions to the United States (“Guatemala Adoption Background”). Guatemala is popular with many because it allows single parents to adopt and its age requirements are more flexible than in many other countries. With an adoption boom hitting the United States over the last ten years, one would think that governments and international bodies would make it as easy, safe and as quick as possible for adoptive parents to bring adopted children to the United States (Guatemalan Adoption Background). Unfortunately, all three components rarely go together. The Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, or The Hague Convention, was “created in May 1993 through the Hague Conference on Private International Law, a global inter-governmental organization which develops conventions promoting the mutual agreement and compatible legal procedures among countries” (“Guatemalan Adoptions and the Hague Convention”). The Hague Convention was “designed to curb abuses such as child trafficking that have long marred international adoptions” (Bernstein 1). While the intentions of such a proposal were noble, the “premature implementation” of the Convention in Guatemala has caused the halt of virtually all adoptions in the country (Joint Council of International Children’s Services). Prior to Hague ratification in Guatemala, many adoptions in Guatemala were carried out in a safe and timely manner, creating fewer issues involving attachment problems for the adopted children. The Hague Convention has taken steps to protect children from cases of child trafficking and kidnapping, but, at the same time, has created few opportunities for adoption in Hague countries.

BACKGROUND

The Pre-Hague Adoption Process

Before the Hague Convention was ratified in Guatemala, the process for adoption took an average of six to nine months (“Guatemalan Adoptions and the Hague Convention”). The process began with the adoptive parent(s) submitting a dossier, a type of adoption application (“Overview of the Guatemalan Adoption Process”). The dossier includes employment checks, copies of tax returns, photos of the adoptive family, photos of the family’s home, a home study with a licensed social worker, references and often a psychological evaluation (Braun). This dossier is then translated into Spanish and kept on file with a lawyer (“Overview of the Guatemalan Adoption Process”). The adoptive family must also be fingerprinted for a nationwide security check (Braun). In addition, state and local criminal checks are conducted (Braun). Once the baby is born, the birthmother goes to an adoption lawyer to relinquish the baby (“Overview of the Guatemalan Adoption Process”). The birthmother has to sign her *first* intent to put the child up for adoption (“Overview of the Guatemalan Adoption Process”). What can be several months later, the birthmother is photographed holding the child and a cheek swab is taken from both mother and child for a DNA test to prove that the mother is the actual mother of the child (“Overview of the Guatemalan Adoption Process”).

Process”). This step is taken as a safety precaution, to be sure that the child was not kidnapped and is not being sold, as there are occasionally troubles with child trafficking. This step can be very heartbreaking for the birthmother and often takes so many months so that the U.S. government can review all documents related to the adoption before the DNA test can take place (Braun). Only certain doctors and labs are used to process the DNA test, all of which are approved by the U.S. Embassy as a safety precaution (Braun). From here, the baby is put into either an orphanage or into foster care, all of which are privately run, while the adoption process is carried out (“Overview of the Guatemalan Adoption Process”). Once the baby and birthmother are seen by a doctor and receive a clean bill of health, a referral with physical information, blood test results and often a photo of the baby are sent to the adoptive parents (“Overview of the Guatemalan Adoption Process”).

A social worker through the Guatemalan Family Court system is assigned to each adoption case (“Overview of the Guatemalan Adoption Process”). The social worker makes sure that the birthmother understands the implications of giving up her child for adoption and also reviews the dossier to be sure that the mother will be less likely to change her mind (“Overview of the Guatemalan Adoption Process”). At this point, the birthmother has to sign a *second* time to give her intent to relinquish all rights to the child (“Overview of the Guatemalan Adoption Process”). The social worker meets with the child and visits where the child is living as well and writes a report, which is submitted, to a judge in Guatemalan Family Court for approval (“Overview of the Guatemalan Adoption Process”). The DNA test has to be approved by the U.S. Embassy, requiring the birthmother to sign off for a *third* time to make the plan for adoption (“Overview of the Guatemalan Adoption Process”). The U.S. government generally pre-approves the adoption at this time through the Embassy (Overview of the Guatemalan Adoption Process”). In giving this pre-approval, the U.S. government is approving of the adoption and agreeing to allow the adopted child to immigrate into the United States (Braun). If the social worker’s report is favorable for the child to be adopted by the adoptive parents, the Family Court judge generally approves the case. The case is then submitted to another court system called Procuraduria General de la Nación, or PGN, by the attorney (“Overview of the Guatemalan Adoption Process”).

