CICIG Comisión Internacional Contra la Impunidad en Guatemala

Report on Players Involved in the Illegal Adoption Process in Guatemala since the Entry into Force of the Adoption Law

(Decree 77-2007)

Guatemala, December 1, 2010

Translated from Spanish by
Ilma Niederheitmann Bayo

TABLE OF CONTENTS

I PRESENTATION

Latin America is one of the most unequal regions in the world, with one of the highest rates of violence, which affects mainly women and children. In Guatemala, people aged 0-17 represent more than half the total population.

Although significant progress has been made, Guatemala has not been able to ensure that children can live free from violence and protected against all forms of abuse or exploitation. Impunity, and thus violence, are marking the lives of children and adolescents in Guatemala.

For years, many children have been stolen, missing and/or kidnapped for trafficking under the irregular guise of adoption; their mothers were threatened, deceived or even punished in their communities. An example of the consequences of impunity is the fact that in 2007, 60% of lynchings in Guatemala concerned alleged abductions of children.

This problem is one of the main concerns of the International Commission against Impunity in Guatemala (known by its Spanish acronym as CICIG).

That was precisely why, to support the considerable efforts made by UNICEF in this area, the "Agreement for Cooperation on Studies on Children and Adolescents" was signed to continue supporting the work of UNICEF and institutions responsible for child protection and investigation of crimes committed against children and adolescents in connection with Guatemalan clandestine organizations and illegal security bodies.

That is the context of this study. It sets out the results of investigations conducted by the International Commission against Impunity in Guatemala (CICIG) of all domestic and inter-country adoption proceedings conducted during the transition period that started on 31 December 2007 with the entry into force of the Adoption Law and of the first ones processed under the regulations of the new law. The Adoption Law of Guatemala contains the principles enshrined the Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Convention), ratified by Guatemala.

Reducing violence and impunity in this type of crimes requires not only strong political will in the criminal and investigative area, but also that this will be exercised by all the institutions responsible for the comprehensive protection of children and adolescents.

That is why CICIG presents specific recommendations and hopes that they will be followed in keeping with the national and international obligations of each State institution in charge of the comprehensive protection system in favor of Guatemalan children and adolescents.

Finally, I thank all the officials of Guatemalan institutions who cooperated with CICIG by providing information for this study and thank all my colleagues at the International Commission against Impunity who worked with great professionalism and commitment in the preparation of this report. Guatemala deserves a country worthy of its children, without violence and with institutions that can be trusted.

I conclude by quoting the preamble to the Convention on the Rights of the Child:

> *"… recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world... In all countries in the world there are children living in exceptionally difficult conditions, and that such children need special consideration."*

Francisco Dall'Anese Ruiz

Commissioner

International Commission against Impunity

II EXECUTIVE SUMMARY

REPORT ON PLAYERS INVOLVED IN THE ADOPTION PROCESS IN GUATEMALA SINCE THE ENTRY INTO FORCE OF THE ADOPTION LAW (LEGISLATIVE DECREE No. 77-2007)

This report is the result of an investigation conducted by the International Commission against Impunity in Guatemala (CICIG) on all domestic and international adoption proceedings during the transition period that started on 31 December 2007, when the Adoption Law went into effect, and the first adoptions processed under the regulations governing the new law.

The Adoption Law established a new legal adoption procedure that eliminated the possibility of processing adoptions through a notary public and incorporated the provisions of Article 22 of the Convention on the Rights of the Child and the Convention On Protection and Co-operation in Respect of Inter-country Adoption (The Hague Convention), into the national legal adoption system. These include adoption as a last resort, identification of suitable measures, which include placement with the child's birth or extended family, preference for national adoption over international adoption and the obligation to conduct compatibility studies between the adoptive family and a child given up for adoption in the best interests of the child.

The new adoption law established a transition period during which all adoptions initiated prior to the enactment of this law would be processed under the old legislation. The only requirement was registration with the National Adoption Council (NAC), the new central authority for adoptions under the new law.

Therefore, during the transition period, notaries continued exclusively handling adoptions, of which there were 3,342 according CICIG, with the Solicitor General's Office (known by its Spanish acronym as PGN) acting as a monitoring body. Five months after the entry into force of the Adoption Law, serious illegalities were identified in the transitional proceedings. This led to the creation of a verification process supervised by PGN and NAC. The investigation conducted by CICIG analyzed the illegalities committed and found that the verification process did not prevent many of the same from continuing.

a. Irregularities Detected

CICIG analyzed various allegedly criminal facts and identified different proceedings used by illegal networks engaged in trafficking for purposes of irregular adoption. These networks are made up, among others, of snatchers ("jaladoras") who kidnap or "buy" children from their birth mothers. In some cases, they threaten, coerce or deceive the mothers into giving their children up for adoption. They are associated with notaries who process the adoptions. Children are sometimes kidnapped and given fake identity papers. Women are used to supplant birth mothers through forged identity documents. For this purpose, both notaries and snatchers, who are usually at the core of these networks, rely on doctors, midwives, registrars of vital statistics in different municipalities and DNA laboratories, where the relevant tests are also falsified.

An analysis of adoptions handled during the transition period has also shown that notaries involved in serious irregularities continue to serve as local representatives or facilitators of international adoption agencies, using the methods described above to obtain children who meet certain characteristics.

Another model, known as "child laundering", consists of presenting to a Court for Children and Adolescents children who were stolen or bought, claiming that they were abandoned, getting the court

to declare them abandoned and thus beginning the adoption process without having to forge the child's or the mother's documents. This is possible because neither the judges nor PGN order investigations to determine the background or try to locate the allegedly abandoned child's biological family.

In other cases, judges for children and adolescents would order caregivers, children's homes and homes that were not accredited to provide shelter and care for children. Their legal representatives would later carry out the adoption process.

In addition to judges involved in child laundering activities or who allow these illegal actions by failing to act (who in some cases have been stripped of immunity through motions for impeachment), the CICIG investigation found that these criminal networks used other actors in State institutions to facilitate illegal adoptions during the transition period.

PGN gave its consent to adoption proceedings that were begun by notaries after the entry into force of the new law, or that were never registered with NAC, or where the documentation clearly showed that changes had been made to give false identities to some of the parties involved, among others.

The verification process included actions to prevent waiver of the mother's rights or to remedy obvious flaws, such as misrepresentations in the documentation. It found that many PGN and NAC officials who took part in the verification and control process sought to remedy the irregularities, instead of analyzing the defects or offenses that led to the suspected irregularities. In some cases, these administrative control offices even agreed and allowed the adoption of children whose illegal origin was already under investigation by the Public Prosecutor's Office (Public Ministry or Ministry of Justice). There are irregularities in about 60% of the cases handled during the transition period. However, in over 90% of the cases, PGN ruled that the adoption could proceed.

In mid-2010, six lawyers of the Solicitor General's Office and a judge for Children and Adolescents were being investigated by the Office of the Solicitor General.

This leads to the conclusion that serious crimes contemplated in the Guatemalan Penal Code and the Law against Organized Crime: unlawful association, conspiracy, trafficking for the purpose of illegal adoption, child abduction, material misrepresentation, forgery and others, were committed during the transition period.

Despite these control weaknesses, judicial, PGN and NAC officials found problems in several cases during the transition period. These cases (approximately 300) were pending as of April 2010. CICIG found that serious flaws in these cases should mean that notaries could not finish processing most of them as planned, or even that the adoptions could not be approved.

Obvious irregularities are also inherent to the transition process itself with regard with adoptions that are still pending. At least 40% of these adoptions were commenced after the entry into force of the Adoption Law; under this law, they should be processed in accordance with the rules, terms and principles of the new legislation. On the other hand, more than 20% of pending adoptions are being investigated by the Public Prosecutor's Office and it is likely that this percentage will increase as review of the cases continues. Finally, in certain cases, the children have been returned to their mothers because they gave up the adoption or there is evidence that they had been coerced.

b. Problems In the Framework of the New Law

CICIG also analyzed a sample of one-third of the 500 adoptions that are being processed under the Adoption Law.

The investigation found that many adoptions processed under the new system show serious flaws. The Adoption Law provides that the institution responsible for determining the child's origin is PGN. However, PGN did not investigate or ascertain the origin of at least 60% of the children that Judges for Children and Adolescents declared adoptable. PGN admitted that it has only three investigators for the

entire country and that it carried out no investigations at all for certain court hearings. In spite of this, the child was declared adoptable.

On the other hand, the institution of the foster family as defined by the Adoption Law and regulated in the Law on Protection of Children and Adolescents, has been used to disguise flawed adoptions. The new law provides that a foster family is one that welcomes a child temporarily until his or her permanent placement is decided. However, [CICIG] identified cases where Judges for Children and Adolescents used foster families to temporarily surrender children to foreign families who are not legal residents of Guatemala with minimal requirements, or to domestic or foreign foster families that are not accredited by the Social Welfare Secretariat (known by its Spanish acronym as SBS).

The National Adoption Council has not completed the accreditation of homes and/or children's homes to care for children whose adoptions are being processed; Judges for Children and Adolescents are still using children's homes that were involved in illegal adoptions and/or are not accredited by the NAC.

Furthermore, it should be noted that, two years after the entry into force of the Adoption Law, regulations to implement the law had not yet been adopted.[1]

Some of the institutions involved in the new process (mainly PGN and SBS) have not yet drafted internal regulations that establish the basic guidelines for investigation and determination of an ideal family placement, investigation the origins of the child and the relevant declaration of adoptability, and constraints for foster families to adopt. In addition, with only three investigators, PGN does not have the ability to fulfill the considerable responsibilities assigned to it by the new rules to prevent the adoption of abducted or purchased children.

Finally, the CICIG investigation found that representatives of certain international agencies that have been recently recommended by the central authorities of countries interested in having their citizens adopt children from Guatemala are linked to illegal adoptions and are being investigated by the judicial authorities.

The large number of irregularities and the principles of the new law, such as adoption as a last resort and the preference for domestic adoption in all cases, ensure that proper functioning of the Adoption Law can lead to a very significant reduction in the number of international adoptions of Guatemalan children. Implementation of the new law cannot prevent illegalities if members of the networks described above are involved or if institutions are not strengthened.

*** Note: The report was completed in June 2010; however, some facts contained therein were updated by information provided to CICIG as of November 2010.*

c. Recommendations

In view of the above, CICIG is of the view that before launching a Pilot Plan for international adoption, the State of Guatemala should take the following immediate actions:

- The Executive must approve and publish Regulations of the Adoption Law that regulate the responsibilities of each of the entities involved in the different phases of the adoption proceedings as set forth in the Adoption Law, in addition to regulating the functions and duties of the National Adoption Council.
- The Supreme Court should pay special attention to motions for impeachment of judges to prevent judges involved in human trafficking for irregular adoption purposes from continuing to participate in adoption proceedings or in criminal cases linked with adoptions.

[1] The regulations of the Adoption Law were published In July 2010. However, this Commission is of the view that the Regulations of the Adoption Law should regulate all the stages of the adoption proceedings for which each of the entities is responsible. These are contemplated in the Adoption Law but not in the recently adopted Regulations.

- The Solicitor General's Office (PGN) and the Social Welfare Secretariat should adopt internal regulations governing the proceedings to be carried out by each of the institutions involved in the adoption process.
- The Social Welfare Secretariat should adopt and strengthen the foster care program, including the search for interested families and their training.
- The National Adoption Council should register midwives and obstetricians in the different municipalities, in coordination with the Ministry of Health.
- The National Adoption Council should establish homes, associations and children's homes that were not involved in unlawful conduct or irregularities under the old procedure.
- The National Adoption Council must not cooperate with international adoption agencies that are involved in illegal adoption proceedings investigated by the Public Prosecutor's Office.
- The Solicitor General's Office should be strengthened and have an adequate number of investigators for effective determination of a child's origins.
- The Solicitor General's Office should be instructed by the Solicitor General to investigate a child's origins.
- The Solicitor General's Office should take action to clean up institutions.
- The State of Guatemala must resume discussion of the Organic Law of the Solicitor General's Office. The current regulatory body that governs this institution is Decree 512, Law of the Public Prosecutor's Office, issued in 1948, when the Public Prosecutor's Office and PGN were a single entity. That legislation assigns different functions to PGN, including legal representation of the State and representation of minors and incompetents. It is imperative to resume legal discussion of mechanisms to strengthen State representation, particularly judicial action for defense of its assets, and to adopt a State policy on child advocacy, including discussion of what public bodies have that primary responsibility. Further, decisions regarding the representation of minors should involve clear guidelines on strengthening the capacity for legal action in defense of the best interests of child victims of trafficking.
- As for the reaction of the justice system, it is important that both judges and prosecutors consider trafficking in persons for irregular adoption purposes forms of organized crime, especially in transnational cases.
- It follows from the above that investigation and punishment should consider:
    - seeking punishment of those responsible for the offenses committed, to prevent impunity;
    - attacking adoption structures as a criminal policy objective;
    - using the mechanisms provided in the Law against Organized Crime, including the characterization of crimes, special investigation methods and defendant-informants;
    - extending the investigation or the proceeds of criminal activities;
    - working with financial intelligence units to identify unexplained capital flows that may be indications of criminal activity and using legal mechanisms for seizure of property obtained illegally by members of criminal organizations;
    - It is also important to understand that coordination with investigative units different from those responsible for trafficking offenses may lead to cases linked to criminal organizations, such as those dealt with by the Office for Prosecution of Administrative Offenses, Money Laundering, etc.

El 01 de Agosto de 2007, el Congreso de la República de Guatemala ratificó el Acuerdo constitutivo de la Comisión Internacional Contra la Impunidad en Guatemala (CICIG), el cual había sido suscrito entre el Gobierno de Guatemala y la Organización de las Naciones Unidas el día 12 de diciembre de 2006.

III INTRODUCTION

On 1 August 2007, the Congress of the Republic of Guatemala ratified the agreement establishing the International Commission against Impunity in Guatemala (CICIG), which had been signed between the Government of Guatemala and the United Nations on 12 December 2006. The International Commission against Impunity was created under the agreement.

Since its inception, the Commission has made every effort to fulfill its institutional mandate of determining the existence of illegal groups and clandestine security organizations. It has assisted the State in dismantling those groups and structures by promoting investigation, prosecution and punishment of crimes committed by their members and recommended that the State adopt public policies to dismantle these illegal groups and clandestine organizations and prevent their recurrence.

To accomplish this, CICIG is vested with various powers, which include collecting, evaluating and systematizing information provided by official or private persons or entities, NGOs, international agencies and authorities of other States as well as to publish general and thematic reports.

In this context, CICIG deemed it advisable to prepare this report on illegal adoptions in Guatemala, since behind the adoption proceedings involved in these there are often structures that take advantage of the weaknesses of the institutions responsible for child protection and the legality of the adoption process. They have also established illegal interactions with the authorities responsible for them.

These circumstances create a fertile ground for the commission of illegal acts, leading, on the one hand, to the institutional weakness of the supervisory bodies and on the other, to treatment of human beings –children subject to irregular adoption proceedings– as commodities from which the many players that make up criminal networks obtain financial benefits.

The seriousness of the circumstances CICIG detected regarding this issue, from the standpoint of criminal policy and human rights, the transnational character of the networks involved, the links between these and State authorities and the impunity of those involved in these crimes, show that actions must be carried out to discourage and put an end to the problem.

In this regard, despite the positive changes in Guatemalan law, impunity is persistent in the area of irregular adoptions, while the networks that existed prior to the legislative changes have barely been affected by the disciplinary response. On the other hand, there is strong evidence that changes in regulations are leading networks to change their methods but have not affected their existence, which is motivated mainly by powerful financial incentives. These are not presently outweighed by disincentives such as investigation and punishment of those involved, in and outside State structures, and the dismantling of the structures to which they belong or with which they interact.

This report is a brief situational analysis of the transition from the pre-existing regulatory framework and how this transition allowed members of structures that profit from adoptions to validate adoption proceedings suffering from obvious flaws. This reflects the extent to which networks have infiltrated the authorities created precisely to protect the rights of the main subjects of the adoption process, i.e. Guatemalan children.

The report also points out that there is clear evidence that the structures involved in illegal adoptions still benefit from the actions of public entities responsible for the protection of children, which breaches their rights and weakens the rule of law.

For this report, CICIG collected data from public sources; consulted adoption records, criminal investigation records, national, regional and international law and specialized bibliographic information, and conducted interviews with qualified sources. It also processed and analyzed information available in public oversight bodies and even developed appropriate computer support for this purpose.

The result of this report shows that a series of normative institutional strengthening actions are required to equip the State with the necessary tools to protect the rights of those involved in adoption proceedings

effectively. These are birth and adoptive families, but more importantly, Guatemalan boys and girls who are given up for adoption if this is in their best interests, which is the principle that should underlie any adoption.

The State's ability to investigate, prosecute and punish the perpetrators of adoption-related crimes, often associated with trafficking, which is regarded internationally as a particularly odious human rights violation, must be strengthened. Therefore, addressing the recommendations contained in this report is of the utmost importance to keep the illegal bodies and clandestine structures involved from benefiting from the weak State control structure in the future.

Finally, the International Commission against Impunity in Guatemala expresses its appreciation to those who contributed to this report and its deepest appreciation to all Guatemalans who are fighting impunity.

** Note: The report was completed in June 2010; however, some facts contained therein were updated with information provided to CICIG as of November 2010.

a. Objective

The main purpose of this study was to computerize and analyze information on the 3,342 adoption proceedings of children subject to domestic or international adoption under the Law Regulating Processing by Notaries of Matters under Voluntary Jurisdiction (Decree 54-77 of Congress) (notarial or voluntary jurisdiction proceedings) that were pending at the time of entry into force of the Adoption Law (Decree 77-2007). Throughout this report, the International Commission against Impunity (hereinafter called 'CICIG' or 'Commission') will call these cases "adoptions processed during the transition period".[2]

With the entry into force of the Adoption Law on 31 December 2007, a set of transitional arrangements was established, aimed at ensuring completion of all proceedings commenced prior to the entry into force of the new law. Notaries would continue processing these cases and they would be registered with the central authority created upon the enactment of the Adoption Law within a period not exceeding thirty days. This central authority is the National Adoption Council (NAC).[3]

In May 2008, the National Adoption Council (hereinafter called "the Council" or "NAC") and the Solicitor General's Office (hereinafter called "Solicitor" or "PGN") decided that cases filed before the entry into force of the Adoption Law and registered between January and February 2008 with NAC were to be reviewed through the so-called "Verification Process".

NAC identified the records of at least 893 children that were not brought in for review. Therefore, in February 2009, NAC requested that four Children's and Adolescents' Courts (hereinafter called "Children's Courts") order precautionary measures[4].

As of 30 June 2010, at least 300 adoptions processed during the transition period were still pending, including some that presented serious irregularities throughout the entire transition period.

