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Intercountry Adoption in Guatemala: Implications of the Hague Convention

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Implications of the Hague Convention

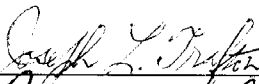
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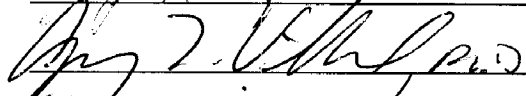
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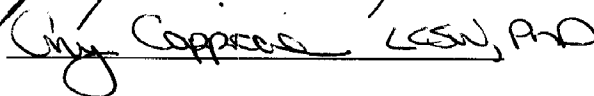
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Abstract

The recent growing popularity of intercountry adoptions between the United States and Guatemala has increased opportunities for corruption. As a result, policies have been created in order to decrease instances of corruption. The current policy recently ratified by the United States is the Hague Convention on Intercountry Adoption, which makes strides toward improving the situation, but at a cost. The anticipated ratification of the Hague in 2008 has led to a reduction in the number of adoptions between the United States and Guatemala and all adoptions ceased once the U.S. implemented the convention. This study analyzes current opinions concerning the Hague and whether or not it will be effective in alleviating the corruption which has tainted the Guatemalan intercountry adoptions system.

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Intercountry Adoption in Guatemala:

Implications of the Hague Convention

In current Western society, interracial and even intercultural families are not uncommon. But things have not always been so. According to U.S. attorney, Elizabeth Bartholet (2007),

The poor countries of the world have long had an excess of children for whom they cannot adequately care – children doomed to grow up in grossly inadequate orphanages or on the streets. The rich countries have long had an excess of infertile adults who want to parent and a relatively limited number of homeless children (p.9).

She explains that not until after the Second World War did this situation begin to change. Increased awareness of the poverty in war-torn nations following World War II and especially its effects on children combined with the growing cultural acceptance of intercountry adoption caused adoptions between developing nations and the United States and Europe to increase rapidly.

As interest in international adoption has grown, the need to improve infrastructure related to adoptions has also increased. Due to instances of corruption and illegal activity, international governments have found it necessary to work together to enact policies which will ameliorate the situation. In analyzing the current state of adoption between the United States and Guatemala, one can surmise that policy creation is necessary if instances of corruption are to be eradicated. The debate, however, focuses on determining whether or not the current policy, namely the Hague Convention on Intercountry adoption, is really punishing the offenders and benefiting the innocent children and families involved.

History

This growing trend of intercountry adoption came about as a response to the increased number of orphans living in war-torn nations following World War II, the Korean War and the Vietnam War (Masson, 2001). More recently, wealthier nations have approached international adoption as a means of international charity, a manner of aiding foreign nations struggling economically. This was especially apparent following the Cold War era when the deterioration of communist economies created greater economic needs. International adoption of orphans from these nations greatly increased resulting in Russia becoming the number one international provider of adoptions to the United States. Other economic and social policies in China, Latin America, and now the Middle East and Africa are opening doors to international adoption throughout the world in response to economic and social needs (Kapstein, 2003).

Adoption in Guatemala originated when U.S. military personnel stationed in Guatemala during the nation's thirty-six-year civil war began adopting war orphans after the fighting ended, following historic trends in other nations. Guatemala's civil war began following tensions surrounding a military coup aided by the United States in 1954 (<http://www.state.gov/r/pa/ei/bgn/2045.htm>). In 1960 a group of junior military officers revolted and guerilla factions formed. Fighting continued until 1996 when their government finalized peace accords under democratically-elected President Alvaro Arzu (Goldsmith, 2000; <http://www.state.gov/r/pa/ei/bgn/2045.htm>). This guerilla war, however, had already left its mark as more than 100,000 Guatemalans had been killed and one million Guatemalans became refugees (CIA, 2007). Researchers estimate that half of those displaced, nearly 500,000 refugees, were children (Goldsmith, 2000).

U.S. soldiers who had been stationed in Guatemala during the crisis took pity on the many abandoned children and began efforts to adopt Guatemalan orphans and bring them home to the United States. Elizabeth Gibbons, director of UNICEF, reported to BBC News, "Originally a humanitarian activity . . . it became obvious that it had the potential for being a lucrative business" (Goldsmith, http://news.bbc.co.uk/2/hi/programmes/crossing_continents/879589.stm).

This "lucrative business" has flourished to such an extent that the *New York Times* reported in 2006 that one out of every one hundred children born in Guatemala is adopted by an American family (Lacey, 2006). The past decade has seen tremendous growth in intercountry adoptions, including adoptions between the United States and Guatemala (see Figure 1.).

There are many reasons why intercountry adoption is so popular, including increased acceptance of interracial families in western society, horror stories of the difficulties faced by couples who choose to adopt domestically (such as birth mothers who change their minds at the last minute), and increased international adoption by celebrities such as Angelina Jolie (ABC News, 2007). Increased media attention has also provided many with a greater awareness of the desperate situation of the Guatemalan economy, such as the recent article featured in the *New York Times* concerning the use of child labor to further the economy (Lacey, 2007). According to the article, approximately 16% of children between the ages of five and fourteen were part of the labor force in 2000. The article also estimates that as many as one million children under the age of eighteen are working based on an independent study. This awareness of the inadequate living conditions of children in third world countries motivates prospective parents to consider

adopting beyond the borders of the United States. Additionally, trends in Guatemalan fertility, mixed with unemployment, violence, sex crimes, and extreme poverty, create a situation where many Guatemalan women find it necessary to give up their children for adoption (ILPEC, 2000). The situation in Guatemala contributes to the high number of orphans that make intercountry adoptions possible.

Some opponents of international adoption between the U.S. and Guatemala argue that domestic adoption ought to be viewed as the best option for these children. The problem with this assertion, however, is two fold. Extreme poverty in Guatemala prevents many who might consider domestic adoption from doing so (Wheeler, 2006). Additionally, racism is sadly a contributing factor. Jacob Wheeler of the World Press Organization explains, “Those with money tend to be white, while the babies available for adoption are half- or full-blooded Mayan Indian” (p.5). Racism between the *ladino* white Guatemalans of Spanish decent and the *indigeno* Mayan Guatemalans creates a stigma towards the blending of the different races. As these distinct social groups do not intermarry, it is unlikely for a *ladino* Guatemalan, the only Guatemalans who might have the financial means, to adopt a Mayan or indigeno infant (Wheeler, 2006).

Adoption Process

Although increasing in popularity, intercountry adoption can be a time-consuming, expensive process. According to literature distributed by Families Thru International Adoption or FTIA (2006), an adoption agency accredited by the Council on Accreditation for Children and Family Services (COA), parents hoping to adopt a child from Guatemala can anticipate spending nearly \$30,000 and between five and eleven months of time throughout the adoption process. The U.S. Department of State's (2007, February) studies show that the average time spent from the beginning to the end of the process of adopting a child from Guatemala is nine and a half months. Financial costs are comparable to numbers associated with adoption from Russia and somewhat higher than the costs for India, Vietnam, and Brazil (see Table 1.). The time requirements, however, vary greatly among nations with Guatemala having one of the shortest amounts of time for stay abroad and total time required for the process. China, for example, requires approximately a year and a half to process an intercountry adoption (Families Thru International Adoption, 2006).