A notary in PGN reviews all paperwork and can either approve or deny an adoption, theoretically within three days (“Overview of Guatemalan Adoption Process”). In Guatemala, a notary is an attorney who has furthered his or her studies and has additional powers beyond those of an attorney (Braun). This step can be problematic because dossiers and other paperwork can be denied due to true inconsistencies, missing paperwork, or, more often, silly reasons; this could be seen as a corrupt practice in the system (Braun). Some of these foolish reasons will be mentioned later on. The paperwork can be resubmitted again and again, and it can be denied approval multiple times based on minute details (Braun). On occasion, denials are given due to missing paperwork, which, upon further review, is not missing after all (Braun). Because of such denials, this step of the process can take months. Once PGN approves the paperwork, the adoption is processed and the birthmother meets with the lawyer representing the adoptive parents and the child to sign over her rights for the *forth and final* time (“Overview of Guatemalan Adoption Process”). The adoption is then registered in Guatemala. The child is legally the child of the adoptive parents at this point (“Overview of Guatemalan Adoption Process”). A new birth certificate and immigration papers have to be filed before the child can immigrate to the U.S. (“Overview of Guatemalan Adoption Process”).

Hague Ratification in Guatemala

Child trafficking is always a risk in international adoptions. In fact, the Guatemalan government was criticized by the U.S. and international organizations for its “lack of government oversight necessary to protect children and families” (“Guatemala Status of Intercountry Adoptions and the Hague Convention”). While this is a very serious issue, unfortunately, some organizations choose to print advertisements in Guatemalan newspapers, discouraging mothers from taking their children to lawyers who would be able to find them homes (Braun). Some claims that are printed include that children will be sold for their organs or as sex slaves (Braun). UNICEF is one organization that is pressuring Guatemala to participate in fewer international adoptions (Kopel). They believe that adoption takes away the child’s cultural heritage; they believe that it is better to improve conditions in the children’s native countries than to have them adopted into another country (Sperry). Such advertisements instill fear in mothers and can increase the number of abandoned children (Braun). While such claims can be supported, successful adoption stories are rarely covered in the media.

In 2008, Guatemala was marked on the Tier 2 Watch List for the second consecutive year (“Guatemala”). This means that the country was cited, “for its failure to provide evidence of increasing efforts to combat trafficking persons, particularly with respect to ensuring that trafficking offenders are appropriately prosecuted for their crimes” (“Guatemala”). Guatemalan officials thought that the implementation of the Convention would show that the

Guatemalan government was making more of an effort to prevent child trafficking when, in reality, child trafficking and legal adoptions are completely different means of transporting children.

The United States considers the Guatemalan government to be the most corrupt national governmental body in this hemisphere (Rotabi). It is believed that many people bribe government officials in order to help adoptions be approved in a shorter amount of time (Rotabi). One example of bribery is the case of Mary Bonn. Bonn was arrested in early 2007 in Florida by U.S. officials “related to illegal transportation of a child out of Guatemala into the United States” (Rotabi). Because Bonn plead guilty, not all evidence was released in court (Rotabi). Still, because Guatemalan citizens were involved in the crime, there is an assumption made that they were motivated by some sort of reward for their actions (Rotabi).

Requirements of the Hague Convention

The United States signed the Hague Convention in 1994, but it was not until December 12, 2007 that the requirements of the Convention were fully fulfilled in the country (Rotabi). On April 1, 2008, the United States officially became a Hague country, with the Department of State (DOS) overseeing all intercountry adoptions (Rotabi). The DOS is the official Central Authority as described in the Hague Convention, as they previously controlled the issuing of orphan visas for adopted children (Rotabi). The DOS has taken on further roles since the ratification of the Hague Convention in the U.S. As required by Hague, all adoption agencies must be accredited by the Central Authority, the agencies must provide a clear budget and fee schedule, and all adoption agencies must obey “professional standards of practice, including supervision guidelines, and the training of agency employees, board members, and prospective adoptive parents in [Hague] requirements” (Rotabi). The DOS has taken years to implement all of the requirements of the Hague Convention, making it understandable that Guatemala was unable to make so many changes in an effective way over a short period of time.