CICIG analyzed each of the adoptions processed during the transition period in detail, determined that members of State institutions had participated in irregular adoptions and gave proof of the presence and activities of child trafficking networks.

This study also analyzes a sample of 153 cases processed under the Adoption Law, which came into force on 31 December 2007, and identified a number of irregularities described in the chapter on adoption proceedings under the Adoption Law.

---

[2] The study period covers mainly proceedings approved by a favorable PGN opinion between 3 January 2008 and 31 July 2009. However, the study provides relevant updates as of 30 June 2010, when at least 300 cases were pending.

[3] See also National Adoption Council, 2008 Annual Report, http://www.cna.gob.gt (as of May 31, 2010).

[4] El Periódico, Guatemala, February 28, 2009. "NAC Refers 985 Cases to Children's Courts." http://www.elperiodico.com.gt/es/20090228/pais/92835/ (as of May 31, 2010).

In this sense, CICIG cautioned regarding the likelihood of reactivation of trafficking networks for irregular adoption purposes under the new legislation and drew attention to some irregular adoption cases processed under the new Adoption Law.

Failure to investigate the actions allegedly constituting crimes is a violation of the proceedings established by the new law. Seen together, these provide evidence of the systematic acts and omissions carried out in an effort to preserve irregular practices that were prevalent in the past and the activity of illegal structures or networks that profit from this form of trafficking in persons.

b. CICIG Activities in the Prevention and Prosecution of the Crime of Trafficking in Persons for Illegal Adoption Purposes

CICIG's main function is to assist the State in dismantling clandestine and illegal security forces and promote the investigation, prosecution and punishment of crimes committed by their members. It includes recommending that the State adopt public policies to eradicate clandestine and illegal security forces and prevent their recurrence, including the necessary legal and institutional reforms for this purpose, acting with complete functional independence in the discharge of its mandate.[5]

To carry out its activities, based on Article 3, paragraphs (a) and (l) of the Agreement, CICIG may: (a) gather, evaluate and organize information provided by official or private persons, NGOs, international agencies and authorities of other States; (l) submit general and thematic reports on its activities and their results, including recommendations in keeping with its mandate.

In addition, pursuant to Article 4, paragraph 2, CICIG may enter into agreements with other states and international organizations as necessary in order to carry out its activities and perform its duties.

Accordingly, a Cooperation Agreement was signed on February 13, 2009 between the International Commission against Impunity (CICIG) and the United Nations Fund for Children (UNICEF) for studies on children and adolescents.[6] The purpose of the Agreement is to support, strengthen and assist Guatemalan State institutions responsible for ensuring the rights of children and adolescents.

Since it began operating, CICIG has monitored several irregular adoption cases, providing technical assistance to the Unit against Human Trafficking and Illegal Adoptions of the Organized Crime Prosecution Office. CICIG has thus supported specific investigation and prosecution activities conducted by the Public Prosecutor's Office.

CICIG has been in constant communication with members of civil society, strengthening their capacities in order to ensure better access to justice in these cases.

CICIG has monitored the transition process and implementation of the Adoption Law, participating in various events and interagency working groups to contribute its vision to the development of strategies for prevention of the crime of human trafficking.

Finally, CICIG has made a set of recommendations for legal reform of the rules on penalties for trafficking in persons, in order to define such criminal, facilitate their investigation, prosecution and punishment and support the implementation of special investigative proceedings, given the transnational organized crime nature of these activities.

In keeping with the mandate of the Commission, this report is submitted to assist the State of Guatemala in identifying and investigating illegal groups and clandestine structures involved in networks that engage in trafficking in persons for irregular adoption purposes acting with the assent and/or direct

[5] Under Article 2, the Agreement stipulates that its main functions are to: (a) determine the existence of illegal security forces and clandestine organizations, their structure, manner of operating, financial sources and possible links with State entities or agents and other sectors that threaten civil and political rights in Guatemala; (b) cooperate with the State in dismantling clandestine security forces and illegal organizations and promote investigation, criminal prosecution and punishment of crimes committed by their members; (c) recommend that the State adopt public policies to eradicate clandestine and illegal security forces and prevent their recurrence, including legal and institutional measures to this end.

[6] Published in http://cicig.org/index.php?page=convenio (as of May 31, 2010).

involvement of government agents capable of promoting impunity by taking advantage of their ties with members of the institutions responsible for providing protection to children and adolescents in national and international adoption proceedings.

c. Methodology

This report analyzes the results obtained by collating and analyzing information provided by different institutions.

Sources of information used in the study were qualitatively and quantitatively varied in nature.

All data collection instruments were specifically designed for the report and implemented by project staff.

Most of the information was collected from the following sources[7]:

- PGN forms, notarial notices, records, databases and listings provided by PGN, NAC and the Immigration Bureau (hereinafter called 'DGM', as it is known by its Spanish acronym) relating to adoptions during the transition period.
- Resolutions of Courts for Children and Adolescents with regard to protection measures on behalf of children brought in for the verification process.
- Information provided by independent investigation on 153 adoption cases processed under the Adoption Law.
- Records of complaints to the Public Prosecutor's Office (MP) between November 2007 and July 2009 and review of cases investigated by the Human Trafficking Unit of the Organized Crime Prosecution Office.
- Investigation and documentation regarding this problem.
- Reports and documents emanating from non-governmental organizations that study national and international trafficking.
- United Nations system reports.
- Interviews with members of civil society, UNICEF (HQ) and UNICEF Guatemala officials, officials of the Committee on the Rights of the Child, PGN officials, NAC officials, MP prosecutors and assistant prosecutors, National Civilian Police (PNC) officers and members of international organizations such as International Social Service.

All information concerning adoptions handled during the transition period was used by CICIG to design and develop a database, which served as the main source of the information contained in this study.[8]

In this sense, the database was used:

- o To identify the number of children subject to notarial adoption proceedings in transition and pending completion at the time of entry into force of the new Adoption Law, Decree 77-2007 of Congress.
- o For analysis by CICIG and to computerize the results of this study.
- o To collect statistics and identify patterns showing the existence of structures and their possible links with networks dedicated to illegal international adoption of Guatemalan children.
- o For the purposes of this study, the masculine gender includes the feminine when referring to children, notaries, etc.

[7] Attachment containing the details on information sources.

[8] Attachment on Building the CICIG Database.

1 BACKGROUND AND CURRENT CONTEXT OF ADOPTIONS IN GUATEMALA

a. Regulatory Background

The current problem of illegal adoptions in Guatemala originated in the internal armed conflict that took place between 1960 and 1996.

The problem was compounded by a number of restrictions in limiting illegalities and crimes on the one hand, and by resistance on the part of certain sectors that benefited from international adoptions on the other.

Various studies indicate that domestic and international adoptions in Guatemala were fraught with unlawful practices and illegalities since their inception.

During the internal armed conflict, the country's armed forces played an important role in the adoption process. An investigation conducted by the Peace Archives Bureau, contained in the report of the Peace Secretariat (SEPAZ) on adoptions at the time, states that: "The files that contain information on children given up for adoption include data involving members of the Army and National Police in the transfer of children".[9]

The report mentions how adoption proceedings acquire significance in accordance with the institutions of government that "were responsible for the legalization of adoptions and had the power to determine the lives and futures"[10] of thousands of Guatemalan children.

Even the Commission for Historical Clarification (known by its Spanish acronym as CEH) ascertained the "generalized" violation of children's right to a family, identity and culture and included specific recommendations on "missing children,[11] children adopted illegally or illegally separated from their families".[12]

From a policy perspective, there are three important stages in connection with adoptions in Guatemala:

a.1. First Period (1963-1977)

The Civil Code stated at the time that a competent Trial Judge should file the adoption application and take steps for its implementation. For its part, the Public Prosecutor's Office (then part of the Solicitor General's Office) examined such proceedings and had the power to object if it believed that the procedure did not meet all the legal requirements.[13]

At that time, the entity responsible for carrying out such proceedings in the case of abandoned minors was the Social Welfare Secretariat of the Presidency of the Republic.

a.2. Second Period (1977-2007)

During this period, the institutional roles changed many times and conflicts arose among groups that benefited from illegal adoption proceedings.

---

[9] Secretariat for Peace (SERPAZ), "The Adoption and Human Rights of Guatemalan children, 1977-1989." First Edition. Guatemala, September 2009.

[10] *Ibid.* Pages 26 and 27.

[11] Between 2001 and 2003 there was an "Inter-institutional Commission for Children," which established that 46% of the victims were less than a year old when they went missing.

[12] Commission for Historical Clarification (CEH), Guatemala, A Memoir of Silence ", June 1999. Conclusions and recommendations. Paragraph 24.

[13] *Ibid.*

The main event was the entry into force in 1977 of the Law Regulating Processing by Notaries of Matters under Voluntary Jurisdiction (Decree No. 54-77), the result of which was that Trial Judges were "overshadowed by notaries and protection centers. The normative emergence of the notary as manager of the adoption process and the leading role of Child Protection Centers allowed the removal of institutional checks established by the State. The notary had the power to formalize the adoption proceedings without prior judicial authorization".[14]

> *"Adoptions governed by the Civil Code may be formalized by a notary public without requiring prior judicial approval of the proceedings." (Decree 54-77, 1977, Article 28).*
>
> *"A person wishing to adopt another may apply to a notary, submitting the birth certificate and proposing of two honorable persons as witnesses, in order to establish the adopter's good standing and economic and moral ability to meet the obligations entailed by adoption and a favorable report or opinion under oath of a social worker reporting to the Family Court of his jurisdiction." (Decree 54-77, 1977, Art 29).*[15]

Under these new regulations, the Solicitor General's Office (PGN) was virtually the only State institution responsible for monitoring and approving notarial adoption proceedings as a procedure under voluntary jurisdiction, which was conducted in accordance with the Law Regulating Processing by Notaries of Matters under Voluntary Jurisdiction (Decree No. 54-77), i.e., by a notary. In principle, the notaries only gave a notice before starting an adoption and PGN notary gave "approval" of sorts through a legal opinion.[16]

However, this control by PGN was not exercised properly and for years, not even notarial notices were mandatory. According to information provided by PGN officials, PGN files do not contain physical records of proceedings carried out during the period 2004-2006.

In 2002, Guatemala acceded to the Convention Relative to Child Protection and Cooperation in Inter-Country Adoption[17] (Hague Convention), which was to take effect in 2003. However, its validity was challenged by a group of lawyers[18] interested in preserving the system of adoption through notaries. The Constitutional Court declared the accession process of accession to this instrument unconstitutional,[19] arguing that accession had been carried out by the President of the Republic and that reservations made by Guatemala to Articles 11 and 12 of the Vienna Convention on Treaty Law exclude manifestation of the will of the State to be bound by a treaty, except through subscription or ratification.

The Vienna Convention on Treaty Law includes signature, exchange of instruments constituting a treaty, ratification, acceptance, approval, accession or any other appropriate form as ways of manifesting consent to be bound by a treaty. That is an open list, which made reservations by Guatemala to said articles unnecessary.[20]

This decision of the Constitutional Court led to the continuation of notarial adoption proceedings, i.e. with little active State control, except through PGN, and allowed the consolidation of child trafficking networks around these proceedings. This resulted in a sharp increase in the number of adoptions

---

[14] Secretariat for Peace, op. cit., page 21.

[15] *Ibidem*. Pages 20 and 21.

[16] Currently known as "Favorable Opinion.".

[17] Decree 50-2002 dated August 13, 2002.

[18] Consolidated Cases 1555-2002 and 1808-2002. Constitutional Court, made up of Judges Mario Guillermo Ruiz Wong, chairman, Cipriano Francisco Soto Tobar, Juan Francisco Flores Juárez, Rodolfo Rohrmoser Valdeavellano, Nery Saúl Dighero Herrera, Francisco José Palomo Tejeda and Manuel de Jesús Flores Hernández. Guatemala, 13 August 2003.

[19] Record 1109-2003, Constitutional Court: "... in a ruling issued by (the Constitutional Court) on 13 August, 2003 (Consolidated records 1555-2002 and 1808-2002), Decree 50-2002 of Congress, which incorporated said international convention into domestic law, is totally unconstitutional."

[20] Letter sent by the Foreign Affairs Commission of the Congress of the Republic of Guatemala to the legislative direction of Congress on 21 February 2006.

processed between 2003 and 2007 (year when the Adoption Law was enacted).

The Law on Protection of Children and Adolescents, also known as "PINA Law" (Decree No. 27-2003) entered into force in 2003. The PINA law recognized the institution of adoption,[21] and established the primary obligation to serve the best interests of children and adolescents.[22]

Those provisions state that the best interest of the child is the axiological purpose that must govern any decision taken with regard to children and adolescents to ensure the exercise and enjoyment of their rights, respecting family ties, defining all the actions that promote family unity and integrity as family interests.[23]

Thus, adoptions were to be carried out under treaties, conventions, agreements and other instruments ratified by Guatemala in this area,[24] which provide that a judicial process is the only lawful means for international adoption and promote the application of basic principles in the area of adoptions.[25]

With the entry into force of the PINA Law, Courts for Children and Adolescents were created and charged with protecting children at the judicial level. The Children's Solicitor was the responsible agency at the institutional level.[26] However, despite the provisions of the PINA Law stating that adoptions were to be processed by a court, the new protection system, meaning the Office of the Solicitor General (Children's Solicitor) and the Courts for Children and Adolescents continued the practice established by notaries.

Notwithstanding the decision of the Constitutional Court against the accession by Guatemala to the Hague Convention, concern on the part of civil society and the international community regarding irregular adoption proceedings[27] led to preparation at the beginning of 2007 of PGN's 'Manual of Good Practices'. This manual established controls that apparently followed constitutional and international rules with regard to children's protection and adoption.[28] However, even with manuals on good practices and institutional guidelines, the illegalities continued, because the manual legitimized the notarial process and no strict controls were established on pending adoption cases, which meant that purely formal controls prevailed.

In May 2007, the Constitutional Court recognized accession by Guatemala to the Hague Convention approved in Guatemala by the President of the Republic in 2002. PGN was described as an institution that would ensure better control of notarial adoption proceedings under Resolution 051-2007 relative to the registration of notarial notices. These notices were to be submitted by notaries to PGN within the ten days following the date of filing of the adoption application.

The handling by notaries of domestic and international adoptions was fraught with uncertainties, illegal

---

[21] Article 22 of the PINA Law.

[22] Article 50 of the PINA Law states: "Children and adolescents are entitled to protection from abduction, trafficking and sale for any purpose or in any manner. The State shall carry out appropriate activities and strategies at the national, bilateral and multilateral level to prevent these actions."

[23] http://www.pgn.gob.gt/procuraduria_de_la_ninez.html (as of May 31, 2010).

[24] Article 21 of the Convention on the Rights of the Child, http://www2.ohchr.org/spanish/law/crc.htm (as of May 31, 2010), Article 2, paragraph a) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and the Use of Children in Pornography, http://www2.ohchr.org/spanish/law/crc-sale.htm (as of May 31, 2010).

[25] Among others, the basic principles are that domestic adoptions should have priority over international ones; judicial control of the proceedings must prevail; control mechanisms to avoid improper charges; monitoring and verification of the conditions of the adopted child, etc. Principles established in the Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption and Article 20 of the Convention on the Rights of the Child.

[26] Articles 4, 5, 6, 8, 76 and 108 of the Law on Protection of Children and Adolescents, Decree No. 27-2003 of Congress.

[27] General Distr. A/HRC/11/7/Add.3, March 18, 2009. Original: Spanish. Report of Mr. Jorge Bustamante, Special Rapporteur on the human rights of migrants, Mission to Guatemala. "The Special Rapporteur notes with concern that the comments of the Committee on the Rights of the Child indicate an increase in Guatemala in recent years of cases of commercial sexual exploitation of children, sale of children, illegal adoption and trafficking."

[28] Solicitor General's Office, Manual of Good Practices for Domestic and International Adoptions in Guatemala, March 2007. http://webcache.googleusercontent.com/search?q=cache:q53Ova2LqZAJ:www.pgn.gob.gt/Download.php%3FID_DOWNLOAD%3D17%26ID_CATEGORY%3D6+manual+de+buans+practicas+pgn&cd=1&hl=es&ct=clnk&gl=gt (as of June 15, 2010).

practices and irregularities.[29] In some cases, adoptions were processed against the best interests of the child by failing to find suitable options or solutions in the child's extended family. Child trafficking networks gained strength. Among other activities, they forged documents, abducted children, falsified DNA evidence and threatened mothers to make them give their children up for adoption.[30]

Such irregularities constituted crimes under the Criminal Code of Guatemala. However, the lack of investigation of cases of trafficking for the purpose of illegal adoption and the lack of respect of the children's best interests led to a situation of impunity for many years. Between 2000 and 2007[31], more than 20,000 children left Guatemala for other countries[32] without minimal controls in the processing of their adoptions.

a.3. Third Period (2007 to date)

Between 1992 and 2005, eight adoption bills were introduced in Congress.[33]

Finally, on 11 December 2007[34], Congress passed the Adoption Law (Decree 77-2007), which ushered in a new period that included a follow-up mechanism designed to monitor system performance and guarantee the status, security and integrity of adopted children.[35]

With the entry into force of the Adoption Law on December 31, 2007, control over adoption proceedings was ensured by a central authority called the National Adoption Council (NAC)[36] and the Judiciary (Family Courts and Courts for Children and Adolescents), which give the State greater control over the adoption process and define the rights of persons, in this case children.

It should be stressed that upon the entry into force of the Adoption Law, transitional provisions were established whereby all notarial and judicial adoption proceedings that were in progress when the law went into effect had to be registered with the Central Authority (NAC) within a period not exceeding thirty days. For registration purposes, the process would continue in accordance with the applicable law at the time of filing. These cases should be verified and monitored by the Central Authority.[37] Cases not registered within the established period would be resolved according to the procedure established in the new law.[38]

These transitional provisions, intended to establish some control and monitoring of notarial adoption proceedings, led to a series of irregularities that will be described throughout this study.

---

[29] Casa Alianza, COPREDEH, Myrna Mack Foundation, Survivors' Foundation, Social Movement for Children and Adolescents, ODHAG and Social Welfare Secretariat of the Presidency of the Republic. 'Adopciones en Guatemala: ¿protección o mercado?' ('Adoptions in Guatemala: Protection or Marketplace?' Guatemala, November 2007.

[30] Attachment: Paradigmatic Cases.

[31] 2006 and 2007 saw the highest number of adoptions per year in the history of Guatemala. Over 10,000 children (roughly 5,000 a year) were taken from Guatemala.

[32] Data provided by the Solicitor General's Office. Information provided by PGN. See also "Adoptions in Guatemala: Protection or Marketplace?' 2006, op. cit.