In order for a family to adopt from Guatemala, the parents must be at least eighteen years of age. Prospective parents may be either single or married. Although other nations require two parents, medical eligibility requirements, and even age-difference requirements between parent and child, Guatemalan adoption has no such requirements. Thus, anyone over the age of eighteen with appropriate funding and time is eligible to adopt a child from Guatemala, according to the U.S. Department of State ([www.http://travel.state.gov/family/adoption/country/country_389.html](http://travel.state.gov/family/adoption/country/country_389.html)). Although the

lack of these specific requirements may make it seem that it is easy to adopt from Guatemala, the process can still be quite taxing.

The adoption process between the United States and any other country is often somewhat painstaking because of the amount of paperwork and red tape that must be accomplished before the prospective parents ever even meet the child. Although eligibility requirements may seem lax, there is a lot of paperwork and international bureaucracy that must be tackled by the prospective parents once the process begins (see Table 2.).

Intercountry adoptions with Guatemala must all be finalized through Guatemala's Solicitor General's Office (*Procuraduría General de la Nación*, PGN) with the assistance of a Guatemalan attorney. These attorneys often absorb the bulk of the costs associated with adoptions through Guatemala, as much as \$35,000 according to the U.S. Department of State ([www.http://travel.state.gov/family/adoption/country/country_389.html](http://travel.state.gov/family/adoption/country/country_389.html).) The Guatemalan attorney is involved because of the nature of the Guatemalan adoption system, called a "notarial" system. Oftentimes the attorney will actually take physical custody of potential orphans and present them to U.S. adoption agencies to be shown to prospective parents. Some agencies publicize these photos online, a concept which is abhorred by many as a form of baby advertising (U.S. Department of State, 2007). The adoption system in Guatemala is also subject to scrutiny for being "notarial" as this places the bulk of the authority in the hands of attorneys who face little to no accountability domestically or internationally and receive the largest portion of the financial gains.

Intercountry adoption agencies arrange for the attorneys and contacts in Guatemala, as well as provide the necessary paperwork for the adoptive parents. Paperwork required to adopt a child from Guatemala includes proper U.S. immigration papers, Orphan Petition (I-600), review of birth mother information and DNA testing, "Pink Slip" (visa appointment letter), medical examination report, color photographs, parents' U.S. passports, child's Guatemalan passport, the dossier, and possibly others when applicable. In order to process all of the necessary paperwork and thus obtain an immigrant visa for the child, the U.S. Embassy charges \$380. All information which the parents need to know concerning paperwork and fees is included on the United States website for intercountry adoption and should also be made available by the agency with which the adoptive parents are working (U.S. Department of State, 2007, February). Agencies in the United States also provide professionals to help arrange the entire process for prospective parents.

Although adoptions between the United States and other nations occasionally require further action to be taken once the child is in the United States, intercountry adoption with Guatemala has no such requirements. Under the Child Citizenship Act of 2000, children adopted from Guatemala are considered legal citizens upon entering the country so long as they are under the age of 18, have at least one parent who is an American citizen, live in "legal and physical custody of the American citizen parent," and are admitted to the country as a lawful permanent resident (http://travel.state.gov/family/adoption/info/info_457.html). Children adopted outside the United States do not, however, receive a birth certificate, but can obtain one by filing the appropriate paperwork if they wish to have one made (U.S. Department of State, 2007,

February). This U.S. policy eliminates additional red tape for the adoptive parents once they return home with their child.

Statistics on Guatemalan Adoptions

Even though the process of completing an adoption between the United States and Guatemala requires a lot of time and money for prospective parents, statistics show that many are still willing to pay such a price. According to the U.S. Department of State, 4,135 visas were issued to Guatemalan orphans coming to the United States in 2006 (http://travel.state.gov/family/adoption/stats/stats_451.html). This number has been steadily rising since 1990 when only 257 orphans were adopted from Guatemala (see Figure 1.). As of 2006, Guatemala relinquished the largest number of offspring per capita of any nation in the world (Wheeler, 2006), a fact which some see as a benefit to the children who received opportunities for a better life. Others, however, see this as a point of embarrassment for Guatemala in that the country cannot take care of its own, and therefore ships them off for other nations to deal with.

Although adoptions have increased, studies show that there is still a very large orphan population present in Guatemala. According to "Children on the Brink," a study done by UNICEF concerning orphans and children affected by HIV/AIDS, there were 342,000 orphans living in Guatemala in 2001. The study also estimates this number to increase to 345,000 by 2010 (Children on the Brink, 2001). Although the difference between these two statistics may seem minimal (a growth of only 3,000 in a span of 9 years) the results are still detrimental given that the United States adopts less than 5,000 orphans out of the over 340,000 children waiting for loving families. In addition, many European countries will not adopt children from Guatemala, including the United Kingdom, Spain, Germany and the Netherlands, as well as Canada, due to concerns about

compliance with current international policy (http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69).

An additional factor in the future for these orphans is the fact that intercountry adoption as a whole appears to be declining in the United States. According to David Crary of the Associated Press (2006), intercountry adoptions have decreased from 22,728 in 2005 to 20,679 in 2006, which he claims is “the first significant decline since 1992” (p. A3). He quotes the president of the Joint Council on International Children’s Services, Thomas DiFilipo, who states, “The huge growth rates you saw in the ‘90s – I think that’s over” (p.A3). Whereas statistics for adoption with Guatemala rose drastically in the 1990s, trends for intercountry adoption as a whole do not look favorable, leading one to wonder whether or not this trend will begin to affect intercountry adoption with Guatemala in the near future (see Figure 2.).

Supply and Demand

Many believe that increased interest in international adoption in the past has created a business often referred to as the “baby trade.” This expression identifies a situation where increased demand has created a frenzy to provide a supply. Manuel Manrique, the UNICEF representative for Guatemala, explained in an interview with the *New York Times*, “Most people think, ‘How great that those children are going to have a better life.’ But they don’t know how the system is working. This has become a business instead of a social service” (Lacey, www.nytimes.com/2006/11/05/world/americas/05guatemala.html). Members of the Council of Central American Human Rights Attorneys who met in August, 2006, expressed concerns that the adoption system has converted children into “an object, like a piece of merchandise” (Lacey, www.nytimes.com/2006/11/05/world/americas/05guatemala.html).