The Hague Convention required a Guatemalan Central Authority to oversee all intercountry adoptions. Prior to the ratification of the Hague Convention, “all international adoptions in Guatemala occur[ed] through private attorneys or through orphanages, since there [were] no state-run social service programs” (“Guatemala Adoption Background”). The Central Authority would standardize the adoption process and require adoption and foster care organizations to be certified (“Guatemalan Adoptions and the Hague Convention”). In addition, the Hague Convention requires “agencies to try harder to collect health information on children” (Bernstein 1). This would assist adoptive parents in better finding treatments for conditions their children may have. The Central Authority would add in more safeguards to prevent illegal child trafficking from taking place and assist adoptive families when facing medical issues the child might have. Still, it would be extremely unlikely for child traffickers to attempt to transport children by going through the adoption process as there were already many safeguards in place, even prior to the implementation of the Hague Convention.

The Hague Convention also required accredited agencies to provide adoptive families with an adoption budget to clearly present families with the costs of adoption. In 2005, the adoption of a Guatemalan child was estimated to be approximately \$25,000 (Rotabi). However, “more recent estimates by child rights advocates range upwards of \$40,000, depending on the circumstances of the child” (Rotabi). Such unexpected costs could force an adoptive family to completely back out of the adoption due to lack of funds to complete the process.

METHOD

Drawbacks of Hague Convention Implementation in Guatemala

While the Hague Convention is designed to protect adopted children and adoptive families, Guatemala ratified the requirements prematurely and could not implement them in a timely manner. The Hague Convention was implemented in Guatemala on January 1, 2008 “under significant scrutiny and amidst allegations of corruption, child trafficking and unethical practices” (Joint Council on International Children’s Services). Because of such pressure from the U.S. and UNICEF, the government ratified the rules without a solid plan on how to achieve the standards required in the Convention. A Central Authority has been established, but “the manner in which Guatemala implemented the Convention has not resulted in an ethical intercountry adoption system; it has resulted in no intercountry adoption system” (Joint Council on International Children’s Services). Of the more than six thousand children in foster care and orphanages, not a single one has found a home since the implementation of the Convention (Joint Council on International Children’s Services).

The early ratification of the Hague Convention has taken its toll on Guatemalan children. The pressure the Guatemalan government was put under caused the virtual halt of adoptions in the country. A *Wall Street Journal* article printed in November of 2006 states:

Once the U.S. ratifies the Hague treaty... It will be against the law for Americans to adopt from countries that have ratified the treaty but are in violation of its laws, such as Guatemala. Yet

Americans will still be able to adopt children from non-convention countries; Hague rules and safeguards won't technically apply to these adoptions (Bernstein 1).

Since the time the article was printed, the United States has in fact implemented the Hague Convention. Because Guatemala has ratified the Hague Convention, it is expected to fully obey all requirements of the Convention. However, in countries like Russia, where the Convention has not been signed, the requirements for accreditation are insignificant – even though it is suspected that intercountry adoptions are controlled by the Russian Mafia (Rotabi).

As a result of postponed adoptions, many mothers are resorting to other, less favorable options for the children they are unable to care for. As printed in *Nuestro Diario*, a Guatemalan newspaper, “Children are being abandoned to the streets at an alarming rate” (Joint Council on International Children’s Services). Had the Guatemalan government not ratified the Convention, U.S./Guatemalan adoptions would be carried out as usual, but without the additional steps required by the Hague Convention.