[33] Bill 3217 of 2005, introduced by Congressman Ortega Torres; Bill 2784 of 2002, introduced by Congressman Carlos Valladares; Bill 2381 of 2000, introduced by Congresswoman Nineth Montenegro; Bill 2118 of 1999, introduced by Congresswoman Nineth Montenegro; Bill 1852 of 1997, introduced by Congressman Baudilio Hichos; Bill 1694 of 1996, introduced by Congresswoman Nineth Montenegro, Bill 1142 of 1994, introduced by Congressman Andrés de Jesús Girón; unregistered Bill of 1992, introduced by Congressman Mario Taracena Diaz Sol. Information provided by UNICEF Guatemala.

[34] About six legislative proposals on adoption were introduced in Congress since 1991 and a bill was introduced in 2005.

[35] LaVoz.com, October 16, 2007. "Guatemala refuses to stop adoptions to the United States" http://www.radiolaprimerisima.com/noticias/20493 (as of May 31, 2010).

[36] See Attachment on Chronology.

[37] Articles 56 and 57 of the Adoption Law. Transitory Provisions.

[38] Article 56 of the Adoption Law.

b. Current Rules on Adoptions

Article 54 of the Constitution of the Republic of Guatemala states: "The State recognizes and protects adoption. An adopted child acquires the status of child of the adopter. Protection of orphaned and abandoned children is declared a matter of national interest."

According to the Adoption Law[39] "adoption" is a "social protection and law and order institution supervised by the State, whereby a person takes another person's child as his own biological child" and international adoption is "one in which a child legally residing in Guatemala will be transferred to a host country."

In conclusion, adoption is an institution that primarily ensures the welfare of children who lack the protection and support of a birth or extended family, considering primarily the best interests of the child and ensuring the rights enshrined in the Convention on the Rights of the Child.[40]

In criminal cases, the Guatemalan Penal Code characterizes trafficking in persons for illegal adoption purposes as a crime, like other similar behaviors, such as irregular adoptions and irregular adoption proceedings. It is important to remember that when adoption networks act, they also commit a series of crimes such as money laundering, active and passive bribery or misrepresentation, to name but a few. Therefore, the State is required to investigate, prosecute and punish those responsible for trafficking of children in connection with irregular adoption proceedings.

It should also be noted that trafficking in persons for illegal adoption and related offenses are prosecutable criminal activities under the Law on Organized Crime, which includes other crimes linked to this activity, such as obstruction of justice and conspiracy, and establishes special investigative means which seek, as the purpose of criminal policy, not only the punishment of members of these criminal structures, but dismantling the same.

Internationally, Guatemala has approved and ratified international and regional human rights treaties.[41] Guatemala has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted by Congress the Republic of Guatemala by Decree No.36-2003 of 19 August 2003.

The State of Guatemala must guarantee that adoptions respect the principle of the child's best interests, which should be based on national laws and instruments approved and ratified by Guatemala in this area. It must also protect fundamental rights of children and adolescents such as individual liberty, dignity, the right to self-determination and children's best interests, identity and legal status. In this context, international adoption should be supplementary to a national adoption when a child cannot be placed with an adoptive family in the country of origin.

---

[39] Adoption Law, Decree 77-2007, Article 2, paragraphs a and b.

[40] Article 21 of the Convention on the Rights of the Child states that they shall: "(a) ensure that a child's adoption is only authorized by competent authorities, who shall determine, in accordance with the applicable laws and proceedings and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's legal status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given informed consent to the adoption on the basis of advice that may be necessary; (b) recognize that inter-country adoption may be considered as an alternative means of caring for the child, if it cannot be placed in foster care or given to an adoptive family or cannot be assisted adequately in the country of origin; (c) Ensure that the child to be adopted in another country enjoys safeguards and standards equivalent to those existing with regard to adoption in the country of origin; (d) Take all appropriate measures to ensure that in the case of inter-country adoption, the placement does not result in improper financial gain for those involved; (e) Promote, where appropriate, the objectives of the present article by entering into bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by the competent authorities or bodies.

[41] E.g. the United Nations Convention against Transnational Organized Crime (http://www.acnur.org/biblioteca/pdf/1292.pdf (at 31 May 2010) and Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. http://www2.ohchr.org/spanish/law/pdf/protocoltraffic_sp.pdf (as of 31 May 2010).

c. Context of Adoptions in Guatemala

Adoption is a special measure for children who cannot be placed with their birth family or extended birth family. In principle, international adoption is exceptional and supplementary to domestic adoption, and possible when there is no adequate solution in the child's social and cultural environment, i.e., in the national sphere.

Since the internal armed conflict in Guatemala, the increase in international adoptions of Guatemalan children responded more to the interest of adoptive parents in finding a child, which generated a strong demand that led to the creation of child trafficking networks with the aim of processing illegal adoptions.

As was mentioned in previous sections, international adoptions in Guatemala began as a product of internal armed conflict,[42] but the demand made adoptions grow exponentially, mainly because of lack of State control, corruption and permissive legislation.[43]

Over time, privatization of the adoption process by Guatemalan notaries through notarial adoptions led, by promoting the trade, to consolidation of transnational organized crime networks involved in the processing of illegal adoptions, with the involvement of multiple actors who took advantage of the absence of effective Government control. 99 percent of adoptions from 1977 to 2007 were processed by notaries and by 2006, 95 percent of these were international adoptions.[44]

The statistics show that only 10 percent of the notarial adoptions refer to abandoned children, although in 2007 5,600[45] children were placed by judges for Children and Adolescents under the care and shelter of homes because they had been abandoned or under protective measures due to child abuse or maltreatment. In the same year, 5,110 small children that met the demand characteristics were placed for adoption. Most institutionalized children[46] (5295[47]) continúan en 2010, en la misma situación, con lo cual se corrobora el hecho que los niños dados en are still in the same situation in 2010. This corroborates by the fact that the children given for adoption were not necessarily abandoned or adoptable children.

This resulted in the strengthening of networks that provided financial benefits mainly to the mothers or the kidnappers or snatchers, in exchange for children to be given up for adoption. These networks enjoyed impunity through actions aimed to perpetuate this situation and thus continue processing irregular adoptions by taking advantage of lax controls, inadequate legislation, corruption of public officials and support from the authorities and members of State institutions.[48] That was how, over the years, these networks were able to strengthen the activities of clandestine organizations or parallel structures that acted with the assent or direct participation of State agents in irregular adoption proceedings.

In 2005, Guatemala was already considered one of the countries of the world with more irregularities

[42] See also Casa Alianza, "Report on illegal adoptions in Guatemala, 2000.

[43] Interview with International Social Services, Hervé Boéchat, Director of International Social Service and Nigel Cantwell, an expert in child protection systems, 13 April 2010.

[44] 'Adoptions in Guatemala: Protection or Marketplace?' op. cit.

[45] Study on the Situation of Children and Adolescents in Public and Private Protection and Shelter Homes in Guatemala." With the support of the United States Agency for International Development (USAID), the Social Welfare Secretariat of the Presidency and HOLT International. October 2007 to March 2008.

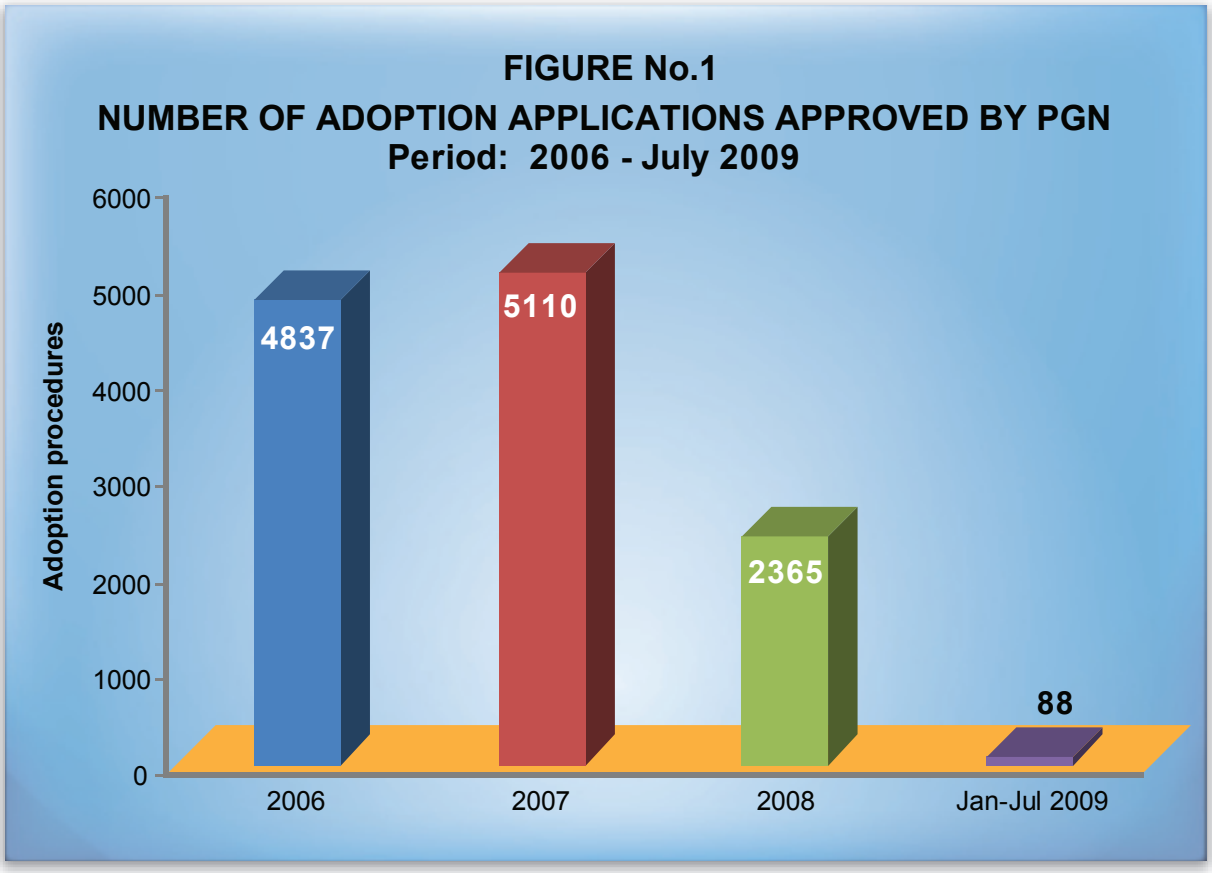
[46] "Institutionalized children" means children who are under the care or shelter of any institution, children's home or foster home.

[47] Preliminary Data, Expert Unit, Institution Monitoring and Evaluation (UNIPSE) Database, National Adoption Council.

[48] E. J. Graff, The Lie We Love, Foreign Policy Magazine, 15 October 2008. http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love (as of May 31, 2010).

in the adoption process.[49] The situation generated such concern at the international level[50] that in recent years, Guatemala was visited by officials of the Hague Private International Law Conference, the Committee on the Rights of the Child and the Special United Nations Rapporteurs on the Sale of Children, Child Prostitution and Child Pornography.

Some European countries, including Germany, Spain, France, the Netherlands, the United Kingdom and Canada, banned adoption by its citizens of children from Guatemala until Guatemala ratified and implemented the Hague Convention on Protection of Children and Cooperation Concerning International Adoption.[51]



Source: Office of the Solicitor General of the Nation[52] and report "Adoptions: Protection or Marketplace?"

Even in these conditions, over 5,000 children were given up for adoption in Guatemala in 2007. The cost of each adoption in Guatemala ranged from $ 30,000 to $ 40,000.[53] According to estimates by the

[49] In recent years, several universities and organizations in the United States have highlighted the situation. A Brandeis University study even shows that Guatemala is the country where there is more risk around the world to adopt a stolen child or one whose adoption was processed illegally using false documents. http://www.brandeis.edu/investigate/gender/adoption/guatemala.html (as of May 31, 2010). See also E.J. Graff, Foreign Policy Magazine, "The Lie We Love, Op Cit.

[50] OAS/Ser.L/V/II.111, Doc 21 rev., April 6, 2001. Original: Spanish / English.

[51] Information provided by UNICEF Guatemala.

[52] CICIG Database. Period: January to July 2009.

[53] "Inter-country Adoption Guatemala" Online Guide to prospective adoptive parents of the Department of State of the United States, September 2007. (Available online on 10/21/2008) http://www.brandeis.edu/investigate/gender/adoption/guatemala.html (as of May 31, 2010). It states: "ADOPTION FEES: The Solicitor General's Office (PGN) does not charge for processing adoptions. Based on the results of a study on prospective adoptive parents conducted by the U.S. Embassy in 2005, prospective adoptive parents must expect to pay Guatemala from US $ 17,300 to $ 45,000 to adopt a Guatemalan child. According

United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, the demand for children to adopt was roughly 50 applicants for every health newborn[54], reflecting the influence of demand on the international adoption process.[55]

According to information provided by investigators specialized in this matter, the United States is the country that adopts the largest number of children in the world annually.[56]

TABLE No.1

Total number of international adoptions to the main countries of destination in the world
Period: 2001 - 2009

Country	Year								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
Canada	1,874	1,926	**2,180**	1,955	1,871	1,535	1,713	1,908	>1,600
Denmark	**631**	609	522	527	586	448	429	395	496
France	3,095	3,551	3,995	4,079	**4,136**	3,977	3,162	3,271	3,017
Italy	1,797	2,225	2,772	3,402	2,874	3,188	3,420	**3,977**	3,964
Netherlands	1,122	1,130	1,154	**1,307**	1,185	816	782	767	682
Norway	713	**747**	714	706	582	448	426	304	344
Spain	3,428	3,625	3,951	**5,541**	5,423	**4,472	3,681	3,156	2,990
Sweden	1,044	1,107	1,046	**1,109**	1,083	879	800	793	912
United States*	19.237	20.099	21,616	**22,884**	22,728	20,679	19,613	17,438	12,753
Total	32,941	35,019	37,950	**41,510**	40,468	36.442	34,027	32,009	>26,758

Sources[57]: CIC (Canada), Department of Family Affairs (Denmark), MAI (France), ACI (Italy), German Ministry of Justice, Bufdir (Norway)
MTAS (Spain), MIA (Sweden), USA, Department of State
* Per Fiscal Year (October 1 to September 30 of each year)
** For 2006: Secretary of State for Social Services, Families and Disability, July 18, 2007

Along these lines, it is important to stress that in nine years, over 90% of adopted Guatemalan children were adopted by U.S. families. As shown in the table attached to this report, prepared by the United

to Guatemalan press reports, some lawyers charge about $ 35,000 per adoption. A lawyer quoted in the press stated that he earns between $ 15,000 and $ 20,000 per adoption." (Paragraph translated by CICIG).

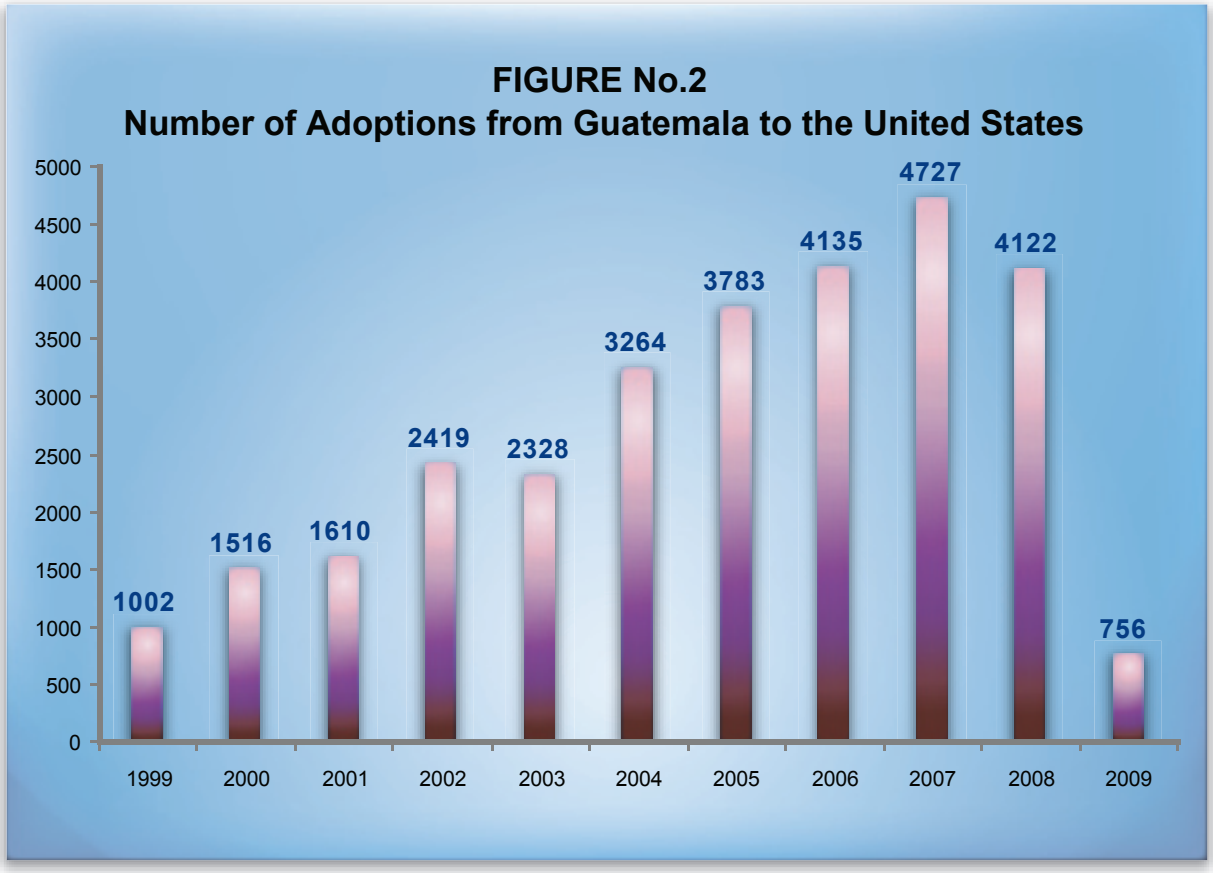
[54] Report by the former Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Ms. Ofelia Calcetas Santos, (E/CN.4/1999/71), paragraph 19. See also E/CN.4/2000/73/Add.2.

[55] Information provided by UNICEF Guatemala. See also United Nations Radio http://www.unmultimedia.org/radio/spanish/detail/108515.html (as of May 31, 2010).

[56] "Intercountry Adoption", Office of Children's Issues, United States Department of State http://adoption.state.gov/country/guatemala.html (as of June 15, 2010). All statistics provided by the U.S. Department of State correspond to the fiscal year of the United States Government, which begins October 1 and ends September 30.

[57] Information compiled by investigator Nigel Cantwell (2010) and translated by CICIG. (Years with the highest number of adoptions by country in bold). See also http://www.hcch.net/index_en.php?act=conventions.publications&dtid=32&cid=69 (as of 15 June 2010).

States Department of State[58], the number of adoptions of Guatemalan children grew exponentially and in 2008 Guatemala even became the number one child exporting country to the United States, sending 4,122 adopted children, while China sent 3,911 and Russia 1,857.