In their report for UNICEF, ILPEC Guatemala supported Manrique’s statement. They included in their summary that “adoptions constitute a ‘business’ where the economic aspects of ‘supply and demand’ actively intervene” (ILPEC, p.57, 2001). Approaching international adoption as a business has had serious implications for the Guatemalan adoption system.

According to Marc Lacey of the *New York Times*, this business-mentality has flipped the normal procedure for adoption on its head. Whereas in most nations, a family is sought out for a child after it has been abandoned, in Guatemala the reverse occurs. Oftentimes it is the babies that are being sought out in order to satisfy the desires of the

adoptive parents (Lacey, 2006). This inverted approach to intercountry adoption has exposed Guatemala to increased instances of corruption.

Advertising the Baby Trade

The ILPEC report written for UNICEF explains that this supply and demand mentality has caused attorneys and other agencies to elicit women to give up their child by any means, including public advertising. According to their report, in 1999 an ad ran in the Guatemalan paper *Prensa Libre* which read, “ARE YOU UNEXPECTEDLY PREGNANT? Do you face problems as a result? Do not despair, WE CAN HELP YOU.” At the bottom of the ad the advertising agency listed its phone number. When the call was made, a recorded message explained that if the caller did not want to or was unable to support their child, they could give it up for adoption by setting up an appointment (ILPEC, p. 50-51, 2000). Another Guatemalan paper, *El Periódico*, (as cited in ILPEC, 2000) reported in 1998 that Guatemalan mothers were receiving an average of \$500 in aid when they agreed to give up their child for adoption. The use of public advertisement and monetary incentives shows that the “baby trade” is a reality, to at least some extent.

Corruption

The offenses, however, do not stop at advertising alone. The increase in international adoption and the supply and demand mentality of professionals involved in adoptions between the United States and Guatemala have increased opportunities for a variety of corrupt activities to take place. The Latin American Institute for Education and Communication (ILPEC Guatemala) reported for UNICEF in 2000,

This [extreme poverty and the lack of family protection policies] has contributed to a situation where the sale of children has turned into a way of life for many, especially when so many families lack economic resources and are unable to find any alternative solution or assistance for addressing their most pressing problems (p. 3).

Increased adoption and approaching adoptions as a business, combined with poor policies, have created an environment fertile for acts of corruption.

One key instance of corruption which plagues intercountry adoption between the United States and Guatemala is baby trafficking, a key component of the “baby trade” dilemma. Trafficking involves a complex situation where pregnant mothers are bribed by corrupt attorneys or *jaladoras* (Spanish word meaning “middlemen”) to give up their unborn children to parents in the United States looking to adopt. Because the demand from the United States for adoptions from Guatemala is healthy at present, the situation is ripe with opportunities for acts of corruption involving corrupt attorneys, *jaladoras* and even corrupt birth mothers who allow themselves to become producers for the baby trade.

Intercountry adoption is especially profitable for Guatemalan attorneys. Because of the nature of the adoption system in Guatemala, attorneys are able to facilitate the entire process. Their high level of involvement and the amount of money they can gain from these adoptions creates a situation where corruption among attorneys does happen,

although the frequency of these occurrences is very difficult to determine. Mario Roberto Rios Castillo, an adoption attorney from Guatemala, told BBC News, “I personally have been offered extraordinary amounts of money for babies. I have always said no. But when there are such large offers being made some people get dollar signs in their eyes and they go off to look for a woman to persuade her to give up her child for adoption” (Goldsmith, http://news.bbc.co.uk/2/hi/programmes/crossing_continents/879589.stm). According to Jacob Wheeler of Wordpress.org (2006), individuals involved on both sides of the adoption agree that attorneys do pay women to give up their babies. He goes so far as to say that it may even be a widely accepted practice, although it may not actually represent what occurs in the majority of cases. Although it is nearly impossible to determine how often mothers are paid by attorneys, reports indicate that such acts of corruption do occur.

Susan Killeen, a social worker with the intercountry adoption agency Project G.L.O.W., explains that in some cases “runners that work for [an] attorney... will try to coerce pregnant women to choose adoption” (S. Killeen, personal communication, October 23, 2006). In the instance that an attorney finds it more profitable, a runner will be hired to bribe and or otherwise coerce women to give up their child for adoption in order to obtain financial gains for himself, his boss, and often the biological mother of the adopted child.

Jaladoras may also seek out pregnant girls wherever they can find them and bribe them as much as 5,000 *quetzales* (approximately \$657 US as calculated by <http://www.exchange-rates.org/converter/GTQ/USD/5000.00000/Y>) for their child, according to ILPEC Guatemala (2000). Because Guatemalan adoption does not require

judiciary proceedings, these middlemen can arrange the entire intercountry adoption by simply locating a temporary caretaker, a local notary, and agents who agree to file the proper paperwork (ILPEC, 2000). Thus, *jaladoras* may facilitate the entire adoption sometimes without hiring or being hired by a licensed attorney. Although the facilitation of the adoptions is not illegal under current legislation, the acts of bribery are in definite defiance of the requirements of current international policy. By coercion and bribery, *jaladoras* taint an international activity intended for international aid and the mutual benefit of families and international orphans.

The biological mothers in Guatemala have also been blamed for aiding instances of corruption, not just for accepting bribes from attorneys, runners, and *jaladoras*, but also for choosing to supply them with more infants in the future. Susan Killeen states that sometimes following a bribe “a woman is more inclined to use that attorney and place her baby” (Killeen, personal communication, October 23, 2006). Not only will women give up their child after receiving bribes, but some are also more inclined to give up other children if they become pregnant again. Presumably, these biological mothers see giving up their child as a blessing for the rest of the family who desperately needs the economic assistance. In addition, their action does not directly harm anyone since the family gets money, the baby gets a safe and wealthy home, and the new family is able to bring home a healthy infant. Thus, it would be difficult to convince these women that turning their bodies into a baby-producing machine for financial gain is ethically or morally wrong, despite how clear cut it may seem to others.

Media Perspectives

Although instances of corruption persist, media attention creates a foggy picture by presenting certain monetary gifts through a lens of corruption which may not have existed in actuality. Susan Killeen describes the situation this way:

When an attorney is charging 18k to process the adoption and decides to assist a birth mother with a gift of cash of several hundred dollars as she returns to the streets...it doesn't seem harmful. When, however, word spreads that money is gifted after placement and a woman is more inclined to use that attorney and place her baby...it seems corrupt (S. Killeen, personal communication, October 23, 2006).

As Killeen explains, attorneys and adoptive parents are likely to feel unashamed or even morally obligated to give money to the biological mother of the adopted child once they recognize the state of poverty in which she lives. In their minds these gifts are not connected in any way with the adoption of the child and likely occur after the adoption process has already been finalized. Instead, they intend the gift to be a compassionate gesture toward a human being in need. Once this situation is depicted through the lens of the media, however, it begins to look inappropriate, regardless of the charitable intentions of the giver.