One Family’s Story

Liz Braun and her daughter became caught in the middle of the implementation of the Hague Convention. After having success with an adoption from Guatemala a few years prior and falling completely in love with her first adopted daughter Liz decided she wanted to adopt again. Unfortunately, this time, things did not go as smoothly. Liz began her adoption in the Fall of 2006. She was having some difficulties with the adoption due to the publicity surround the Convention and the additional pressures on the Guatemalan government. This was over a year before the Hague Convention was ratified in Guatemala, and it was already impacting the adoption process. The Hague Convention was ratified by the Guatemalan government and the government was coming under scrutiny for not fully complying with the Convention’s requirements.

Liz’s first hold up came on the U.S. end. The U.S. government’s pre-approval for adoption and immigration was taking much longer than usual (Braun). The pre-approval form is one of many documents required before the adoption case file can be submitted to PGN. Liz’s lawyer decided to submit her case to PGN before the U.S. gave its pre-approval, with the understanding that the adoption process would not continue because there was not yet a pre-approval (Braun). This path was chosen with the hope that all of the reasons for rejection of the case would be presented at once, as PGN had agreed to do this (Braun). PGN had a reputation for rejecting files for legitimate reasons as well as foolish ones (Braun). For example, the file may have been denied because the reviewer caught minor spelling errors that occurred in translation or the reviewer simply did not like the color of the ink on documents (Braun). Once the reasons for rejection are given, the lawyer has the opportunity to correct any errors and resubmit the file to PGN (Braun). Because PGN had agreed to present all reasons for rejection at once instead of rejecting a case multiple times for different reasons, Liz’s lawyer thought that they could correct any errors PGN found in her file and then resubmit the file once the pre-approval had been granted (Braun). After PGN had Liz’s case for approximately five and a half weeks, her request was rejected because it did not have pre-approval from the U.S. (Braun). In the summer of 2007, cases were being reviewed, or waiting to be reviewed by PGN for upwards of eight months instead of the three days that is required by Guatemalan law, as mentioned earlier (Braun). Liz’s lawyer decided to resubmit her case to a different court: the Tribunal Court. The Tribunal Court can approve adoptions if there is a dispute in PGN, but they generally handle other kinds of court cases (Braun). Liz’s lawyer had heard that the Tribunal Court had recently approved some adoptions in a timely manner, so they decided this would be a good alternative to waiting for PGN approval (Braun).

The Tribunal Court had Liz’s case for about twelve weeks (Braun). During this time, there were multiple cases in the Guatemalan media about child trafficking or children going to the U.S. and being sold as organ donors (Braun). The Guatemalan government was being pressured by the U.S and international organizations like UNICEF to ratify the Hague Convention (Braun). One judge in the Tribunal Court was being attacked in the media—being falsely accused of participating in corrupt practices (Braun). Because judges in Tribunal Court are elected, they were concerned that the media’s accusations could cost them their jobs (Braun). The court took no further action at this time.

In August of 2007, Liz was told that Tribunal Court had approved her adoption and that she would be able to pick up her daughter in Guatemala in six to eight weeks (Braun). Because of international media hype and a governmental raid of an orphanage accused of participating in child trafficking, PGN decided to challenge the Tribunal Court’s ability to approve adoptions (Braun). Liz’s case was sent to the Court of Appeals where it sat for months (Braun). The Appeals Court did not make an official ruling on the cases that had been approved in the Tribunal Court (Braun).

In late 2007, Liz and her lawyer learned of some other families who were in the same situation, but had understood that the Court of Appeals ruled that the adoption cases had to be resubmitted to PGN for adoption

approval, negating the approval already granted by the Tribunal Court (Braun). At the time, Liz was told that the Court of Appeals was going against Guatemalan law in making such a ruling, but the ruling was made regardless of the laws it may have been breaking (Braun). Liz's attorney predicted that the same would happen to her case. The attorney requested Liz's case file back from the Court of Appeals instead of waiting longer for a ruling that would likely send her case back to PGN anyway (Braun). Liz requested her case be returned to her without a ruling from the Tribunal Court to PGN in January of 2008, after Guatemala had ratified the Hague Convention, virtually ending international adoptions from Guatemala. This in itself took two months. Since the file had originally come from Tribunal Court, protocol said that the case file had to go back to Tribunal Court before it could be returned to the attorney (Braun). When the case was returned to Tribunal Court, the Tribunal Court would not accept it on the grounds that the case had not been ruled on by the Court of Appeals (Braun).