Source: United States State Department.[59]

c.1. Financial Dimension

The economic significance of the phenomenon of international adoptions of Guatemalan children had been recognized internationally since 2001 in a report by Ofelia Calcetas Santos, Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, in which she pointed out that the remuneration of lawyers and notaries was not subject to regulation, allowing them to profit from adoptions. The Rapporteur noted that "given the cost of international adoptions, an attorney can afford to offer incentives or commissions to recruiters and their contacts in the courts and various administrative bodies, to facilitate the adoption".[60]

---

[58] See Attachment "Number of children adopted to the United States". "Intercountry Adoption", Office of Children's Issues, United States Department of State http://adoption.state.gov/country/guatemala.html (as of 15 June 2010). All statistics provided by the U.S. Department of State correspond to the fiscal year of the United States Government, which begins October 1 and ends September 30.

[59] Intercountry Adoption", Office of Children's Issues, United States Department of State, Ibid. See also http://www.travel.state.gov/pdf/MultiYearTableXIII.pdf (as of 31 May 2010).

[60] Report by the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography (E/CN.4/2000/73/Add.2) "Mission to Guatemala", paragraphs 90 and 91. See also http://www.alterinfos.org/spip.php?article1481 (as of 31 May 2010).

According to data collected by CICIG, in 2007 (the year in which the highest number of adoptions was recorded in Guatemala), some 5,110 Guatemalan children were adopted by foreign families.[61] If we multiply the number of adoptions carried out in 2007 times the average cost of an adoption in Guatemala ($ 35,000), we would be talking about revenues of close to $ 200 million into Guatemala that year.

According to information obtained through case investigation, it is estimated that of the total amount spent by adoptive parents in the international adoption process, only about 30% was sent to Guatemala and distributed among the notary, attorney-in-fact, caregiver or children's home and others involved in the adoption process. The rest was retained by international adoption agencies in the country of destination.[62]

Thus, the child market promoted trafficking through irregular adoptions and became important with regard to other illicit activities that produce major gains.

d. Conclusion

The lack of control by the institutions charged with providing protection to children in Guatemala led to a lucrative business and the subsequent creation of structures that responded to demand by acquiring children through threats, coercion, exploitation of the mothers' vulnerability and theft or purchase of children to be sent abroad.

A series of offenses were committed to that effect, such as forging documents, altering public records, child abduction, etc., which required the involvement of different people, including government officials, to achieve their ends.

This explains the creation of transnational organized crime networks, which aroused the concern of international bodies, particularly the United Nations, and the suspension of international adoption proceedings of Guatemalan children by some European countries, by resolution of the European Parliament.

This reflects how, when there is no clear legislation or strict controls by State institutions, the meaning of adoption changes. Priority is given to the will of the adopter at any cost and by any means, putting it ahead of the best interests of the child.

Now, after the determination by the authorities of irregularities in the implementation of the verification process and criminal prosecution of alleged perpetrators of a series of crimes linked to illegal adoptions, international adoptions of Guatemalan children are suspended.

[61] Data provided by PGN.

[62] Ignacio Goicoechea, Legal Liaison Officer for Latin America with the assistance of Jennifer Degeling, Principal Legal Officer "Report of the Fact-Finding mission on International Adoption in Guatemala", 26 February -9 March 2007.

2 ADOPTION PROCEEDINGS UNDER THE RULES IN FORCE BEFORE THE ENTRY INTO EFFECT OF THE ADOPTION LAW

National or international adoptions in Guatemala until December 31, 2007 were carried out using the 'notarial adoption process."

Once a child was given up by his birth mother for adoption or declared abandoned by a judge, the notary processed the adoption. Because it is a voluntary jurisdiction process, it had to be approved by PGN and subsequently registered with the Register of Vital Statistics.

A juvenile judge's only function was to declare a child abandoned, if that was the case, for subsequent notarial adoption.

With the entry into force of the PINA Law in 2003, Courts for Children and Adolescents were created and it was decided, among other things, to introduce judicial adoption. However, this was not observed due to lack of regulations or of established proceedings for implementation of the law. Notarial adoptions thus continued to be the norm and Judges for Children and Adolescents simply replaced juvenile courts in cases when children had been abandoned.

a. Procedure

The following briefly explains the procedure for notarial adoption in effect at the time of approval of the Adoption Law on December 7, 2007.

By 2007, there were two possible ways of beginning a notarial adoption. First, the notarial adoption process could begin when a mother who wanted to give her child up for adoption went to a notary public for him to carry out the process.

The notary then asked the mother to submit personal identification[63] for herself and the child that would be given up for adoption. The notary also asked her to ratify her consent through an affidavit. If the mother was married, the notary asked for both parents' consent. The notary granted a third party the care and custody of the child through an affidavit. However, after the entry into force of the PINA Law, custody could only be granted through a court resolution.[64]

The notarial adoption process could also begin when a child was declared abandoned by a Judge for Children and Adolescents (formerly Juvenile Court Judge), or when the child's birth parents lost their parental rights through a ruling handed down by a Court for Children and Adolescents.[65] In this case, the notary also handled the adoption of abandoned children, who were considered adoptable.

The notary was in contact with one or several international adoption agencies and it was usually the notary who contacted and appointed an attorney-in-fact that represented the adoptive parents proposed by the international agency. In some cases, the notary also acted as the attorney-in-fact, representing the prospective adoptive parents.[66]

---

[63] E.g. identity card, residence card, the child's birth certificate and medical birth certificate.

[64] Article 112, paragraph (h) of the PINA Law.

[65] With the entry into force of PINA Law it was established that, before declaring a child abandoned, the Solicitor General's Office should investigate its origins and whether this child had an extended family that could take care of it. The institution that represents children in the protection process is the Solicitor General's Office. Article 108 of the PINA Law.

[66] Resolution 51-2007 of the Solicitor General Office.

At this point, the notary went to the Solicitor General's Office and filed a legal notice of initiation of adoption proceedings. The notice was given on a form implemented in 2007 by PGN. Initial information on the birth mother or father or the person who was caring for the child and the child's data, the agent and the adoptive parents was attached to this form.

With the help of the person who was caring for the child, the notary facilitated the following steps: home study of the child's birth mother by a social worker from the Family Court; a medical report on the child by a pediatrician and, beginning in 2007, a DNA test of the mother and child.

Once the record was complete, including documents relating to the adoptive parents, the notary submitted it to the Solicitor General's Office to obtain a favorable opinion. PGN reviewed the documentation and if necessary, made any comments or objections ("previo")[67], and returned the case to the notary; otherwise the procedure was considered "admissible".

After obtaining PGN's favorable opinion, the notary prepared the Notarial Adoption Instrument and registered it at the Register of Vital Statistics, at which time the child's name was changed.

In international adoption cases, the file was sent to the Bureau of Immigration for a passport to be issued.

b. Institutions Involved in Notarial Adoption Proceedings in Force at the Time of Entry into Force of the Adoption Law

b.1. Office of the Solicitor General of the Nation

The Office of the Solicitor General of the Nation (PGN) oversees the legality of voluntary jurisdiction proceedings, including notarial adoption cases. The Attorney General's Office is the institution that represents the State of Guatemala under the Constitution. It has advisory and consultative responsibilities and controls the legality[68] of State bodies and entities[69]. These processes entail a high level of discretion in the absence of an Organic Law governing the operation of PGN.[70]

Under the Civil Code and the Law Regulating Processing by Notaries of Matters under Voluntary Jurisdiction (Decree 54-77), review of proceedings falling under voluntary jurisdiction is the purview of the Solicitor General's Office. Until the entry into force of the Adoption Law on December 31, 2007, PGN was the body responsible for reviewing the documentation and issuing a favorable opinion in adoptions processed by notaries.[71]

In adoptions processed by notaries, PGN received notice of adoption proceedings initiated by notaries. Later, when the notaries completed the record, they sent them again to PGN for review of the

[67] "Previo" ("prior [formalities]"): name that is given by PGN to observations made by attorneys of the Legal Section with regard to errors or missing documents to be corrected or added by the notary in a voluntary jurisdiction process.

[68] The purpose of Decree 25-97 of the Congress of the Republic is to clarify that any legal provision which reads "Public Prosecutor's Office" (Public Prosecutor's Office) shall be understood to refer to the Solicitor General's Office. The Public Prosecutor's Office has jurisdiction over penal, criminal procedure and penitentiary matters, and over matters relating to the "Amparo", Habeas Corpus and Constitutionality Law. Other laws that mention the Public Prosecutor's Office will be understood to refer to the Solicitor General's Office.

[69] Under Article 252 of the Constitution of the Republic of Guatemala and Decree 512 of Congress, as amended.

[70] Website of the Solicitor General's Office. http://www.pgn.gob.gt/ (as of May 31, 2010). "The Organic Law of the Public Prosecutor's Office (Decree 40-94 of Congress) was approved and enacted and became effective in 1994. However, the Solicitor General's Office is at an impasse since a law defining its role was not enacted, whereas the role and responsibilities of the Public Prosecutor's Office were established.".

[71] Legislative Decree 18-93 introduced a constitutional reform that delimits the roles of the Public Prosecutor's Office and the Solicitor General's Office. Under the new Article 252 of the Constitution of the Republic of Guatemala, the latter has a consultative and advisory role of State bodies and the represents the State before the people.

documentation and issuance of a favorable ruling in the voluntary jurisdiction process.

This intervention by PGN was the only State control required in adoptions processed by notaries.

The favorable opinion of PGN was to be required by registrars of vital statistics in order to register the adoption, and by Immigration Bureau officials for the issuance of passports in international adoption cases.

b.2. Courts for Children and Adolescents

Special courts for children and adolescents were created under the PINA Law (Decree 27-2003). This Law recognized the need to promote the comprehensive development of Guatemalan children and adolescents, especially those whose needs are partially or completely unmet. Legal reality was adapted to the development of doctrine and international law on the matter, particularly the 1989 Convention on the Rights of the Child, which recognizes the civil, political, economic, social and cultural rights of children and adolescents.

The duties of courts for children and adolescents include ordering protection measures for abandoned children or those in potentially hazardous situations.[72]

The courts are also mandated to order "temporary shelter of children and adolescents in public or private institutions, considering the circumstances in each case".[73] The law was interpreted to mean that the notary had to go before a judge to ensure shelter for a child whose mother wanted to give it up for adoption. However, this provision was never followed in practice. Notaries continued to issue custody and shelter orders.

Both notaries and children's homes brought allegedly abandoned children before the judges for Children and Adolescents for adoption. They subsequently initiated proceedings for adoption of these children. Notaries also acted as legal representatives of the children's homes and carried out the formalities for adoption of children that had been declared abandoned.

It is estimated that only 10% of children placed for adoption were children who had been declared abandoned.[74]

b.3. Family Courts

Social workers assigned to the Family Courts[75] conducted home studies of the birth mother, of children that were put up for adoption and the adoptive family. In international adoption cases, they assessed the ho,e studies sent directly by international agencies to the notary and/or attorney-in-fact.

b.4. Register of Vital Statistics

Decree 90-2005 established the National Registry of Persons (RENAP) as the entity responsible for organizing and keeping track of personal identification, registering data and events concerning marital status, civil status and other identification data from birth to death, and issuing a Personal Identification Document.[76] Previously, the Register of Vital Statistics was a municipal agency.[77]

---

[72] Article 104 of the Law on Comprehensive Protection for Children and Adolescents, Decree 27-2003.

[73] Article 112 of the Law on Comprehensive Protection for Children and Adolescents, Decree 27-2003.

[74] Interview with UNICEF Guatemala officials. See also CICIG database on children placed for adoption as of January 3, 2008.

[75] Decree law No. 206, Article 14. Judges shall order social workers who work with the Courts to conduct the necessary investigations. [The social workers] shall act immediately, diligently and expeditiously and submit their reports with absolute truthfulness and objectivity, in order that any problems might be solved with full knowledge of reality in each case (…).

[76] http://www.renap.gob.gt/pagina.php?men=1&id=46 (as of June 30, 2010).

[77] http://www.canalegal.com/contenido.php?c=119&titulo=el-registro-civil (as of June 30, 2010). Previously regulated by the Guatemalan Civil Code. This provision was repealed with the entry into force of the new RENAP Law.

The Register of Vital Statistics kept by municipal registrars was the institution responsible for registering the birth of a child. Once the adoption process was completed, it was in charge of registering the adoption and registering the child with the surname of the adoptive parents.

In order for the Registrar to register the adoption, the proceedings should contain a favorable opinion by the Solicitor General's Office.

b.5. Immigration Bureau

In international adoptions, the Immigration Bureau was responsible for issuing passports for children subject to adoption proceedings. The prerequisite for the issuance of passports was that the proceedings contain a favorable PGN opinion and registration in the Register of Vital Statistics, in addition to the duties and responsibilities set out in the Immigration Law and Regulations.

c. Conclusión

The notarial adoption process was under purely formal State control carried out primarily by PGN, which facilitated private proceedings handled by notaries without official supervision. The proceedings included formal requirements, most of which were privately recorded (home study submitted by the adoptive parents, ratification of the birth mother's will before a notary, medical certificates, DNA testing, etc.).

3 IRREGULAR ADOPTIONS: ORGANIZED CRIMINAL TRANSNATIONAL CHILD TRAFFICKING NETWORKS FOR IRREGULAR ADOPTION PURPOSES

Having explained the process under the provisions of the legislation in force at the time of entry into effect of the Adoption Law, chapter will discusses the practices and activities of the trafficking networks that were created in order to process irregular adoptions.

It will also describe the types of irregularities committed by each of the actors in a human trafficking network and how the irregularities are related or coordinated among the different players.

This chapter also addresses the institutional reaction to these irregularities.

The unlawful acts committed for the purpose of carrying out adoption proceedings, most of them international, are one of the forms of the crime of trafficking[78], established in the Guatemalan Penal Code and the newly established crimes of 'irregular adoption'[79] and 'irregular adoption proceedings'[80], referred to in the Law against Sexual Violence and Trafficking in Persons (Decree 9-2009).

The crime of trafficking is also contemplated in the Law on Organized Crime.[81]

Human trafficking is considered one of the crimes committed mainly by organized transnational crime networks[82]. The clandestine nature of trafficking makes it virtually impossible to investigate and prosecute those responsible.

Human trafficking is a crime against life, liberty and human dignity and integrity, all fundamental rights protected by the Constitution of the Republic of Guatemala, which establishes the protection of persons and the family as a reason for organization of the State.

[78] Article 194 of the Penal Code, Decree 17-73: Human trafficking. Whoever in any way promotes, induces, facilitates, finances, cooperates or participates in the recruitment, transportation, transfer, harboring or receipt of one or more persons by means of threats, the use of force or other forms of coercion, fraud, deception, abuse of power, kidnapping or abduction, or by taking advantage of a position of vulnerability or the giving or receiving of payments or benefits to obtain the consent of a person having control over another person for purposes of sexual exploitation, shall be punishable with six to twelve years in prison. The same penalty shall be imposed on whoever takes advantage of the circumstances stated in the preceding paragraph to force another person to beg, perform forced labor or services, civil marriage, illegal adoption, slavery or similar practices (...). "The characteristics of human trafficking characterize this as a crime that falls within the framework of the Palermo Convention, the provisions of which apply to acts of organized crime.

[79] Article 241 Bis. Irregular Adoption, Law against Sexual Violence, Exploitation and Trafficking. Decree 9-2009.

[80] Article 241 Ter. Irregular Adoption Procedure. Law on Sexual Violence, Exploitation and Trafficking. Decree 9-2009.

[81] Law against Organized Crime, Decree 21-2006, Article 2, paragraph (e), subparagraph 3.

[82] Global Programme against Trafficking in Persons, Manual for Combating Trafficking in Persons, United Nations, New York, 2007.

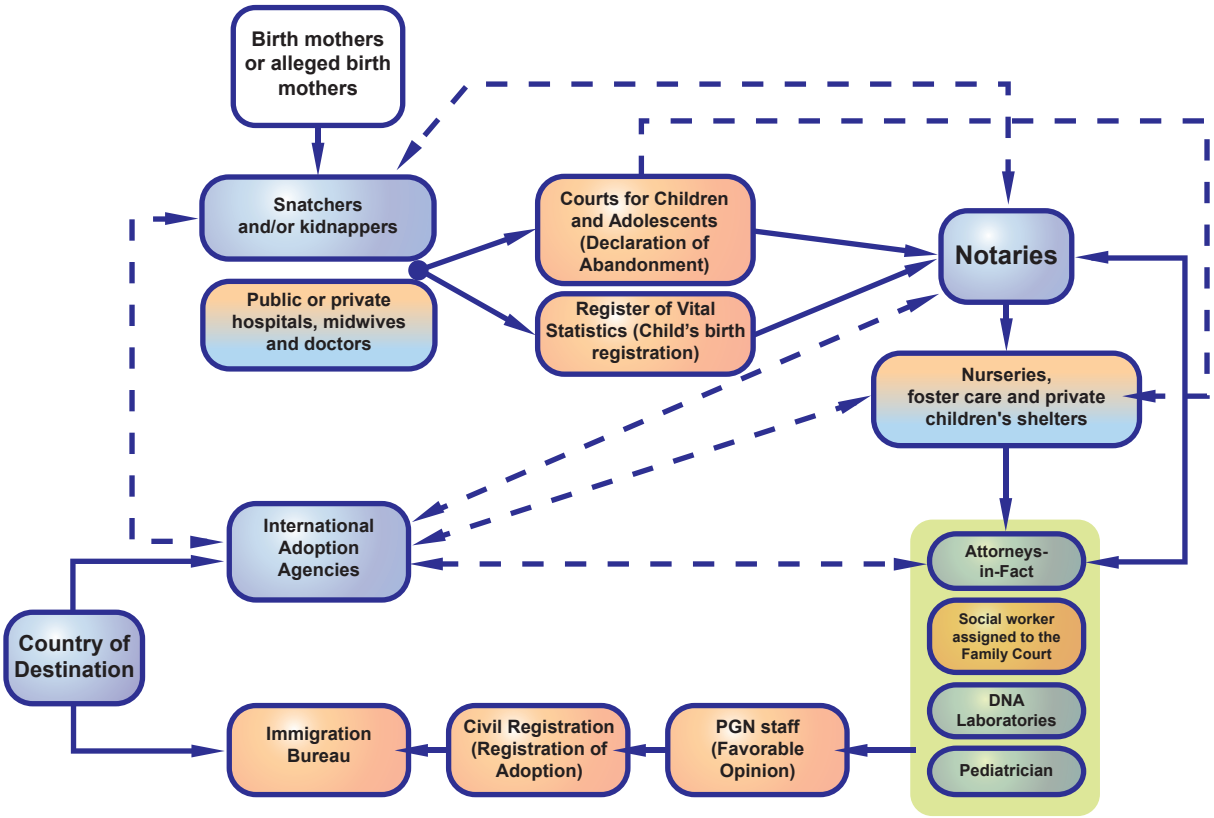
a. Description of How the Members of Child Trafficking Networks Operate in Connection with Irregular Adoption Proceedings Handled By Notaries

Carrying out an illegal adoption requires the collaboration of various individuals and institutions that cooperate in the proceedings in one way or another.