Furthermore, the media stories like those encountered in the New York Times article "Guatemalan System is Scrutinized as Americans Rush In to Adopt" depict emotionally charged scenarios of Guatemalan biological mothers whose children were given up for adoption through corrupt circumstances. An example is the story of a twelve-year-old girl who received money after giving up her child. She said, "They gave me some money...I don't know how much. They gave my father some money too" (Lacey, p. 3, 2006). The girl's father, however, denied ever having received any money because, according to the article, individuals are advised to deny receipt of money by the

attorneys involved. Although these stories are emotionally persuasive, they may or may not depict actual instances of corruption. In reality, this young woman may have simply received what the giver believed was a charitable gift to a young, impoverished girl in the countryside who struggled financially even without the financial burden of supporting a child. These dramatic portrayals do little to help international researchers understand the actual situation at hand.

Certain unfortunate circumstances, however, seem difficult to misinterpret. BBC News reports the story of a young girl from Guatemala whom they call Elivia. Elivia accepted a job working for a Guatemalan couple in their home, a common practice in many Latin American countries. According to Elivia, she was kidnapped by the couple she worked for and remained with them until the birth of her child. She recalls,

I was given drugs to make the birth quicker and then the baby was pulled out of my stomach. I didn't see it, I didn't even know whether it was a boy or a girl. Then the couple told me I was too poor to be a mother and they were going to put my baby up for adoption (Goldsmith, http://news.bbc.co.uk/2/hi/programmes/crossing_continents/879589.stm).

Although the media presented this story in an emotional manner, it is difficult to find any explanation which might justify Elivia's situation.

ILPEC also reports a story of a woman named Iris Xiomara Borrayo who placed her eight-month-old child in the care of neighbors when she became ill and was sent to the hospital. The neighbors turned her child over to the Minor's Court Judge and declared the child abandoned. The baby was given to an orphanage that immediately listed it for adoption. Fortunately for Mrs. Borrayo, she discovered what had happened in time to seek legal assistance and ultimately regain custody of her child (ILPEC, 2000). Had she been informed later, however, the story might have ended much differently. For Mrs.

Borrayo concerns about corruption in intercountry adoption became personal through her own experience.

These stories illustrate that instances of corruption, the baby trade and even kidnapping do occur in Guatemala regarding intercountry adoption. Although these stories are anecdotal and may not represent that vast majority of cases, they are nonetheless real, and therefore a great concern to policy makers, intercountry adoption professionals, and prospective adoptive parents.

Opposing Views

Despite reports, certain individuals, including some Guatemalan lawyers, claim that the problem is not as widespread as it appears. Fernando Linares, a successful Guatemalan lawyer, reported to BBC News that the instances of lawyers engaging in the baby trade accounts for a very small portion of the total number of adoptions. He states, “What we are talking about here is a failure rate at much less than 1% and what we should [be] talking about is the success rate of 99%” (The children of Guatemala, p. 3, 2000). Actual statistics for the number of children exchanged in this illegal baby trade, however, are nearly impossible to obtain.

Arguments against the existence of the baby trade are not limited to Guatemalan lawyers who may receive financial benefits from the system and are therefore more likely to deny its existence. There are professionals in the United States as well who claim that the problem is either not real or not nearly as widespread as the media portrays. According to William L. Pierce, affiliate of the International Association of Voluntary Adoption Agencies and NGOs (IAVAAN),

Allegations of widespread abuses such as child kidnapping and baby selling for the purpose of international adoption cannot be proved because they just do not exist, except in the fertile imaginations of some journalists seeking sensational stories, the misinterpreted understandings of some international observers who are not as familiar as they should be with international child welfare generally or international adoption specifically, or advocacy groups, whether in the U.S. or other countries, which have an antagonistic view toward all intercountry adoptions (Committee on International Relations, p. 11, 2002).

Pierce’s declaration illustrates that U.S. citizens also question the existence of the baby trade in Guatemala.

Although Pierce is correct in stating that the media dramatizes the situation, the problem with his assertion is that it disregards stories uncovered by IPLEC in

coordination with UNICEF, who are not members of the press and therefore cannot be named as “journalists seeking sensational stories.” Additionally, UNICEF utilized the Latin American Institute for Education and Communication (ILPEC) in order to minimize discrepancies caused by “misinterpreted understandings” of someone who is not familiar with the foreign nation or the child welfare system. According to the ILPEC report their organization “represents the Geneva International Social Services in Guatemala and both institutions (UNICEF and ILPEC) work to protect Child Rights in matters related to adoption” (ILPEC Guatemala, p. 2, 2000). Clearly, this organization represents a source which the United Nations and the Geneva International Social Services deem reliable, regardless of the questions raised by Pierce.

Additionally, the United Nations issued a report in 2000 which stated that criminal activity is not limited to rare instances. The report claims that “in the majority of cases, international adoption involve[s] a variety of criminal offences, including the buying and selling of children...” (Kapstein, p. 3, 2003). Although individuals such as Pierce assert that instances of kidnapping, buying, and selling of babies do not occur, studies done by the United Nations have reported otherwise.

What causes this confusion is the fact that specific statistics on the number of adoptions involving illegal or otherwise corrupt practices are very difficult to obtain for obvious reasons. Whereas the United Nations claims that corruption represents the majority, others believe it represents only rare and isolated cases. A key factor in this confusion is the difficulty of defining what constitutes corruption with regards to intercountry adoption.

The author is convinced that the prevalence of these corrupt cases is not the key issue. The issue at hand is that these instances do exist and should be alleviated. Alleviating instances of corruption regardless of how often they occur is currently the main concern of international policy-makers. Policy makers do, however, need to consider the difficulty of defining corruption when drafting policies. A line must be drawn between what is acceptable, and what is illegal.

Adjudicate Orphan Status First

In order to attempt to eliminate instances of corruption in Guatemala and elsewhere, international policymakers have attempted to create policies which deal with these issues. In 2002, the United States launched the “Adjudicate Orphan Status First” initiative intended to repair the situation of adoption for prospective parents. As intercountry adoption can be quite expensive, this policy aimed to reduce the occurrence of adoptions that fall through for reasons of child eligibility, such as the situations described above where the child is taken away by coercion or without proper consent. The “Adjudicate Orphan Status First” initiative sought to screen orphans from several countries in advance so that the prospective parents might know for certain that the child they intended to adopt was legally eligible before they invested tremendous time, money and emotional energy in pursuing an ineligible child (Kapstein, 2003).

Although the measure was a step in the right direction, this initiative did not necessarily pursue the best interests of the child. According to Ethan Kapstein’s article in *Foreign Affairs*, the “Adjudicate Orphan Status First” policy created an even more lengthy process which further prolonged the child’s stay in the foreign orphanage. Additionally, the initiative was only enacted in certain nations, including Poland, Sierra Leone, Haiti, Honduras, and the United States, neglecting Guatemala. Thus, a nation with widespread corruption did not reap what benefits the initiative offered (Kapstein, 2003). Although intended to alleviate concern in the minds of adoptive parents, the “Adjudicate Orphan Status First” policy neglected parents adopting from certain nations and required the child to remain in the orphanage for a longer period of time, further frustrating the prospective parents.