Three months later, the Court of Appeals finally ruled on the case. The case had to go back to PGN before the adoption would be legally approved in Guatemala. The adoption approval given by the Tribunal Court eight full months earlier was completely void. In accordance with required protocol, the case was then returned to Tribunal Court and finally released in the summer of 2008 after being bounced around following the protocol (Braun).

Liz's attorney submitted the case again to PGN. The adoption was approved in late August 2008, a full fifty-four weeks after its initial approval by the Tribunal Court (Braun). After a search for the child's birthmother, the birthmother then signed over the rights to her child for the fourth and final time. The adoption was legally approved in Guatemala. The exact same case was approved twice. Due to the power struggle taking place in Guatemalan court systems, a full fourteen months of anguish and confusion was brought upon Liz, her daughter, the foster family, and her daughter's birthmother.

The Guatemalan government agreed to grandfather in cases like Liz's that were in progress before the Convention was implemented. Still, the cases had to be registered with the Central Authority set up under Hague requirements. There was a deadline given for the cases to be grandfathered in. The cases had to be registered with the Central Authority in early 2008, complying with an adoption law passed in late 2007 (Braun). While there were over 3000 adoptions in process, no one was hired to work at the Central Authority. They had no office, no desks. The deadline was fast approaching and the Central Authority had not been established. At the last minute, people were hired and adoptions were registered with the office. It is rumored that the adoptions were registered by hand on an overturned refrigerator as a desk (Braun).

Once the adoption was registered in Guatemala, the process began to bring Liz's daughter to the U.S. Paperwork was submitted for a new birth certificate to be issued (Braun). A Guatemalan passport was issued to the child and papers were filed with the U.S. embassy to issue a second DNA test, confirming that the child was the same child who was relinquished at the beginning of the adoption process (Braun). An embassy-approved doctor collected the DNA sample and conducted a physical (Braun).

When the DNA from both tests matched, Liz was given appointments at the U.S. Embassy in Guatemala (Braun). These meetings included an identification confirmation of Liz, the payment of fees, to physically match the child with her newly issued passport, and to obtain a visa for the child (Braun).

In October 2008, Liz met her daughter for the first time in Guatemala. She also had the opportunity to meet her daughter's birthmother (Braun). During this meeting, the birthmother informed Liz that she was unable to parent her child. The birthmother was able to answer Liz's questions like how she came to choose the name she had given Liz's daughter (Braun). The birthmother gave Liz her blessing and the privilege raising her daughter.

Thoughts from an Adopted Adult

Sara Docan-Morgan came to the U.S. from South Korea at the age of four months. Sara was adopted before the Hague Convention was even drafted, so there were no technical difficulties with her adoption experience (Docan-Morgan). She has visited South Korea two or three times as an adult and went to Korean camp as a teen but did not really identify culturally as Korean (Docan-Morgan). When asked if she embraces Korean cultural traditions as an adult, she says she does not view culture as what we do but rather how we see ourselves (Docan-Morgan).

CONCLUSION

While the Hague Convention surely takes steps to ensure the safety of both adoptive families and adopted children, the pre-implementation of the Convention in Guatemala puts children at risk for possible emotional trauma. Because all adoptions from Guatemala are currently on hold, children are living with foster families and in orphanages for longer periods of time. Eventual separation could cause severe emotional and trust issues. It seems that the misconception between legal adoption and illegal child trafficking has caused an uproar in Guatemala.

Unfortunately, because of outside pressure, the Guatemalan government ratified the Hague Convention prematurely and is not yet able to create a system of compliance with the requirements of the Convention, leaving both children and families waiting for one another.

The implementation of the Hague Convention in Guatemala is bittersweet. In the long term, the Convention makes monumental steps toward protecting adopted children. In the short term, children and families are left holding their breath, hoping that adoptions will be approved in the very near future.

LIMITATIONS

Because there have been no adoptions granted through the guidelines required by the Hague Convention, there are few cases to study. Once Guatemala is in full compliance with the Hague requirements and adoptions begin to be approved, the number of problems regarding intercountry adoptions could possibly decrease.

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