This section describes the involvement of each actor in each stage of an irregular international adoption process, depending on the mode of action and hierarchy and participation of individual members of a human trafficking network for irregular adoption purposes. The irregularities and crimes committed in handling international adoptions and the individuals involved in them fall within the framework of the Law Regulating Processing by Notaries of Matters Falling under Voluntary Jurisdiction (Decree No. 54-77).

According to its analysis of paradigmatic cases that identified the participation of human trafficking networks for illegal adoption purposes, CICIG has established the actions carried out by these people and the way they operate. The following diagram shows the steps followed to carry out an illegal international adoption.

DIAGRAM No.1
Network Involved In Irregular Adoptions



- International Adoption Agencies[83]

[83] According to the article by John Seabrook, "The Last Babylift" published in May 2010 in The New Yorker, in the United States there are approximately 3,000 adoption agencies.

To ensure protection of children subject to inter-country adoption proceedings, the Hague Convention proposes that States adopt a cooperation system consisting of central authorities and institute an international procedure that also involves intermediary agencies.[84]

For several years, agencies have been the main link with the adoptive family. With regard to the child they intend to adopt and with regard to the adoption proceedings, the agency is the main intermediary of the adoptive family.

Besides being in constant contact with the adoptive family, representatives of agencies that deal with international adoption of Guatemalan children are also in contact with the facilitators and/or notaries.[85]

However, contrary to what is set out in the Hague Convention,[86] in some countries, after the adoptive parents expressed their desire to adopt a child, international adoption agencies contacted their facilitators and/or representatives, who were given the task of finding a child that had the characteristics demanded by the adoptive parents. Over the years, some agencies set up representatives, offices and adoption programs to facilitate their work in children's countries of origin. This meant that some of the international adoption agencies looked for countries with weak legislation, few controls or easily corruptible authorities, with a view to undertaking a large number of adoptions of children from those countries.

In connection with the irregularities committed by international adoption agencies, civil society organizations, independent investigators and victims of illegal adoptions proceedings have documented cases of illegal adoption in different countries.[87]

Most of the cases investigated to date against adoption agencies referred to mismanagement, poor socio-economic studies and child trafficking in the countries of origin. There is even a decision of a District Judge United States against an international adoption which states: "Charity work gave her (the defendant) the possibility of committing crimes".[88]

The most common irregularities identified by adoptive parents against adoption agencies are deception or abandonment of the adoption when it becomes difficult. There are precedents in which some adoptive parents have filed complaints in the U.S. for extortion and fraud committed by agencies processing

---

[84] Marie-Francoise Lücker–Babel, "The Hague Convention on International Protection in the Matter of International Adoption" in http://www.unicef.org.co/Ley/LI/08.pdf

[85] David M. Smolin, Cumberland Law School, Samford University. "Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children", (29 August 2005). Bepress Legal Series. Working Paper 749. Page 117. In http://law.bepress.com/cgi/viewcontent.cgi?article=3679&context=expresso (as of 30 June 2010)

[86] Articles 4 and 5 of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, 29 May 1993 (Hague Convention).

[87] An important case is the Galindo case. Lauryn Galindo was able to make up to $ 9 million for adoptions of Cambodian children. Between 1997 and 2001, 1,230 U.S. couples adopted children from Cambodia. Galindo participated in 800 adoption proceedings. An investigations was started and found that Galindo paid "snatchers" to buy, sell and steal children, deceive mothers and even forge the children's documents. Galindo was imprisoned on charges of visa fraud and money laundering. http://poundpuplegacy.org/node/22103 (as of 31 May 2010). See also http://www.jcics.org/Cambodia.htm (as of 31 May 2010). My Linh Soland spent 3 years in a U.S. prison on charges of fraud, conspiracy and witness tampering. She engaged in child kidnapping and forging documents to obtain Vietnamese children for adoption. In http://poundpuplegacy.org/node/26728 (as of 31 May 2010).
Eyob Mesfin Gebremichael case, 2004. His mother was tricked by telling her that her son would live only for a couple of years in the United States. However, he was given up for adoption to an Austrian family who were told that the child's mother had died.
http://poundpuplegacy.org/child_trafficking_cases?page=0%2C1 (as of 31 May 2010).
David M. Smolin, "The Two Faces of International Adoption: The Significance of the Indian Adoption Scandals" Seton Hall Law Review Thirty-Five. Number Two (2005): 403-493. In http://works.bepress.com/david_smolin/2/ (as of 31 May 2010).
Joseph Albright and Marcia Kunstel, "Citing 'trade' in children: Russia tightens rules on U.S. foreign adoptions," Cox News Services, The Atlanta Journal and the Atlanta Constitution. In http://poundpuplegacy.org/node/26389 (as of 31 May 2010).

[88] Ruling by District Judge Thomas S. Zilly, U.S. District Court, November 2004.

international adoptions,[89] mainly because they had paid for the adoption and had not received an adopted child.

There are documented cases of agencies that have committed illegal acts directly in the countries of origin of the child subject to adoption proceedings. The irregularities identified by CICIG in criminal investigations include those related to the link between international adoption agencies and people who stole, bought or abducted children that later were put up for international adoption. These people worked for adoption agencies as facilitators, i.e., supported them in the adoption process and acted as intermediaries between the foreign agency and the notary and/or "snatcher" and/or children's home in Guatemala.

Such is the case of "Asociación Primavera", in which the facilitator in Guatemala of an agency is being investigated on charges of trafficking and abduction of a minor.

In 2008, the United States Department of State denied accreditation to the agency; however, it continued to process international adoptions of Guatemalan children.[90]

Other irregularities identified in connection with adoption agencies concern the facilitators hired by them who engage in finding children for international adoption process regardless of their origin and the legality of the process. Thus, the facilitators are associated with notaries, attorneys-in-fact and snatchers.

In other instances, lawyers employed directly by the agencies and as representatives handled illegal adoptions. Such is the case against a lawyer who, along with the caregiver and "snatcher", coerced a minor to give her child up for adoption.[91]

In recent years, about 100 adoption agencies have been involved in adoptions from Guatemala, including consulting agencies, oversight agencies, agencies that perform home studies, etc. In 2008, the United States State Department[92] refused accreditation to 14 agencies for various reasons. However, at least five of them continued handling adoptions of Guatemalan children, in violation of Articles 10 and 11 of the Hague Convention.[93]

According to the United States Department of State, only 211 international adoption agencies were accredited in mid-2010.[94]

- Birth mothers or women who falsely assume the identity of birth mothers

With regard to the illegalities associated with motherhood, mothers sometimes sold their children or gave them up for adoption in exchange for favors and/or financial benefits[95]. In other cases, the mothers were threatened, tricked or coerced into surrendering their children for adoption.

Another method is one in which the person who presented herself as the alleged birth mother was

---

[89] "Five families say a South Carolina adoption agency extorted them for more than $75,000 in a Guatemalan baby scam. They say Adoption Partners Inc. charged them each $12,000 just to begin the process, then extorted them for more, threatened them and delivered babies that were seriously ill, or did not deliver a baby at all". Orson Mozes, Director of Adoption International Program, California, case. Detroit vs. Main Street Adoption Services of Lancaster case. Waiting Angels Adoption Service case in Macomb Township. http://poundpuplegacy.org, (as of 31 May 2010). See also http://bankrupt.com/misc/WaitAngels.pdf (as of 31 May 2010).

[90] "Intercountry Adoption", Office of Children's Issues, United States Department of State, Agencies Denied Accreditation http://adoption.state.gov/hague/accreditation/deniedagencies.html (as of 15 June 2010).

[91] See "GDHC Case" in Paradigmatic Cases.

[92] "Intercountry Adoption", Office of Children's Issues, United States Department of State, Agencies Denied Accreditation http://adoption.state.gov/hague/accreditation/deniedagencies.html (as of 15 June 2010)

[93] See Attachment Paradigmatic Cases.

[94] http://adoption.state.gov/hague/agency4.php?q=0&q1=&q2=0&q4=0&q5=0&dirfld=01 (as of 15 June 2010).

[95] http://www.radiolaprimerisima.com/noticias/resumen/38967 (as of 15 June 2010).

actually a woman who had kidnapped a child or was in contact with people who engaged in child kidnapping.[96]

Finally, there is the modality in which the mother's documentation is forged. Some underage women were issued false identification cards so they could give their children up for adoption.[97] Documents were also forged with the intent of changing the mother's marital status, to pass her off as a single mother and carry out the proceedings without the father's signature.

In addition, it was learned that in many of the adoption proceedings, the alleged mothers were not the birth mothers; others were minors and others were married. The identities of all these women, who were mostly poor and resided in rural areas, were forged.

- Courts for Children and Adolescents

As stated in previous sections, with the entry into force of the PINA Law, Courts for Children and Adolescents, known as Juvenile Courts, were established.

Some of the stolen children were brought before the Courts for Children and Adolescents to be declared abandoned, which made them immediately adoptable.

This mode is what is known as "child laundering". It saved the handlers the trouble of looking for false birth mothers and using forged documents throughout the process. By declaring the child abandoned, the child could be adopted. Such is the case against the Judge for Children and Adolescents of the Department of Escuintla, against whom an impeachment motion was filed on charges of conspiracy, malfeasance, abuse of authority, dereliction of duty and trafficking in persons.[98] This motion was granted and is being investigated by the Public Prosecutor's Office.

Moreover, some Child and Adolescent Judges ordered shelter and care of children in children's homes, by caregivers and children's homes that were not accredited and whose legal representatives were later in charge of carrying out the adoption process.[99]

- "Snatchers" and child kidnapping networks

The "snatchers" were usually the individuals who convinced mothers to give their children up for adoption by misleading them and taking advantage of their vulnerability and/or poverty.

"Snatchers" also deceived mothers by convincing them to give their children up for adoption by telling them that foreign citizens would sponsor the children to study and grow outside the country, but return to visit them regularly.

Sometimes they offered mothers financial benefits in exchange for giving up their children (buying and selling of children).

"Snatchers" sometimes acted as an intermediaries or mediators among groups engaged in child kidnapping and stealing and handlers (notaries) and/or facilitators. Their function was to find children that met the requirements requested by the adoptive parents, for example: a girl, less than a year old, with no siblings and no physical or physiological problems.[100] Over the years, this figure became very relevant inside irregular adoption networks since, having access to children, they could have greater control of the market and deliver the children to the children's homes or notaries that offered them greater financial benefits.

---

[96] See Attachment Paradigmatic Cases. Case of JAMS.

[97] See Attachment Paradigmatic Cases. Case of GDHC.

[98] See Attachment "Asociación Primavera" Case in Paradigmatic Cases.

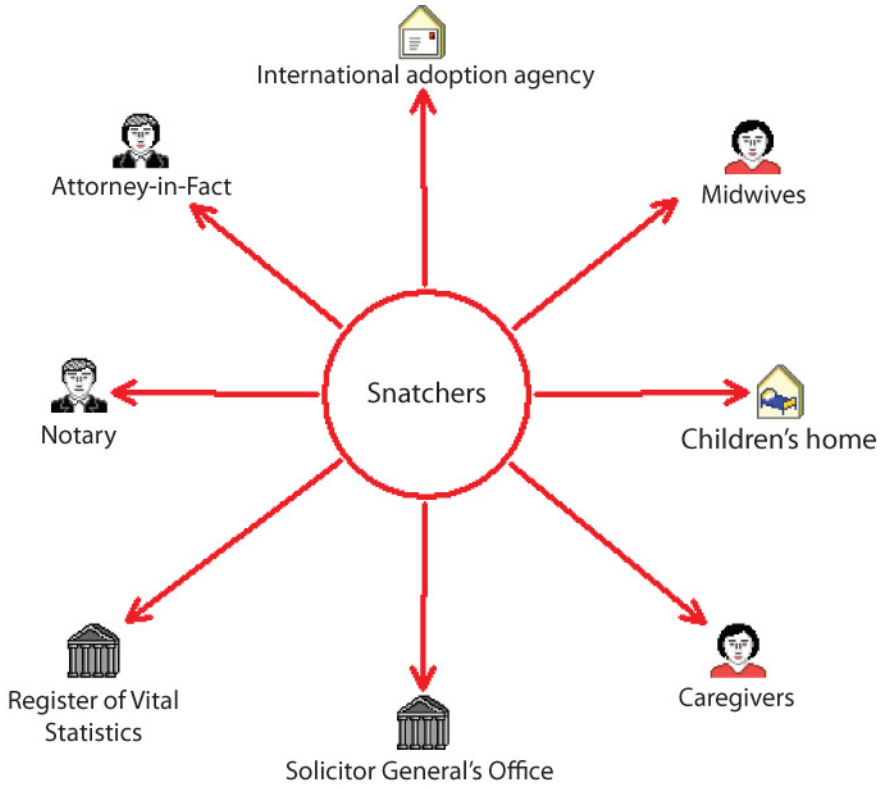
[99] See Attachment "Asociación Primavera" Case in Paradigmatic Cases.

[100] See Attachment "Asociación Primavera" Case in Paradigmatic Cases.

It is known that some of these people even acted as facilitators of international adoption agencies and had contacts with State institutions such as hospitals, registers of vital statistics and the staff of the Solicitor General's Office.

See diagram No. 2, child trafficking networks with the participation of a "snatcher" as an intermediary.

DIAGRAM No.2



- Doctors, midwives and hospitals

Other players who might be part of a trafficking network are doctors and midwives, who have participated by issuing false birth certificates. With those documents they certified that they had attended the birth of a child who was not born in that place or was not the biological child of a woman who was presented as the mother in the adoption proceedings.[101]

There is evidence of the existence of so-called "houses of support for pregnant women" in which at seven months of pregnancy cesarean sections were performed, and the babies were taken away.[102] An investigation by the Solicitor General's Office showed that two doctors in a hospital coerced and deceived mothers by telling them that the only way they could take their babies was by paying large sums of money for medical services rendered.[103]

[101] Officials from the Public Prosecutor's Office stated that investigations carried out in 2001 showed that the staff of public hospitals that provide newborn babies to third parties tell the birth mother that her child was born dead. Interview with officials of the Public Prosecutor's Office, May 2010.

[102] "I was told that my wife had to stay in the hospital for three days. When I came back she had had a cesarean section and had no identity card ... they said the child was ill and they never let me see him ... when I went to get my wife they did not give us the child." One of the doctors allegedly told the father that if they took the child they had to give up for adoption; if not, they should pay the sum of Q9,000. The mother was threatened with jail if she did not pay.

[103] Two doctors are currently under investigation by the Solicitor General for the crime of trafficking. Docket No. 70577-2008, Unit against Trafficking and

- Registrar of Vital Statistics

The Registrar of Vital Statistics is the person who registered the children's birth based on the medical birth certificate in municipalities where they were not born, or where the mother did not live. There are cases in which the same Registrar of Vital Statistics issued counterfeit identification cards to change the mother's identity or pass her off as a single mother or even make female minors appear to be adults to facilitate the process. This is the "Case of GDCH", which is currently under investigation[104] by the Public Prosecutor's Office. CICIG is a complementary prosecutor in this case.

There are indications that forgery of identity documents by some municipal Registrars of Vital Statistics is a widespread phenomenon in illegal adoptions in Guatemala.[105]

- Notaries

In Guatemala there are about thirteen thousand five hundred practicing registered lawyers [who are also notaries].[106]

About 500 notaries and attorneys-in-fact handled adoptions during the transition period. These same lawyers had been handling adoptions for years. As shown, the activity of processing national and international adoptions was restricted to a group of lawyers that barely represents 4% of all practicing lawyers.

This investigation showed that notaries and attorneys-in-fact worked in partnership and generally handled cases with lawyers from their own firms, acting interchangeably as notaries and attorneys-in-fact. Groups of lawyers who handled illegal adoptions were well organized and usually worked with the same caregivers or children's homes and snatchers. They processed adoptions of children born in the same municipality or department.

Snatchers usually went directly with the children and mothers or alleged mothers to the notary for him to begin the adoption process. Snatchers sometimes went to the notaries who paid them more money. In other cases, notaries hired snatchers who collaborated with them in most adoption cases they handled.

Notaries worked regularly with the same Registrar of Vital Statistics and therefore handled adoptions of children born in the same municipalities and hospitals. Sometimes notaries also served as facilitators and/or representatives of international adoption agencies.

Notaries were those who began the adoption process. First, they issued a child custody order in which they handed the child over to a home they trusted or a private caregiver (as a rule the notaries always worked with the same caregivers).

Under Article 112 of the PINA Law, providing temporary shelter to a minor is solely the responsibility of a Judge for Children and Adolescents. However, notaries continued ordering child custody from 2003, when the PINA Law was passed, until late 2007, when the Adoption Law came into force.

The process was subsequently set in motion and an affidavit established the consent of the mother or alleged mother to give her child up for adoption. Notaries had to inform PGN that the proceedings had been initiated by filing a "notarial notice". To complete the adoption, the notary submitted the complete proceedings to PGN and the latter could give its assent.

Irregular Adoptions, Office for the Prosecution of Organized Crime.

[104] See Attachment "Case of GDHC" in paradigmatic cases.

[105] El Periódico, Guatemala 21 June 2010. "1.2 million People without Birth Certificates; New Legislation would Allow Illegal Changes of Identity", in http://www.elperiodico.com.gt/es/20100621/pais/159153 (as of 30 June, 2010).

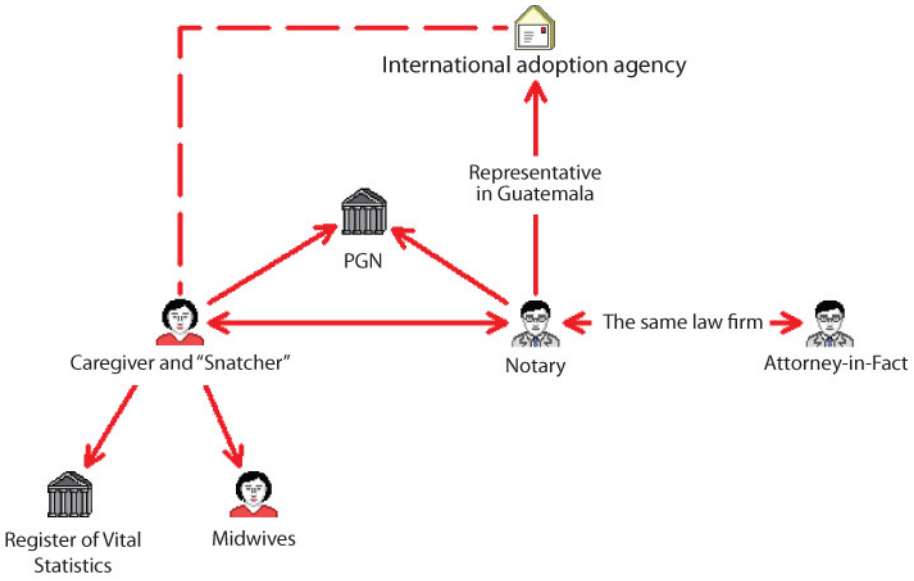
[106] Data obtained as of 29 April 2010.