The Hague

In 1992, the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, often referred to as the Hague or *la Haya*, was drafted. Although it was drafted prior to the Adjudicate Orphan Status First policy, the Hague was not ratified by the United States until April 1, 2008. The purpose of the Hague Convention was to create greater transparency and predictability within the intercountry adoption system and limit financial exchanges to those intended only for costs, expenses and “reasonable professional fees” (Subcommittee on Africa, Global Human Rights and International Operations, 2006). The U.S. Department of State asserts that the Hague seeks to “[Ensure] that intercountry adoptions take place in the best interest of children; and [prevent] the abduction, exploitation, sale, or trafficking of children” (<http://www.state.gov/e/r/pa/prs/ps/2006/61272.htm>). The Hague was adopted in 1993 by 66 states in all and signed by the U.S. in 1994 (see Table 3.). What is interesting is that more than ten years later, the United States had still not ratified the convention. Although the U.S. signature displayed agreement with the requirements of the Hague, the United States had yet to actually become a “Convention Country” until this year

According to the United States website on intercountry adoption, U.S. implementation of the Hague was intended to be completed by late 2007 (U.S. Department of State, 2007). The ratification did not actually occur until April 1, 2008, however, with no specific explanation provided for the delay (U.S. Department of State, 2008, April 1). Among other reasons, it seems likely the U.S. has been stalling in hopes that Guatemala would make the necessary changes compliant with the Hague in order for adoptions between the two nations to continue.

In order to achieve the goals of transparency and predictability, the Hague requires international agencies engaging in activities associated with international adoption to pursue regular accreditation from an established central authority. Agencies are also required to make records of adoptions available, including statistics on adoption and any financial transactions. In response to this accessible information, central authorities are required to prevent inappropriate financial gains from occurring. In order to eliminate instances of kidnapping such as Iris' story, the child must be determined adoptable, meaning that there is consent by the biological parents and/or the consent of the child when applicable (Hague Conference on Private International Law, 1993). These measures are an intensive attempt to alleviate issues of corruption involved in intercountry adoption between nations, including the problems faced in Guatemala.

U.S. Warnings

According to the U.S. Department of State, Guatemala is listed as a “Convention Country,” meaning they have ratified the Hague and claim to follow its specifications. However, the Department of State also indicates that “although Guatemala is a party to the Convention, its adoption procedures do not meet the standards of the Convention” (<http://www.state.gov/r/pa/prs/ps/2006/61274.htm>). Despite the fact that the Guatemalan government has nominally ratified the Hague Convention, instances of corruption continue to occur and in the past real action toward alleviating these crimes has not been taken.

As the United States looked toward ratification of the Hague Convention in 2008, the Department of State has warned that adoptions between the U.S. and Guatemala would be discontinued if standards of the Hague were not met. Their website announced on June 13, 2007:

When the Convention enters into force for the United States in early 2008, the U.S. Government will not be able to approve adoptions from Guatemala if Guatemala’s adoption process does not provide the protections for children and families required by the Convention (http://travel.state.gov/family/adoption/country/country_3257.html).

This of course created great concern for families planning to adopt or already in the midst of adopting from Guatemala. Greater concern was created when the United States posted messages urging U.S. citizens not to pursue intercountry adoptions from Guatemala. In December of 2007, the Department of State posted an updated stating, “The U.S. Department of State continues to urge U.S. Citizens not to commence an adoption process from Guatemala at this time.” They continue the warning by explaining that in August, 2007, several dozen children awaiting adoption to the U.S. from

Guatemala were “taken into custody by Guatemalan authorities because of alleged irregularities in the adoption process and concerns about the care of the children” (http://travel.state.gov/family/adoption/country/country_3825.html). Due to the pending implementation, prospective parents have faced longer waits and the possibility that their adoption will fall through. In the event that the adoption does fall through, they will have to begin the process all over again with the added risk that adoption from Guatemala might no longer be an option.

Thomas Atwood, president of the National Council for Adoption believes that the United State’s decision to post these warnings was “insensitive to people’s feelings” (Crary, p.A3, 2007). “People all across the country in the process of adopting from Guatemala are frightened right now,” Atwood stated (Crary, p.A3, 2007). Although the United States and Guatemala have both agreed that adoptions in progress prior to the December 31, 2007, deadline would still be processed, many families still feared their adoption might fall through. For Atwood, this demonstrated the United State’s lack of consideration for these couples.

Guatemalan Response to U.S. Warnings

In response to U.S. warnings, Guatemala has initiated work on new legislation in order to comply with the Hague standards and assuage the concerns of prospective parents whose adoption is currently in progress. On December 11, 2007, Guatemala passed legislation which created the National Council on Adoptions. Although the United States is still concerned that this is merely a nominal action, the creation of a central Guatemalan authority for adoptions is a step in the right direction. The United States continued to warn, however, that if Guatemala did not establish the proper infrastructure to carry out the said duties of the council, the U.S. would still be unable to process adoptions with Guatemala after the April 1 ratification (U.S. Department of State, 2007, December 11). Only time will demonstrate whether the creation of the council was merely nominal or if Guatemala is taking genuine strides to alleviate current problems.

In addition to establishing a council for adoption, the Guatemalan Congress also approved legislation allowing for adoptions that are currently in progress to be completed. The legislation allows for the completion of all adoptions initiated before the law became effective on December 31, 2007. The U.S. Embassy anticipates that “initiation” of an adoption will include all adoptions where an *aviso* (the notification filed with the PGN) has been filed (U.S. Department of State, 2007, December 19). Although this calms the fears of many prospective parents, the future of adoption between Guatemala and the United States remains unstable with all hopes of continuation relying on the actions of the Guatemalan government in the months to come.

Guatemala’s *Procuraduría General de la Nación* (PGN) has also tightened requirements for intercountry adoption in order to comply with Hague standards. In 2007,

the PGN announced plans to establish the *Registro de Avisos Notariales de Adopción* (Legal Notice of Adoption Registry) which would include the requirements specified by the Hague (Cereser, 2007). The *Registro* would require more information in order to verify that the child is legally available for adoption and that there are records concerning the child's family, health and current location. All contact information for the child's biological parents, adoptive parents and the children's home where the child is being fostered must all be included according to the PGN (Cereser, 2007).

Guatemalan Opinion

The fact that the ball is in Guatemala's court raises the question, "Does Guatemala want U.S. citizens to adopt their children?" It is not surprising that the responses are both numerous and varied. For many there is a sense of national pride which causes them to want Guatemala to take care of its own. Others, however, recognize the poverty and tremendous need present in current Guatemalan society. As a result, they feel intercountry adoption with the United States is a necessary means of aid for many children since neither the people nor the government have the means to support them.