Various irregularities were committed throughout the process, including the use of false documents, the mother's consent given under duress, the "sale" of children, etc. To date one notary has been convicted in Guatemalan courts for the crime of trafficking for illegal adoption purposes.[107]

At least 25 notaries are currently under investigation by the Public Prosecutor's Office[108].

See diagram 3, type of child trafficking network in which the notary is in association with the attorney-in-fact, the caregiver and the snatcher.

DIAGRAM No.3



- Caregivers, children's homes and homes

After the child was declared abandoned by a judge or the mother ratified before a notary that she agreed to give her child up for adoption, caregivers and children's homes were responsible for the care and shelter of children given up for adoption. Many caregivers were themselves snatchers or people close to them, such as friends, relatives or neighbors.

Caregivers followed up the whole adoption process and received monthly payments from notaries and/or snatchers for the child's care and support.

In some cases, legal representatives or legal advisers of children's homes processed the adoption with international adoption agencies, notaries and attorneys-in-fact, before the Courts for Children and Adolescents (in the case of children reported to have been abandoned), family courts and the Solicitor General's Office.

An example is the case of the "Asociación Primavera" children's home,[109] which is the main actor in a trafficking network for illegal adoption purposes.

With regard to children's homes, an investigation conducted by the Public Prosecutor's Office has identified the existence of clandestine nurseries, which did not have the appropriate accreditation by the Ministry of the Interior or the Social Welfare Secretariat of the Presidency.

[107] See Attachment Paradigmatic Cases, ESRE Case.

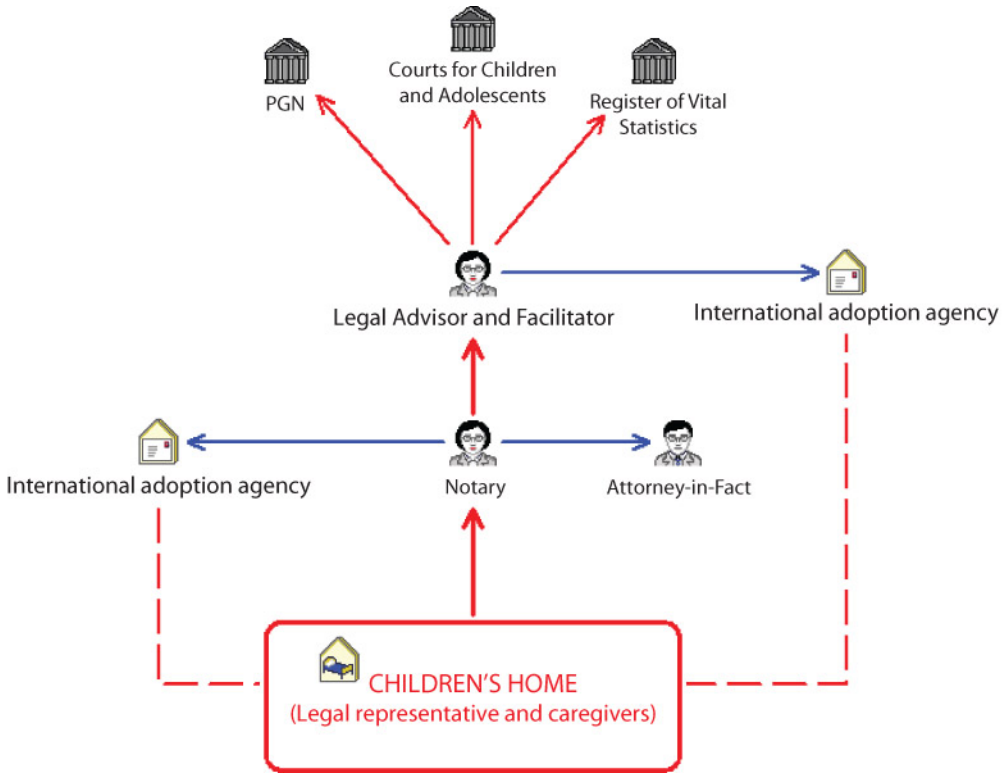
[108] Data updated with information provided to CICIG as of November 2010.

[109] See Attachment Paradigmatic Cases.

Finally, in recent years, in raids of children's homes or private nurseries, children subject to adoption proceedings have been found in poor health.

See diagram No. 4, type of child trafficking network in which the main actors are the legal advisors and/or handlers of nurseries.

DIAGRAM No.4



- Attorneys-in-fact

Attorneys-in-fact acted as legal representatives of the adoptive parents; however, those who were usually in communication with them were either the notary or the international agency. In practice, the attorney-in-fact worked in partnership with the notary. In fact, in most cases the notary and attorney-in-fact belonged to the same law firm.

At least five attorneys-in-fact are currently under investigation by the Public Prosecutor's Office.

- Social Workers assigned to a Family Court

The social worker was responsible for issuing a socio-economic study or report on the status of the mother or alleged birth mother and her willingness to give the child up for adoption. The cases investigated show that, in interviews with the social worker, the mother was usually accompanied by a snatcher and/or caregiver. The interviews were not followed by an investigation to corroborate the statement by the alleged birth mothers.

In accordance with international standards for protection of children's rights, lack of economic resources should not be the main reason to give a child up for adoption.[110] However, most socioeconomic reports

[110] Committee on the Rights of the Child, comments by Rosa Maria Ortiz, member of the Committee, "Children deprived of parental care", September 16, 2005. http://www.crin.org/docs/resources/treaties/crc.40/GDD_Ortiz_Statement.pdf (as of May 31, 2010).

examined base their favorable opinion on the fact that the mother "did not have the necessary financial resources."

In addition, social workers issued their reports without corroborating this financial situation, without a visit or inquiry, and even issued opinions recommending the adoption of children without making sure of their origin or existence, even facilitating the adoption of stolen children.[111] Neither did they recommend or study whether the children could remain with their extended family.

In the case of the adoptive family, a favorable opinion was issued on the future family on the basis of a 'home study' based on documents submitted by the foreign family, but these data were not corroborated by the Guatemalan social worker. These studies and reports only assessed their ability to support the child financially and not their compatibility or suitability as an adoptive family.[112]

- Pediatrician

The pediatrician was in charge of verifying the children's health and issued a medical certificate that was sent to the adoptive parents so that they could know the child's health status.

In some cases, the child's health situation led to the abandonment of the adoption by the adoptive family because of physical or health problems encountered.

- DNA Laboratories

Submitting a DNA test was a requirement established in recent years (2005-2007) before the entry into force of the Adoption Law. This request was established since in a large number of cases it was found that the woman who gave a child up for adoption was not even its birth mother.[113] Even two DNA tests were requested, at the beginning and end of the adoption proceedings.

However, investigations conducted by the Public Prosecutor's Office identified cases in which these tests were manipulated by the laboratory where they were performed. This manipulation consisted of taking a sample from one of the biological children of the alleged mother and a simulated photograph shows a sample being taken from of the child in the adoption process. An example of this was the ESRE case.[114]

- Solicitor General's Office

To initiate adoption proceedings, notaries were required to send the relevant legal notice to PGN. As of May 2007, in accordance with PGN Resolution 51-2007, notaries were required to register such notarial notices ten days after initiating the adoption proceedings. Before drafting the adoption instrument, the notary would send the complete proceedings to PGN to obtain a favorable opinion. As stated above, the agency responsible for issuing that opinion was the Prosecution Unit. It reviewed only the documentation without checking whether the child that was be given up for adoption was subject to protective measures or had been reported stolen or lost by its birth parents to PGN Ombudsman for Children (created in 2003 with the entry into force of PINA Law). It should be noted that both the Prosecution Unit and the Prosecution Office for Children are part of the same institution.

The steps taken by the Prosecution Unit were merely formal proceedings that did not involve any investigation or activity to verify the information. The birth mother's presence to explain the reasons for giving up the child or ratify her decision was not required. None of this was reported to the PGN Children's Solicitor.[115] Whenever it detected a formal anomaly, PGN issued a "previo" for notaries to

[111] Two social workers are currently being prosecuted.

[112] See Attachment 'Asociación Primavera' Case in Paradigmatic Cases.

[113] See Attachment Paradigmatic Cases.

[114] See Attachment Paradigmatic Cases.

[115] ILPEC Guatemala for UNICEF, "Adoption and Children's Rights in Guatemala"Guatemala - 2000. http://www.cna.gob.gt/doc/Adopcion%20y%20

correct the error. There is no record that PGN reported the possible commission of a crime such as coercion, abduction, false documentation, etc. that it was required to report to the Public Prosecutor's Office for it to initiate appropriate investigations.[116] However, in certain cases the events that led to the so-called "previos" were evidence of criminal offenses, such as inconsistencies between the number of the mother's identity card and the registration of the identity card in the registry of vital statistics (the crime of forgery), etc.[117]

In early 2007, PGN implemented certain requirements to be met at the time of filing an adoption application to make the procedure safer and more transparent.[118] However, it was recognized that such requirements referred solely to the documentation to be included in the adoption proceedings, but did not include an investigation into the real situation of the child and birth family, which led to approval of further irregular adoptions by PGN.

In practice, the purpose of PGN's objections was not to suspend the adoption process; on the contrary, the intention was to correct errors, facilitate the completion of missing information and thus conclude an adoption process by turning irregularities into simple omissions. By making a change, the adoption was formally approved.

Various PGN authorities knew the context and illegalities present in many adoptions in Guatemala and, according to investigations carried out by the Public Prosecutor's Office, at least six PGN officials are being investigated on charges of dereliction of duty and trafficking in persons for irregular adoption purposes.[119]

- Register of Vital Statistics (Registration of Adoption)

After obtaining the favorable opinion of PGN, the notary was authorized to prepare the Affidavit of Adoption and enter it in the Register. It was entered in the Register of Vital Statistics of the same municipality in which the child was initially registered, but with the surname of the adoptive parents.

There are cases in which the Registrar of Vital Statistics registered adoptions without the favorable opinion of PGN.

- Immigration Bureau (DGM)

In international adoption cases, once the adoption was registered, the notary and/or attorney-in-fact applied for a passport at the Immigration Bureau.

According to information provided to this Commission, there were cases where passports were issued to children whose adoption proceedings had not received the required favorable opinion.[120]

With regard to the lists provided by the DGM, records of passports issued to the same child with two or three different sets of adoptive parents were identified.[121]

Under Article 4 of the General Immigration Law (known by its Spanish acronym as LGM), the DGM has a duty to ensure that nationals and foreigners enter, remain in and leave Guatemala in accordance with the provisions of the Law, primarily by assessing documents and studying any problems that might arise (Article 87 of the LGM).

---

derechos%20del%20nino.pdf (as of May 31, 2010).

[116] In an interview with senior PGN officials in Guatemala, they denied knowledge of any forgery problems.

[117] See Attachment Paradigmatic Cases.

[118] "Manual of Best Practices for Domestic and International Adoptions in Guatemala." March 2007. Solicitor General's Office, Social Welfare Secretariat of the Presidency of the Republic, the Judiciary, Ministry of Foreign Affairs, Public Prosecutor's Office, Immigration Bureau.

[119] See GDHC Case and 'Asociación Primavera' Case in Paradigmatic Cases.

[120] Cases in NAC: 1737-2008-NAC-EN, 2307-2008-NAC-EN.

[121] In the same month, a passport was issued with different names of adoptive parents to a child whose record in PGN is 12925-07.

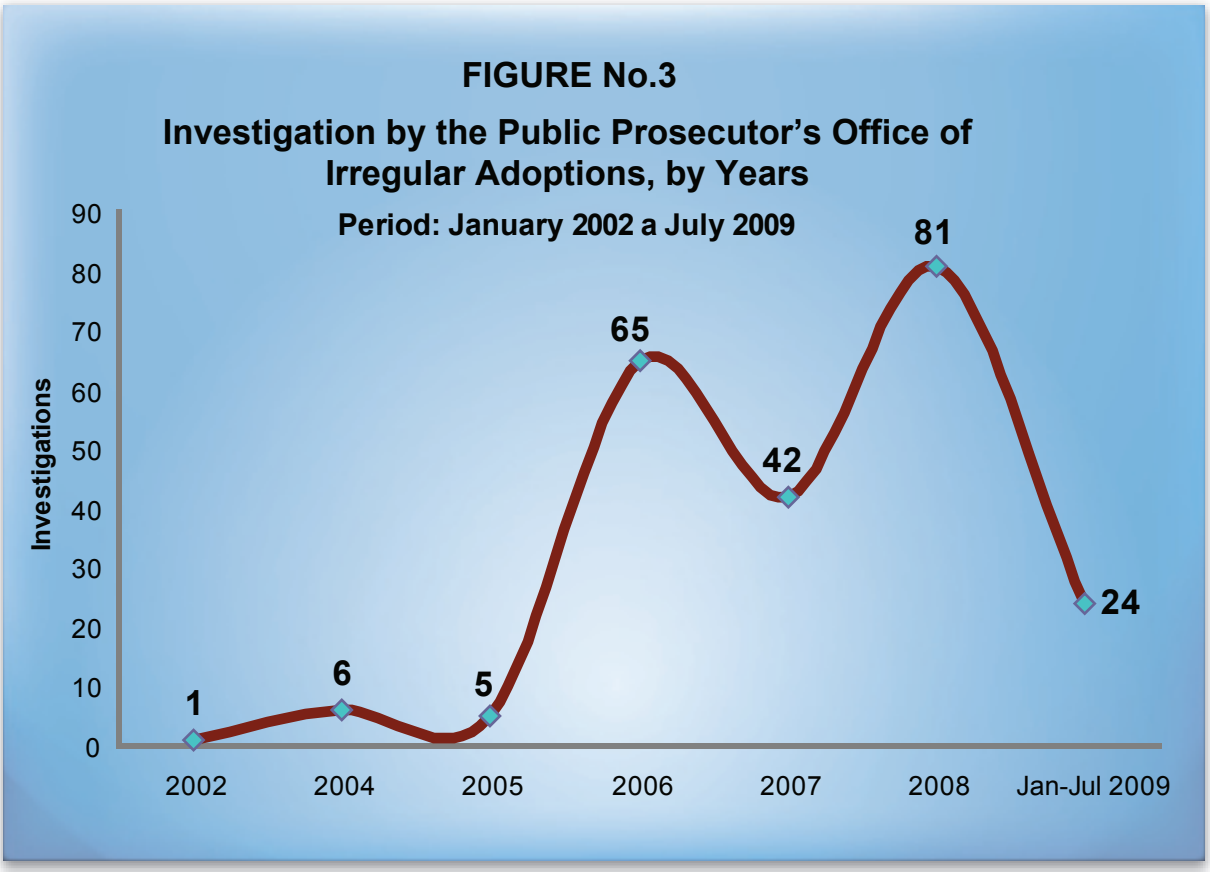
Notwithstanding the provisions of the Law, we have identified cases in which the Department of Immigration passport issued to children who were reported as stolen,[122] and authorized their departure from the country without fulfilling their obligations relating to immigration control.

There are also children whose fate is unknown because they left Guatemala by air on private flights, without any control of the destination [or] the names of the individuals who took the child.

b. Conclusion

In Guatemala, the illegalities committed during the irregular adoption processes constitute the crime of human trafficking. Despite the irregularities described in this chapter, there have been no serious investigations of these networks; on the contrary, superficial amendments were made to the process to facilitate illegal adoptions.

In this context, it was not until 2006 that the Public Prosecutor's Office initiated investigations into the crime of trafficking for illegal adoption purposes. In November 2007, a unit was created to combat trafficking in persons and illegal adoptions in the Organized Crime Prosecution Office of the Public Prosecutor's Office.



Source: Unit against Trafficking in Persons of the Prosecution Office for Organized Crime of the Public Prosecutor's Office of Guatemala.

[122] Report on the kidnapping of the child ALHR. The complaint contained a photograph of the girl.

Since the creation of the Unit against Trafficking in Persons, important actions confirmed the direct participation of the persons mentioned in this chapter, such as investigations and prosecutions against solicitors, caregivers, snatchers, PGN officials, registrars civilians and one impeachment of a Judge for Children and Adolescents.

By the end of 2009, 85% of cases investigated by the Unit against Trafficking in Persons have to do with illegal adoptions. Six defendants charged with the crime of trafficking for purposes of international adoption have been convicted.[123]

However, despite the efforts of the Public Prosecutor's Office, CICIG and civil society in the investigation, prosecution and punishment of these offenses, the results have not been successful due to interpretation errors by some justice officials who failed to consider that activities surrounding illegal adoptions were of characterized as transnational organized crimes or did not consider the seriousness of the crime of trafficking.

This has led, in some cases, to prosecution of an individual for an offense other than trafficking, even though the actions he carried out are characterized and punishable as this crime in the Guatemalan Penal Code.

The commission of these crimes involves structures that have the characteristics of transnational organized crime. As is clear from the actions described in this chapter, the players are the same with varying degrees of participation and importance depending on who heads the network or the type of trafficking crime involved.

The participation of State institutions played a central role in the activities of these networks, such as the actions of certain Judges for Children and Adolescents, members of PGN and Registrars of Vital Statistics.

Some justice officials, misusing broad interpretations of the crimes of unlawful assembly, money laundering and conspiracy, refused to frame the investigation within the Law against Organized Crime, ignoring a whole series of organized crimes against particularly vulnerable persons, which hindered criminal prosecution.

[123] Information provided by the Unit against Trafficking in Persons and Irregular Adoption of the Organized Crime Prosecution Office of the Public Prosecutor's Office. See Appendix Paradigmatic Cases, 'JAMS Case' (MP009-2007-63107, Case 12505-07), ruling now on appeal handed down by the 3rd Criminal Appeals Chamber of the Department of Guatemala. 'ESRE Case' (MP009-2007-33021, Case 17630-07), sentence handed down by the Eighth Trial Court.

4 ANALYSIS OF ADOPTIONS PROCESSED DURING THE TRANSITION PERIOD

This report includes an analysis of adoptions initiated before the entry into force of the Adoption Law that are pending, known as "adoptions processed during the transition period."

These cases were processed under the transitional provisions of the Adoption Law. The type of controls that PGN carried out with regard to 3,342 adoptions handled during the transition period were analyzed.

There were several stages in the transition process. The lack of control during the first months after the entry into force of the Adoption Law (January to April 2008) led to the creation of a verification process. During the second stage, monitoring and control were also very poor. This chapter highlights the main shortcomings identified during the verification process.

The third stage included an analysis of the cases of children that did not benefit from the verification process, of which there were at least 300 in mid-2010.

According to information available to NAC regarding the large number of children whose adoptions were not verified (1,032), the Council requested that the Courts for Children and Adolescents order protective measures. However, this study found that only 452 children were actually brought in. The adoptions of the remaining children were processed between January and April 2008 and PGN failed to report them.

Finally, the Coordination Unit for Control and Oversight of Adoption Proceedings was created on 11 September 2009.

This chapter describes the lack of control and serious irregularities found during each of these stages and concludes that many of the practices described in the previous chapter and the participation of members of illegal groups that were active during the transition period still subsist.

a. Background

The Adoption Law (Decree 77-2007), which entered into force on 31 December 2007, established a new system for processing domestic and international adoptions.

With regard to cases pending at the time of entry into force of the Adoption Law, transitional arrangements were put in place. They stipulated that that these cases were still being handled under the old regulations and established the obligation to register such cases with the National Adoption Council (NAC).

"Article 56. All notarial and judicial adoption proceedings that are pending at the time of enactment of this law must be registered with the Central Authority (National Adoption Council), within a period not exceeding thirty days. They ***will be further processed in accordance with the law that was in force when they started.*** **Any cases that are not registered within the prescribed period shall be processed in accordance with the procedures set out in this law".**

This meant that all adoptions that started prior to December 31, 2007 should be registered with the

National Adoption Council and processed under the notarial procedure. Subsequently, the Solicitor General's Office (PGN) would approve those that met the institutional requirements for the issuance of a 'favorable opinion' as of that date[124] The adoption was then registered, a passport was issued and the child was sent to its place of destination.

Although the rules were clear, unfortunately there were a number of flaws in the adoption proceedings during the transition period, i.e., cases initiated by notaries that continued being processed after the entry into force of the Adoption Law.

Consequently, from 3 January to 12 February 2008, the National Adoption Council registered children whose adoption proceedings had started before the entry into force of the Adoption Law, by requiring that notaries submit notices to NAC.

The National Adoption Council is the Central Authority under the Hague Convention[125] and its mission is to strengthen the comprehensive protection system and ensure restitution of the rights of children and adolescents to grow and develop within a family through policies and programs that follow the principles and proceedings of the Adoption Law.

NAC was expected to start operating in January 2008. The appointments of its members were "confirmed" by Congress in December 2007. However, when President Álvaro Colom took office, he decided to replace all the Council members.[126] The initial members filed an appeal for protection ("amparo"), but the court ruled against them and the new appointments were confirmed.

The current Board of Directors of the National Adoption Council began working on 8 February 2008.[127]

Adoptions handled during the transition period were processed and completed in different stages:[128]

STAGE	PERIOD	CONTENT
First Stage	3 January – April 2008	Notarial notices were filed with the CNA and approval of adoption proceedings pending at the time of entry into force of the Adoption Law continued.
Second Stage	8 May – 31 August 2008	The verification process was established with the participation of various institutions (PGN, CNA, Human Rights Ombudsman (PDH) and Public Prosecutor's Office.
Third Stage	1 February 2009 – 30 June 2010 (still pending)	Courts for Children and Adolescents were asked to order protection measures and the Coordination Unit for Control and Oversight of Adoption Proceedings was created.

[124] For the purposes of this study, proceedings that were given a "departure authorization" are those to which PGN gave a "Favorable Opinion.".

[125] Article 6 of the Convention Concerning the Protection of Children and Cooperation in Respect of Intercountry Adoption.

[126] Information obtained by interviewing one of the first Directors of NAC, in February 2008. See also El Periódico, "The National Adoption Council: First Conflict of the Government", Guatemala, 17 January 2008. http://www.elperiodico.com.gt/es/20080117/pais/47602 (as of 31 May 2010).

[127] National Adoption Council, "2008 Annual Report ", Guatemala. "The following regular and alternate members of NAC Board of Directors were appointed: Lawyers Marilys Barrientos de Estrada and Ana Maria Moreno Ramirez on behalf of the Ministry of Foreign Affairs; Lawyers Sonia Elizabeth Hernández Guerra and Norma Elizabeth Robles Ávila on behalf of the Social Welfare Secretariat of the Presidency; and Lawyers Rudy Amílcar Soto Ovalle and Efraín Estuardo Sánchez Montenegro on behalf of the Supreme Court of Justice. The Board of the National Adoption Council (NAC) was thus set up and started operating on 8 February 2008.". http://www.cna.gob.gt/portal/doc/memoriadeLabores2008.pdf (as of 15 June 2010).

[128] Attachment Chronology of the transition period.

b. Methodology for the Analysis of Adoptions handled during the transition period: Creation of the CICIG Database

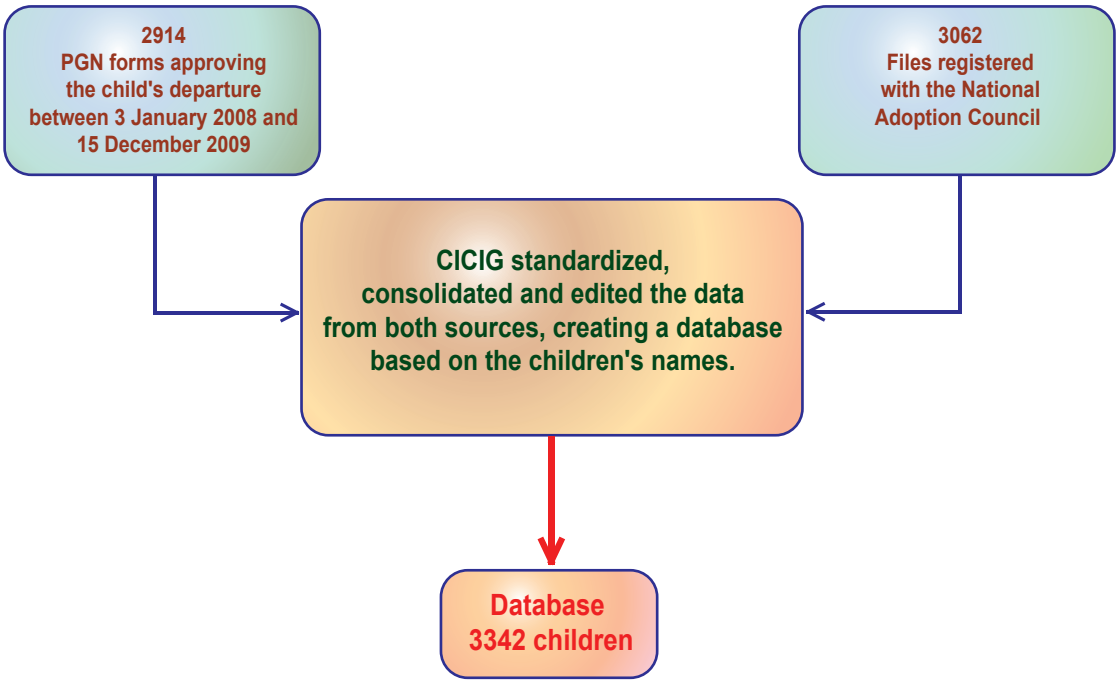
As stated in the introduction, 3,062 notarial notices registered with the National Adoption Council and forms for 2,904 children whose adoption proceedings were completed by PGN by recording their departure from the country between 3 January 2008 and 31 July 2009 were studied for this analysis.[129]

Information was consolidated and duplicate data and proceedings were corrected. CICIG created a database based on the children's names. This database includes all the departure records produced by PGN through 31 July 2009 and the number of notarial notices registered with NAC beginning on 3 January 2008.

In brief, the statistics described in this report match the consolidated database ("CICIG Database"). It determined, as shown by the diagram below, that 3,342 children were subject to adoption proceedings during the transition period.

DIAGRAM No.5

ADOPTIONS PROCESSED DURING THE TRANSITION PERIOD



The number of children subject to adoption proceedings during the transition period was established and the data and players involved in the process and its status were established. Information provided by the Public Prosecutor's Office was then included in the database with regard to criminal investigations of crimes related to trafficking for illegal adoption purposes. The Immigration Bureau gave information regarding the issuance of passports and registration of the child's departure; the Solicitor General's

[129] Register of adoption proceedings and notarial notices provided by PGN through various requests for information by CICIG based on its mandate.

Office provided information regarding proceedings that had been suspended due to anomalies and Courts for Children and Adolescents gave information with regard to protection measures ordered or denied in favor of children who were not brought in for verification. Consolidating the information based on the children's names allowed CICIG to broaden its analysis and present a fuller picture.

Below is a chronological summary of the various stages of the adoption proceedings of at least 3,342 children that are or were among the 'adoptions handled during the transition period'.

c. Stages of the Transition Process

c.1. First Stage (from 3 January to April 2008)

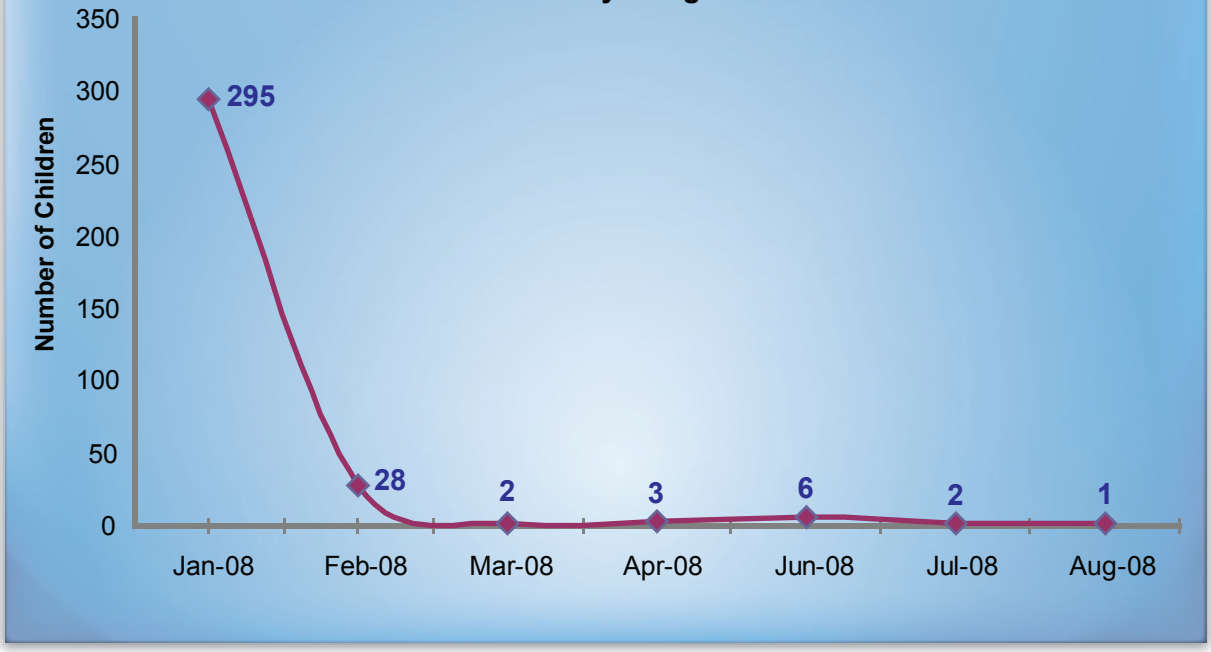
This was the stage of registration with NAC. According to the CICIG database, 3,005 children were registered, of whom 1,115 received the favorable opinion of PGN between January and April. The main irregularities found during this stage were:

- PGN processed **337 cases** not registered with NAC, of which 328 were approved during this period.
- Admission by PGN of **1,043 children** under notarial adoption proceedings after entry into force of the New Law.
- NAC requested information about cases approved through April 2008 and PGN failed to report on **771 cases**.

FIGURE No.4

Number of Adoption Applications NOT Registered with the National Adoption Council

Period: January - August 2008



Source: CICIG Database.

c.1.1. Registration of Notarial Notices by the National Adoption Council

Under the Adoption Law, all pending proceedings should be registered with the National Adoption Council no later than 30 days after the entry into force of the Law in order to continue the adoption proceedings through a notary.

Registration began on 3 January 2008 and ended on 12 February 2008.[130]

Thus, notaries who had pending adoption applications submitted notarial notices to the National Adoption Council, which registered 3,005 domestic and international adoption applications. However, **337 adoptions** were approved by PGN although they had not been registered with the NAC.

The chart shows that **96%** of the adoption applications that were NOT registered with the National Adoption Council received PGN approval[131] (a favorable opinion) **between January and February 2008**.

c.1.2. Processing of Applications Submitted to PGN after the Entry into Force of the Adoption Law

In accordance with Resolution 51-2007 of the Solicitor General's Office, notaries were required to give notice to PGN within ten days after initiating the adoption proceedings.

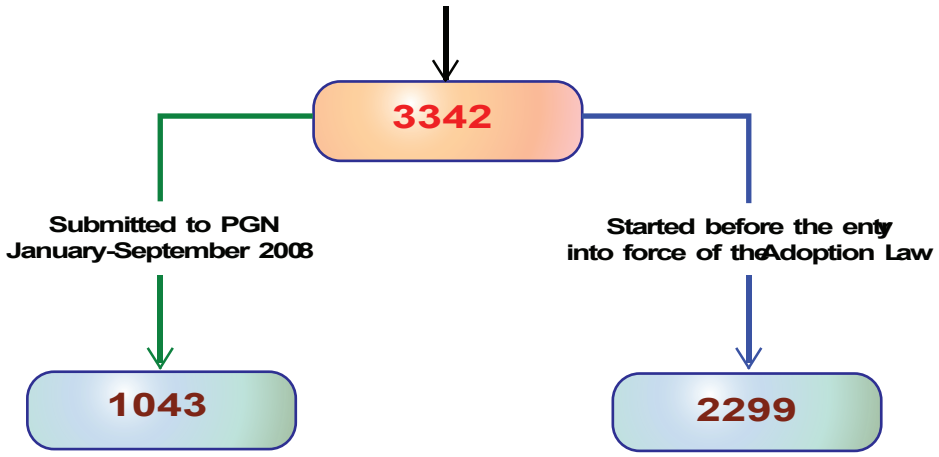
However, the CICIG analysis shows that notarial notices were filed with PGN after that period. These proceedings were also registered with the National Adoption Council as proceedings during the transition period through notarial notices.

CICIG identified 1,043 adoption applications filed with PGN after the entry into force of the Adoption Law in violation of the provisions of PGN Agreement 51-2007; i.e., 31% of adoptions handled during the transition period should have been processed under the Adoption Law.

The Solicitor General's Office indicated that in some of these cases,[132] the applications had been started before the entry into force of the Adoption Law, but because of some "previo"[133], notaries had to resubmit the application and the system recorded it with a new start date and new case number and indicated that new cases were not processed.

DIAGRAM No.6

APPLICATIONS DURING THE TRANSITION PERIOD



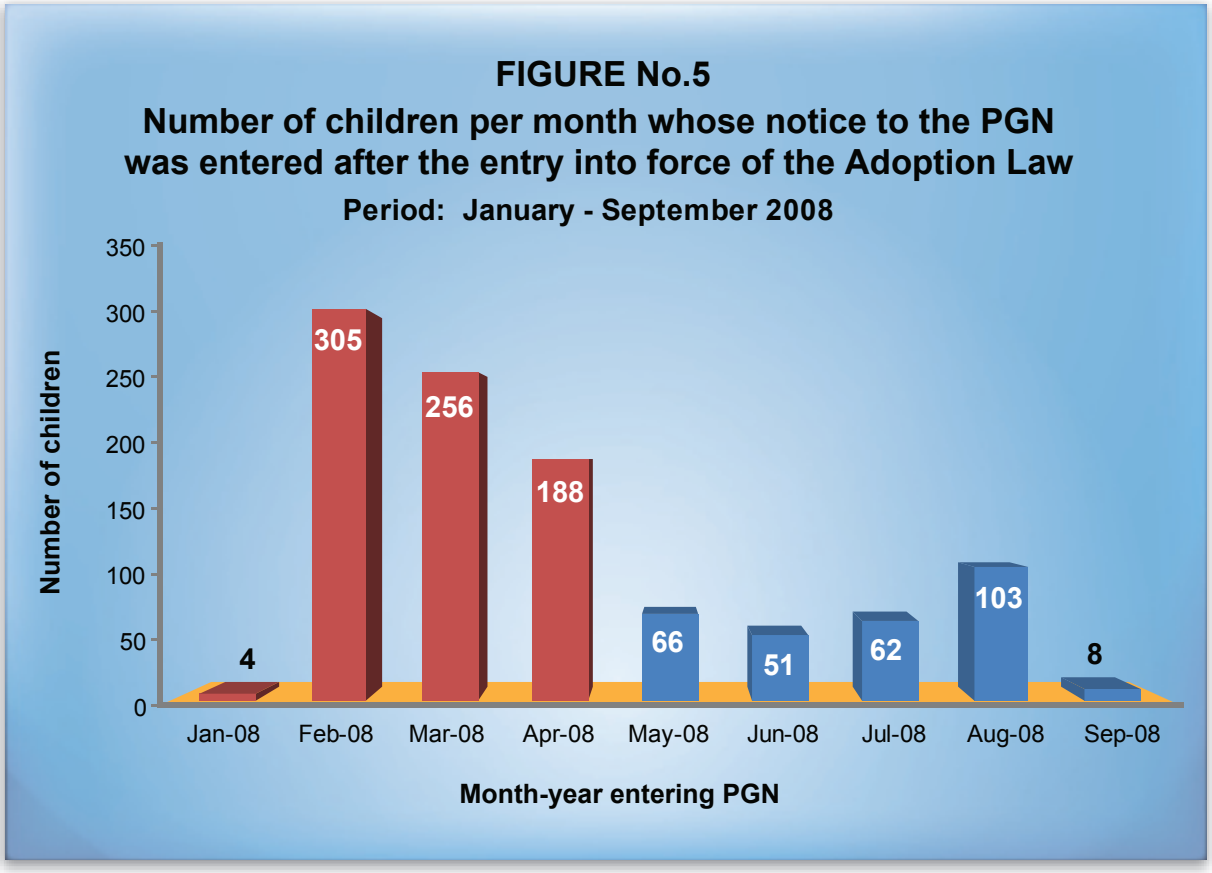
[130] Interview with NAC official.

[131] Applications that received a "favorable opinion" from PGN were returned as approved to the notary so he could complete the process.

[132] Interview with an official of PGN General Secretariat, May 2009.

[133] "Previo": An observation made by PGN to notaries in voluntary jurisdiction proceedings. They are usually remarks regarding errors or irregularities that could/should be corrected by notaries.

Of the **1043** notarial adoption proceedings filed with PGN **AFTER** the entry into force of the New Law, **753 (72%) were started between January and April 2008**.