According to Thomas Atwood, president of the National Council for Adoption, many people are opposed to the idea of intercountry adoption because they feel it demonstrates a nation's inability to care for their own: "There's always been the issue of national pride, where the country of origin wants to take care of their children themselves" (Crary, p. A3, 2007). Jacob Wheeler of Wordpress.org (2006) supports Atwood's statement and says that many countries avoid promoting foreign adoption because it is seen as a national embarrassment when their most popular export is perceived to be their own children. Regardless of their economic situation, countries do not want to taint their international image by putting forth such a seemingly negative impression.

Others view international adoption as a regression back to colonialism. Attorney Curtis Kleem in his research on the implications of the Hague explains, "Many sending countries, being generally poorer than receiving countries, feel international adoptions represent the most recent and the most heinous form of imperialism" (Kleem, p.325). International citizens often feel that North Americans and Europeans engaging in

intercountry adoptions are demonstrating their superiority and their ability to do for the third world what it cannot do for itself.

Elizabeth Bartholet (2007), a professor of law at Harvard Law School, states that many people view international adoption as a form of human exploitation. She expounds that many view international adoption as taking away one of the few blessings that the third world still possesses, their children. Additionally, she cites arguments by individuals who claim that international adoption is heartless since it uproots one child into a life of luxury while leaving the pitiful situation of poverty untouched (Bartholet, 2007). Although adoptive parents see international adoption as a means to form a family, there are many individuals with negative sentiments toward the entire practice, with or without corruption.

UNICEF (the United Nations Children's Fund) is also accused of being anti-international adoption. According to Sara Dillon's article in the Boston University International Law Review, UNICEF "has frequently articulated an at best ambiguous, and at worst implicitly hostile, view of international adoption" (Dillon, p.254, 2003). She claims that although UNICEF is based upon claims of neutrality, there is reason to suspect that UNICEF not only accepts, but perpetuates the idea that intercountry adoption is essentially an act of colonialism. Although UNICEF declares neutrality, researchers analyzing international adoption and the Hague are skeptical about UNICEF's actual stance on the matter. The Wordpress reports that UNICEF is "the most open and vocal critic of international adoption from Guatemala" (Wheeler, p.5, 2006). This description does not mirror the sentiment of neutrality that UNICEF claims.

Although many people oppose intercountry adoption in its entirety, few of these opinions seem to come directly from Guatemala, but rather from international researchers and international organizations. Guatemalans on the other hand seem to have a more favorable tolerance for intercountry adoptions. Although one would anticipate that the Guatemalan attorneys would support adoptions because of the business it creates, average citizens in Guatemala seem to feel there is a need for adoptions at present, even though they reap no direct personal or financial benefit.

In a 2006 article translated from Spanish by the author, Alfred Kaltschmitt (2006), an opinion writer for the *Prensa Libre* newspaper of Guatemala, stated that international adoption is a means of rescue, the rescue of a child otherwise condemned to live in poverty. Kaltschmitt tells the story of an American couple he saw in a restaurant in Guatemala with their newly adopted Guatemalan baby. Although he recognizes the shame the Guatemalan people may feel concerning international adoption, he says the love and sacrifice of these parents in order to adopt this indigent child convinced him that intercountry adoption is not about national shame, but about caring for an innocent child in need (Kaltschmitt, 2006).

In June of 2007, *Prensa Libre* published another article (translated by the author) of the same opinion entitled "Adoption should not be a business." This columnist agreed with Kaltschmitt and questioned those who oppose intercountry adoption, saying that those who oppose these adoptions must lack a social conscience and empathy toward humanity (<http://www.prensalibre.com/pl/2007/junio/24/175212.html>). According to the article, intercountry adoption represents a new opportunity for infants who have lost the most precious thing in their lives, their parents. This point of view and that of Kaltschmitt

demonstrate the Guatemalan opinion may not be as opposed to intercountry adoption as one might suspect.

At first glance, one might assume that their declared support has more to do with economic gain than human interest. Many seem to think that babies are Guatemala's leading export and a substantial source of income for the nation. This, however, is not the case. According to Jacob Wheeler of the World Press Organization, the money spent by American parents to adopt children from Guatemala "does not make of break Guatemala's gross domestic product" (Wheeler, p.2, 2006). Although there are financial gains for specific individuals (lawyers, hotel owners, etc.), it is not likely that this income influences the opinion of the writers for *Prensa Libre*, who receive no financial gains from intercountry adoptions. Furthermore, it is unlikely that this income trickles down to the majority of Guatemalan citizens.

Arguments against the Hague

With many citizens favoring intercountry adoption as at least a temporary solution to an ongoing problem, the Guatemalan government has chosen to sign onto the Hague Convention, although their compliance is still in progress. As the United States deliberated ratification of the Hague Convention, many debated whether or not this policy is actually the best solution for intercountry adoption. According to Mary L. Landreiu, a U.S. Senator from Louisiana, the Hague Convention on Intercountry Adoption is not the best policy if it results in shutting down adoptions with certain countries, such as Guatemala (Committee on International Relations, 2002). "If there was a bank robbery in Duluth, Minnesota tomorrow, we would not close down the banking system, we would find the bank robber," Senator Landreiu stated at the hearing before the House of Representatives' Committee on International Relations (p.7). Senator Landreiu is not alone in her concern for the continuation of intercountry adoptions.

The assumption here, however, is that accepting the Hague will halt adoptions between the United States and certain other nations, an assumption which may or may not be true. In fact, positive actions taken by the Guatemalan government following U.S. warnings indicate that intercountry adoption between the two nations might never actually stop completely. Although it is unfortunate that fewer adoptions with Guatemala may take place during the transition, it appears that neither government intends to close down the system indefinitely if at all possible.

Other individuals skeptical about the Hague are concerned about the increase in governmental controls for adoptions following the guidelines of the convention. Although the intention of the Hague is to create greater transparency throughout the

adoption process, the installation of a central accrediting organization controlled by the government does concern parties in the United States and Guatemala alike (Lopez, 2006; Varnis, 2001). According to Steven Varnis (2001), a family and immigration attorney from Michigan, the Hague has four inherent flaws: increase of government's role in the adoption process, added costs associated with meeting the Hague's specifications, the decreased role of facilitators and intermediaries as a result of increased governmental involvement, and the negative attitude Varnis says the Hague displays towards private adoptions. He states, "The Convention is likely to join the heap of other impotent international agreements, a hollow structure doing much more harm than good" (Varnis, p.46, 2001). According to Varnis, the Hague prohibits creative policies from emerging. By ratifying the Hague, the United States is limiting its options and selecting what Varnis and others feel is an inadequate policy.

Harvard professor Elizabeth Bartholet (2007) in her research on the human rights issues involved in international adoption policy draws similar conclusions. According to Bartholet, the Hague places additional barriers between families and abandoned children. She writes, "The law regarding international adoption is overwhelmingly negative in the sense that it focuses almost entirely on the bad things that can happen when a child is transferred for adoption from one country to another, as opposed to the good things," (p.17). Bartholet agrees with Varnis that the United States should allow for the emergence of more creative policies, specifically, policies which focus on promptly providing loving homes to as many children as possible.

The problem with both Varnis and Bartholet's conclusions is that neither seems to provide any creative policy examples after their arguments against the Hague. Although

one might agree with the fact that increased governmental control on intercountry adoption is cause for concern, the goal of alleviating corruption in this instance might be worth the trade-off. In addition, just as Bartholet encourages policies which provide families for children as soon as possible, there is also a need to eradicate corruption as soon as possible, meaning that there is not sufficient time to wait for more creative responses. It is the author's hope, if and when these improved policies emerge, that the United States and other nations will update the intercountry adoption system, depending on the level of change such ratification would require.

In Support of the Hague

Although the Hague does have shortcomings, there are those who support the decision to ratify the convention. According to Ethan Kapstein's article in *Foreign Affairs* (2003), "The Hague Convention is rightly seen as a major breakthrough," (p.120) In contrast with Varnis and Bartholet's negative perception of the policy, Kapstein asserts that the policy will actually streamline the process, decreasing barriers and supporting the best interest of the children.

According to Marc Lacey (2006) of the *New York Times*, ratification of the Hague is the answer for the corruption plaguing Guatemalan intercountry adoption. By insuring that a loving home is sought for the child first in its own country, preferably with the child's family, issues of baby theft should be eliminated. Lacey also says that limiting payments, another requirement of the Hague, should reduce concerns about treating babies as a product to be bought at a price.

Guatemalans seem to favor implementing the specifications of the Hague as well. The ILPEC research team (2000) after citing their findings regarding instances of corruption concluded that following the standards of the Hague is the best option for Guatemalan adoption. They state, "It is urgent that the State subscribe to the Hague Convention, legislate a new law which regulates the transparency of the adoption process, and implement policies which support and strengthen the family and which provide access to appropriate sexual education for the population" (p.58). Although ILPEC admits through this statement that adherence to the Hague is not sufficient to alleviate problems of corruption in Guatemala, in their opinion it is a step in the right direction.

Conclusion

In order for instances of corruption involved in intercountry adoption to be eliminated in nations such as Guatemala, international policy makers have been forced to construct influential policies. In the case of the Hague Convention on Intercountry Adoption, the author determines that this policy is the best option at the present time, although further improvements are desirable. The Hague is still limited by the poverty of the ratifying nation, which limits the amount of funding that nation can spend on upholding the Hague's regulation. Furthermore, the Hague also creates greater governmental interaction in a field where personal interaction is necessary in order for the greatest level of understanding and sensitivity to occur. Due to the sensitive nature of the accusations against nations such as Guatemala, however, something had to be done and at present, the Hague Convention on Intercountry Adoption appears to be the best temporary solution.

Yet, even at its best, advocates admit that intercountry adoption alone "will never be more than a partial solution for the problems of the homeless children of the world" (Bartholet, p.160, 2007). Although criticized, there are many who embrace intercountry adoption as equal to domestic adoption. It is a way for those who cannot give birth to their own children to experience the blessing of raising a child. "What we are doing here is good," says Guatemalan attorney Luarca, "At this moment in time it is the only way out for these children. I look forward to the time when they can grow up well here" (Lacey, p.4, 2006). The author wishes the same for the children of Guatemala. But until then intercountry adoption should continue, with decreased instances of corruption and regulation of adoptions by way of the Hague Convention on Intercountry Adoption.

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Table 1: Time and Cost Requirements for Adoptive Parents

Country	Total Time Involved	Approximate Cost (depending on whether one or both parents travel abroad)
China	15-17 months (one trip abroad)	\$13,150 or \$15,400
Russia	5-15 months (two trips abroad)	\$33,710 (both parents required to travel abroad)
Guatemala	5-11 months (one trip abroad)	\$26,335 or \$27,335
Vietnam	3-12 months (one trip abroad)	\$18,775 or \$20,815
Brazil	5-14 months (one trip abroad)	\$16,930 or \$22,740
India	8-18 months or longer (one trip abroad)	\$20,490 or \$22,740

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Families Thru International Adoption.

Table 2: Specific Requirements for adoptions from Guatemala

Form No	Description	Expected Timeframe
I-600A	Eligibility of Parents to Adopt Overseas (home study, etc.)	6 months (may be done in advance or concurrently with other steps)
	Proof of "orphan" status (birth certificates, cedula, hospital records)	2 months (depends on attorney and situation)
	DNA test submission	30 days (after previous step)
	DNA test approval	4 weeks (after previous step)
	Guatemalan court documents	2 months (after previous step)
	Finalizing the adoption – adoption deed	7 days (after previous step)
	Guatemalan Birth Certificate with name(s) of adoptive parents	7 days (after previous step)
	Guatemalan passport	1 day (after adoption deed)
I-600	Petition to classify an orphan (blue form) and final adoption documents packet (Form I-600 is filed in the U.S. for escort cases).	Normally within 3 business days following submission to DHS/USCIS at the Embassy "Pink Slips" are issued M-Th at 3:45p.m.
	Medical report	Completed after previous step and prior to the interview.
DS-230	Immigrant Visa application	Same day as interview
I-864 (for IR-4 cases only)	Affidavit of support with previous year's tax returns, etc.	Same day as interview
IR-3 or IR-4	Immigrant Visa	3:30 p.m. the next workday following the interview

U.S. Department of State. (2007, February) Intercountry adoption: Guatemala. Retrieved September 17, 2007, from [www.http://travel.state.gov/family/adoption/country/country_389.html](http://travel.state.gov/family/adoption/country/country_389.html).

Table 3: Hague countries and year of ratification

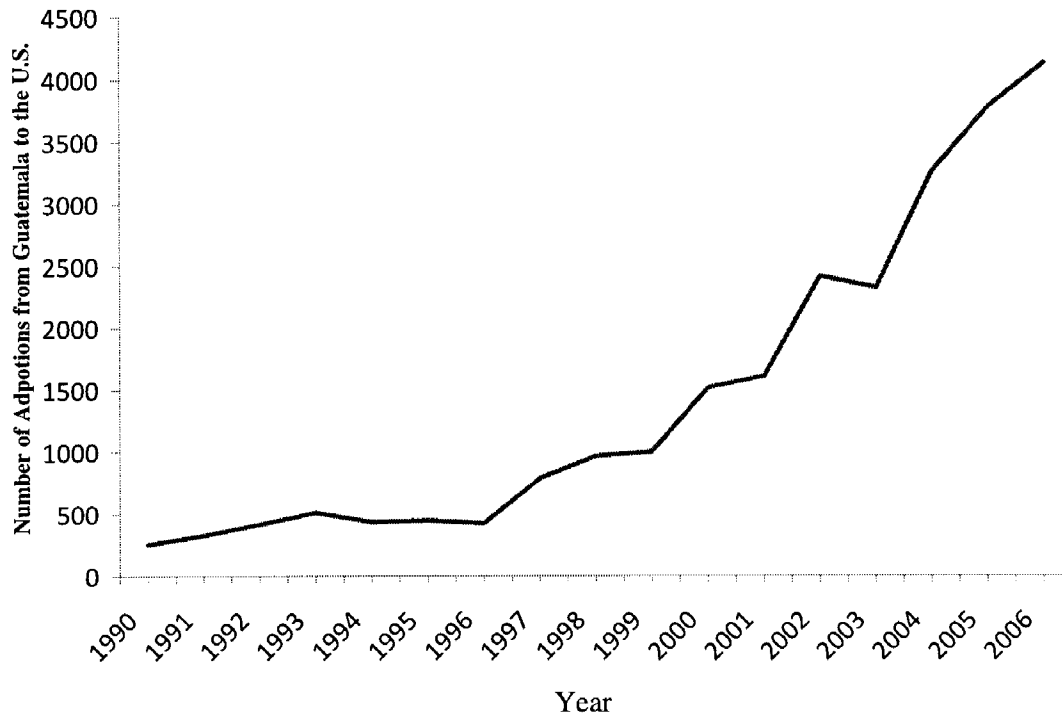
Country	Year of Ratification	Country	Year of Ratification
Mexico	1994	Czech Republic	2000
Romania	1994	Iceland	2000
Canada	1995	Italy	2000
Cyprus	1995	Mongolia	2000
Ecuador	1995	Russia*	2000
Peru	1995	Slovakia	2001
Poland	1995	Bulgaria	2002
Spain	1995	Estonia	2002
Sri Lanka	1995	Latvia	2002
Costa Rica	1995	Slovenia	2002
Burkina Faso	1996	Switzerland	2002
Phillippines	1996	Bolivia	2002
Ireland*	1996	Guatemala	2002
Denmark	1997	Belarus	2003
Finland	1997	India	2003
Norway	1997	South Africa	2003
Sweden	1997	United Kingdom	2003
Venezuela	1997	Uruguay	2003
Andorra	1997	Guinea	2003
Australia	1998	Malta	2004
France	1998	Portugal	2004
Lithuania	1998	Turkey	2004
Netherlands	1998	Azerbaijan	2004
New Zealand	1998	Madagascar	2004
Paraguay	1998	San Marino	2004
Colombia	1998	Thailand	2004
El Salvador	1998	Belgium	2005
Mauritius	1998	China	2005
Moldova	1998	Hungary	2005
Austria	1999	Belize	2005
Brazil	1999	Dominican Republic	2006
Chile	1999	Mali	2006
Georgia	1999	United States	2007
Germany	1999	Armenia	2007
Israel	1999	Burundi	2007
Monaco	1999	Cambodia	2007
Panama	1999	Cuba	2007
Albania	2000	Kenya	2007

* Ireland and Russia have both signed to the Hague, but have yet to ratify.

Status table. Hague Conference on Private International Law. Retrieved April 7, 2008,

from http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69.

Figure 1: Growth in the Number of Adoptions from Guatemala to the United States

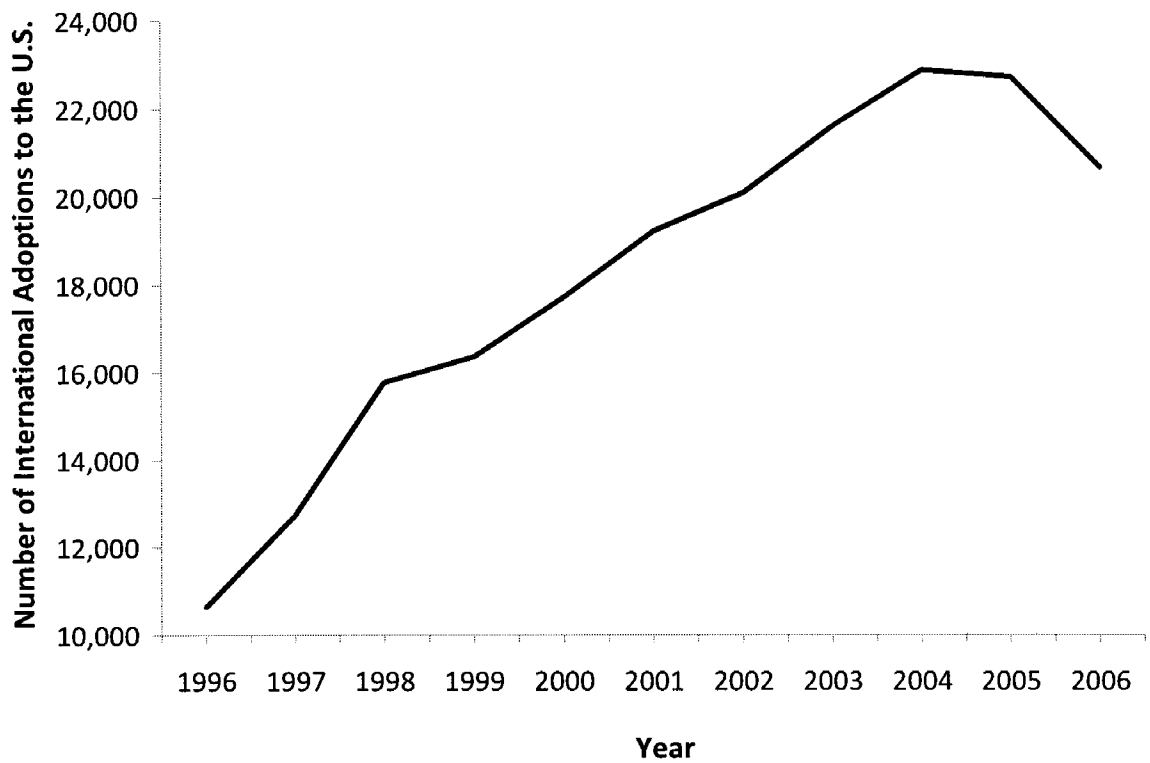


U.S. Department of State. (2007) Immigrant visas issued to orphans coming to the

U.S. Retrieved November 18, 2007, from

http://travel.state.gov/family/adoption/stats/stats_451.html.

Figure 2: Recent Decrease in the Number of International Adoptions to the United States



U.S. Department of State. (2007) Immigrant visas issued to orphans coming to the

U.S. Retrieved November 18, 2007, from

http://travel.state.gov/family/adoption/stats/stats_451.html.