Source: CICIG Database[134]

c.1.3. Omission of Information

Another problem detected was the omission of information by PGN to NAC. On 7 April 2008, the newly structured National Adoption Council sent the Solicitor General's Office communication No. 33-2008 requesting information based on the proceedings registered with NAC regarding the children's names and case numbers that had been approved until then in accordance with PGN's records.

On 15 April 2008, PGN informed NAC through communication 16/08VHBB/sjcdl that: "...with regard to adoption cases registered with the National Adoption Council, the Solicitor General's Office has approved 537 adoptions through 11 April of this year...".[135]

Notwithstanding what was stated by PGN in that communication, CICIG determined, based on information provided by the same Office, that between 3 January and 11 April 2008, 1,308 adoptions had received a favorable opinion, of which 328 had not been registered with the National Adoption Council and 120 were started after the entry into force of the Adoption Law.

[134] Filing records and notarial notices provided by PGN to CICIG in response to various requests.

[135] These 537 records refer to adoptions of 545 Guatemalan children.

TABLE No.2
Adoptions with Authorizations for Departure According to Communication 16/08-VHBB/sjcdl

Period: 3 January – 11 April 2008[136]

	Status of the Case at NAC		Filing of the Case with PGN		
Children	Filed with NAC	Not filed with NAC	Filed with PGN after entry into force of the Adoption Law	Initiated after entry into force of the Adoption Law	**TOTAL**
Children whose adoptions were approved as reported by PGN to NAC in Communication 16/08 VHBB/sjcdl	537		115	422	**537**
Children whose adoptions were approved and NOT reported by PGN to NAC in Communication 16/08 VHBB/sjcdl	443	328	5	766	**771**
TOTAL	**980**	**328**	**120**	**1188**	**1308**

Source: CICIG database.

In total, the following adoption applications received a favorable opinion from PGN during the months of January – April:

TABLE No.3
Applications that Received a Favorable Opinion from PGN

Period: January – April 2008

Month when Departure was Approved by PGN	Registered with NAC	NOT registered with the NAC	Total
January	281	295	576
February	299	28	327
March	290	2	292
April	245	3	246
Grand Total	**1115**	**328**	**1443**

Source: CICIG database.

[136] The data contained in Communication 16/08-VHBB/sjcdl of the Office of the Solicitor General of the Nation to the National Adoption Council are for this period.

During the month of April 2008, the Executive decided to replace the Solicitor General, Mario Estuardo Gordillo Galindo. He was asked to step down on 21 April 2008 and Mr. Baudilio Portillo Merlos took office a day later. The second stage began during his tenure.

In conclusion, of the 3,342 adoption applications during the transition period, about **43%** (1443 children) received a favorable opinion during the first four months of 2008 without any special monitoring mechanism or verification measure and **328** of these were not even filed with NAC. Even after the entry into force of the Adoption Law, during this stage, approval rates remained the same as in 2006 and 2007, when the highest number of international adoptions per year was processed in Guatemala.

c.2. Second Stage (From 8 May to 31 August 2008). Verification Process

After the appointment of Solicitor General Baudilio Portillo Merlos, civil society pressured and demanded greater control of adoption applications in transition. This led to the establishment of a verification process.

Even after the enactment of the law, hundreds of children were given up for adoption under the notarial system without any control beyond the issuance of a favorable opinion by PGN. Because on the above and because several mothers who had reported the theft of their children had no idea of their whereabouts, civil society organizations working on behalf of Guatemalan children and on violence against women called on government institutions to check the status of children whose adoptions were still pending, in order to investigate where and how they were.[137]

Adoption proceedings were suspended in late April and on 8 May 2008, PGN and NAC began a verification process.

The main irregularities detected by CICIG during this stage were:

- Filing, during this stage, of more than 250 notarial adoption applications with PGN, in violation of the provisions of PGN Resolution 51-2007 and the transitional provisions of the Adoption Law.
- Although a special verification committee had been created, at least 86 cases that contained serious irregularities received a favorable opinion.
- Verification was seen as a mere formality.

Based on Article 57 of the Adoption Law which requires verification of the child's origin, to ascertain that the birth mother has given her consent freely, spontaneously and without pressure and provide legal certainty to the adoptive parents, the National Adoption Council and the Solicitor General's Office agreed to conduct a verification of adoptions that were processed in accordance with the criteria established before the entry into force of the law.

To this end, both institutions reported publicly that the verification process would be free, public, transparent and assisted by observers from the Office of Human Rights and the Public Prosecutor's Office. They also indicated in a statement, "adoptive families and the general public can have confidence in the verification process that is taking place".[138]

PGN allowed only one month to carry out this verification, but the process began on 8 May 2008 and ended on 31 August of that year.

Throughout the process, the criteria used by the verifiers were to: verify the mother's consent, the child's origin (birth certificate, the mother's identity card, the presence of DNA testing (even if the notary

[137] CERIGUA, Guatemala, 7 May 2008. "Organizaciones piden verificar estado de menores en proceso de adopción" ("Organizations Ask for Verification of Status of Children in the Process of Adoption") http://cerigua.blogspot.com/2008/05/organizaciones-piden-verificar-estado.html (as of 31 May 2010).

[138] Attachment, NAC and PGN Publication, Inicio de la Verificación (Beginning of Verification).

submitted it), the presence of counsel, consistency between the documents (photographs, dates, age, case numbers, notary's notice to NAC) and other legal formalities (child custody report, special power of attorney, a record of the birth mother's consent.)

The verification was done by creating working groups with PGN and NAC officials.[139] Each working group reviewed cases using its own criteria.

Based on the "CICIG Database", when the verification process started, 1,899 of 3,342 applications filed during the transition period had not received a favorable opinion. At the end of the process, there were 1,412 remaining, or 74% of the proceedings pending when the verification process began.

Of the adoption applications submitted to verification, most (96%) received a verification certificate that allowed the adoption process to continue; i.e. neither PGN nor NAC found any irregularities that would be grounds for suspension of the adoption process. During the process, only 4% (46 children) of all the applications submitted for verification had some irregularity. These children were handed over to a judge and the adoptions were suspended. In some cases, the proceedings were forwarded to the Public Prosecutor's Office for the appropriate legal action.

Some notaries were summoned more than three times and even corrected irregularities while the verification was taking place.

TABLE No. 4

Classification and Results of the Review and Analysis of the Verification Certificates of Adoptions Submitted to the Verification Process according to PGN and the NAC

CLASSIFICATION	Totals
Children with positive verification certificates	1366 (96%)
Adoption proceedings suspended during verification[140]	46 (4%)
Totals	**1412**

Source: CICIG Database.

The irregularities[141] found by the verifying institutions that led to suspension of the proceedings were:

- *8 administrative irregularities: absence of a signature in an abandoned child case. There is no legal representative. Not filed with the NAC.*
- *31 substantive irregularities, some of which may indicate the commission of a crime: Medical birth certificate issued prior to the birth; the photographs of the child do not match those found in the different files (PGN, NAC and verification records); lack of DNA testing or negative DNA*

[139] PGN-NAC Press Communiqué http://www.cna.gob.gt/portal/Noticias09608.html (as of 31 May 2010).

[140] This variable corresponds to applications where anomalies were detected in the course of the verification. Some were suspended because the mother changed her mind, others were sent to the Public Prosecutor's Office and others were taken over by PGN.

[141] CICIG classified irregularities as administrative, substantive and criminal to facilitate understanding.

test. Failure by the birth mother to ratify her consent; false birth mothers; the mother is a minor; the mother does not speak Spanish. Inconsistencies in the file and/or the mother's statements. For example, the mother does not know where her child was born. Forged documents. The mother changes her mind about giving up her child for adoption.[142]

- *7 substantive irregularities with clear evidence of commission of an illegal act: Inconsistencies in the proceedings. The mother contradicted herself in her statements, which indicates that the child was taken by fraud or there was already an inquiry by the Public Prosecutor*.[143]

The last seven cases were referred to the Public Prosecutor's Office and/or the Children's Solicitor of PGN. An example is the case of a girl known as ESRE/SAHM, who was reported stolen in 2006. The girl was the subject of an irregular adoption process and during the verification she was "taken away"[144] because the alleged birth mother "changed her mind" and no longer wished to give her daughter up for adoption. However, her real birth mother recognized her, DNA testing was requested and the test came back positive. Finally, it was determined that the child known as SAHM was the same girl that had been reported stolen.

In the view of CICIG, the 31 substantive irregularities mentioned above should have also resulted in suspension of the adoption and the corresponding complaint to the Public Prosecutor's Office because crimes may be involved. However, these irregularities were treated as simple errors and not followed up.

Therefore, CICIG decided to analyze all the verification records that did not result in suspension of the adoption proceedings. It found that although observations were made and irregularities were noted in the relevant records, at least 10% of these proceedings received a favorable opinion.[145]

Although priority should be given in the verification process to ascertaining the child's true origin, there were cases in which even children that had been reported stolen and brought in for verification were not identified during that process. This meant that the adoption proceedings were completed, allowing the departure of stolen children. Such is the case of KALG/ALHR, a girl stolen in 2006 and given up for adoption. KALG/ALHR's mother was present during the verification. However, when KALG/ALHR's turn came, nobody recognized her. According to testimonies collected by CICIG, "LERM (mother) was taken out of the room where the children were being shown because her two children were soiling the waxed floor".[146]

PGN may have had access to information available in the Prosecution Office for Children as well as on cases that were not registered with NAC and were initiated after the entry into force of the Adoption Law. Finally, although it has detected abnormalities in the process, which are recorded in the verification records, it gave favorable opinions in these irregular adoption cases.[147]

---

[142] In an interview on 15 April 2010, one of the officials responsible for the verification process informed the Commission that when the mother changed her mind and did not ratify her consent, the child was "taken away" because at some point, the mother had wanted to give it up for adoption and therefore was "not a good mother.".

[143] The Public Prosecutor's Office conducted the investigation, resulting in the second half of 2009, the first trial court conviction against the Notary Sum Santiago for the crime of trafficking for illegal adoption purposes. DNA test forgery case. See also Attachment: Paradigmatic Cases.

[144] A term used by PGN when referring to children who were brought before a judge for Children and Adolescents because they were at risk.

[145] Case of the child known as BABP, proceedings 6505-08. During the due diligence process, the mother confirmed her consent. However, it was noted that both the record of custody and DNA test were missing.

[146] Asociación Primavera Case. See Appendix Paradigmatic Cases. See also http://www.elperiodico.com.gt/es/20090828/pais/111770/ (as of May 31, 2010). CICIG, as complementary prosecutor, is currently following up on criminal investigations in this case, which is closely connected with proceedings by the 'Asociación Primavera" children's home.

[147] In an interview on 15 April 2010 with one of the officials responsible for the verification process, she said the process had been transparent and that if they had missed a few anomalies, it was because there were too many children and not enough staff to review the cases.

This shows the existence of a system that does not control adoption proceedings adequately or diligently enough. The result is violation of children's rights and possible participation in the commission of crimes.

In accordance with CICIG's analysis, there were serious problems in some applications, including the following:

TABLE No.5

Details of the Most Serious Irregularities[148] Detected by CICIG during Its Review and Analysis of Verification Records

POSSIBLE IRREGULARITIES DETECTED BY CICIG DURING ITS REVIEW AND ANALYSIS OF VERIFICATION RECORDS	Total
Alleged birth mother linked to child theft.[149]	2
The mother confirmed her consent, but contradicted herself when answering verification inspectors' questions.	1
The adoption process had received a favorable opinion in April 2008. However, the notary submitted to the verification and the mother did not ratify her consent, so her daughter was returned to her. [150]	1
The mother confirmed her consent, but data alteration can be detected.	80
The photograph on PGN form does not match one on NAC form.	2
TOTAL	**86**

Source: CICIG Database

Finally, in PGN registration forms, CICIG identified possible changes in the children's and/or the mother's data and identified cases where the mother is under age. In total CICIG identified approximately 870 forms with allegedly altered documents.[151]

[148] CICIG detected at least 149 irregularities in the proceedings. This table presents the most serious ones.

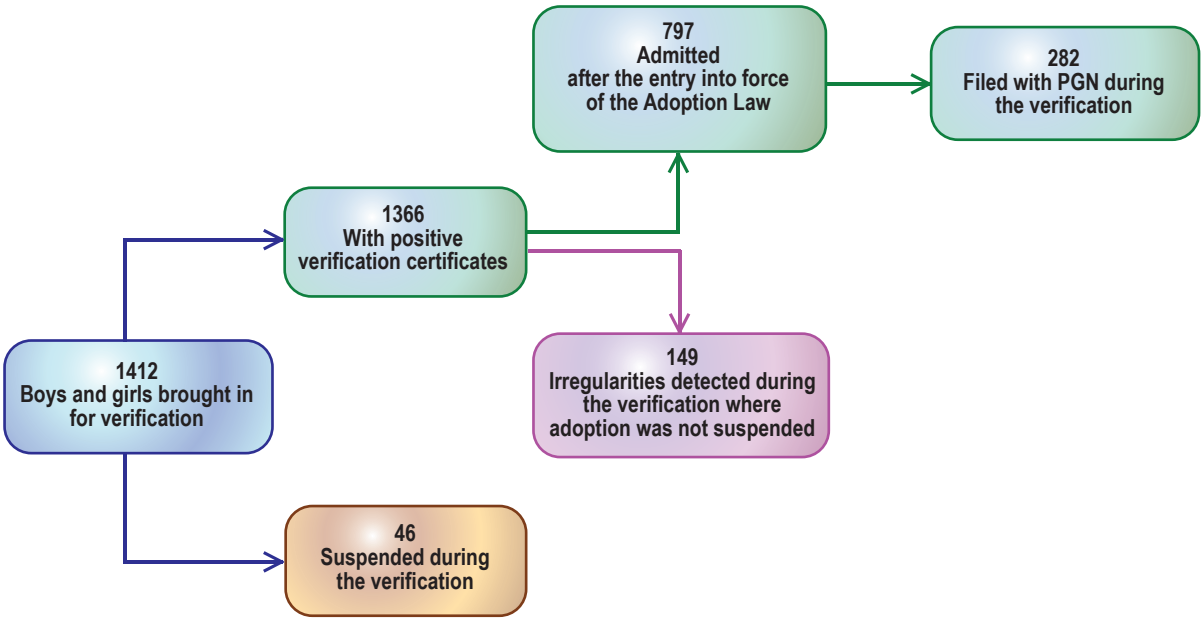
[149] Name of the alleged birth mother: Clara Esperanza Pérez Méndez. In 2009 she was convicted on appeal of the crime of complicity in trafficking for illegal adoption. See also Attachment paradigmatic cases.

[150] The adoption proceedings are being investigated by the Public Prosecutor's Office due to irregularities in the adoption process, Case MP 5535-2008.

[151] For example, approximately 45 forms with altered date of birth of the mother, 25 in which the mother changed her place of residence at the time when the baby was born, 15 alterations in children's data, 15 forms in which the mother is under age.

In that regard, the following procedure was carried out:

DIAGRAM No.7



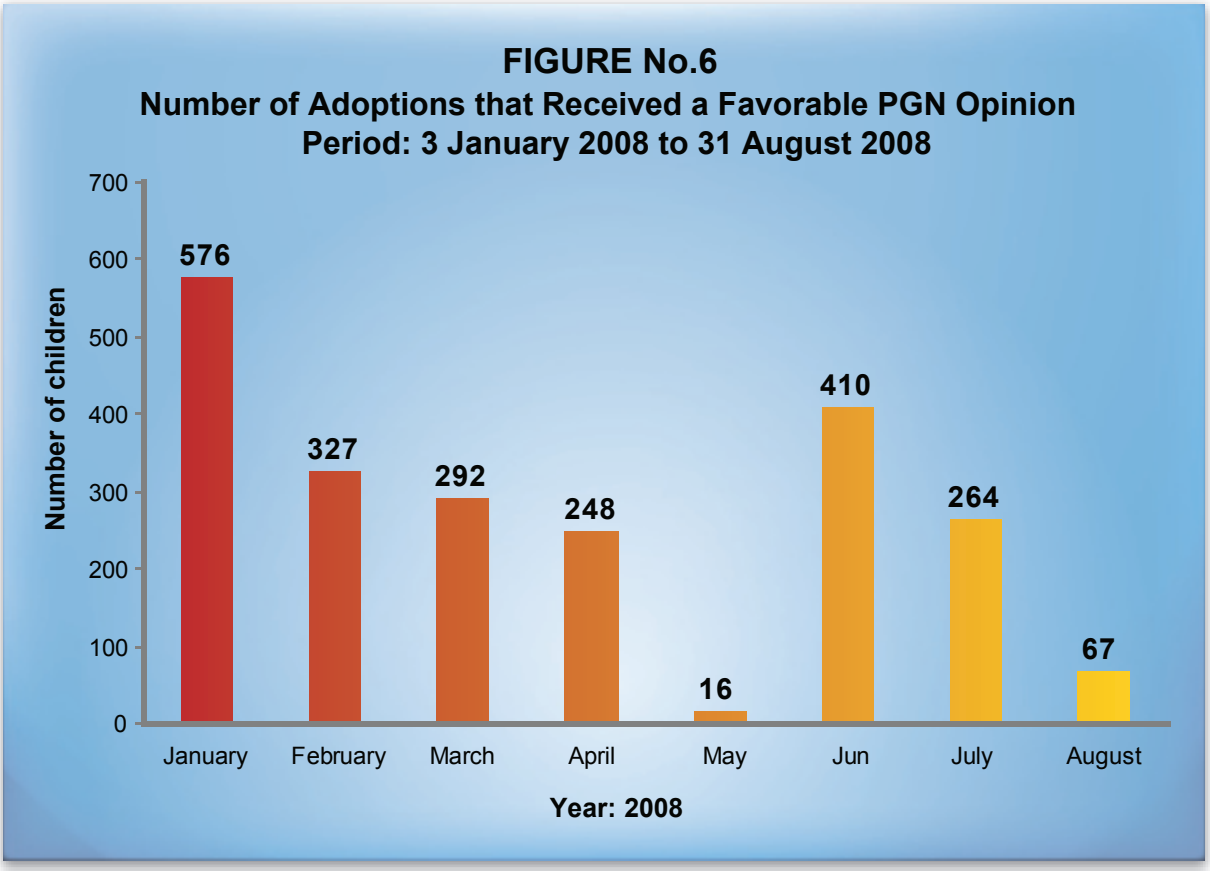
In addition to the irregularities detected in the verification records, CICIG found that the adoptions of 797 children, i.e., 56% of 1,412 children brought in to the verification process, had started after the entry into force of the Adoption Law.

Diagram N° 7 also shows that 282 applications were filed with PGN between May and August 2008.

Verification was used as a mechanism to facilitate adoptions instead of detecting illegal acts, which was reported even by the media.[152]

For example, the chart below shows how, in the months of June and July the number of approved adoptions increased.

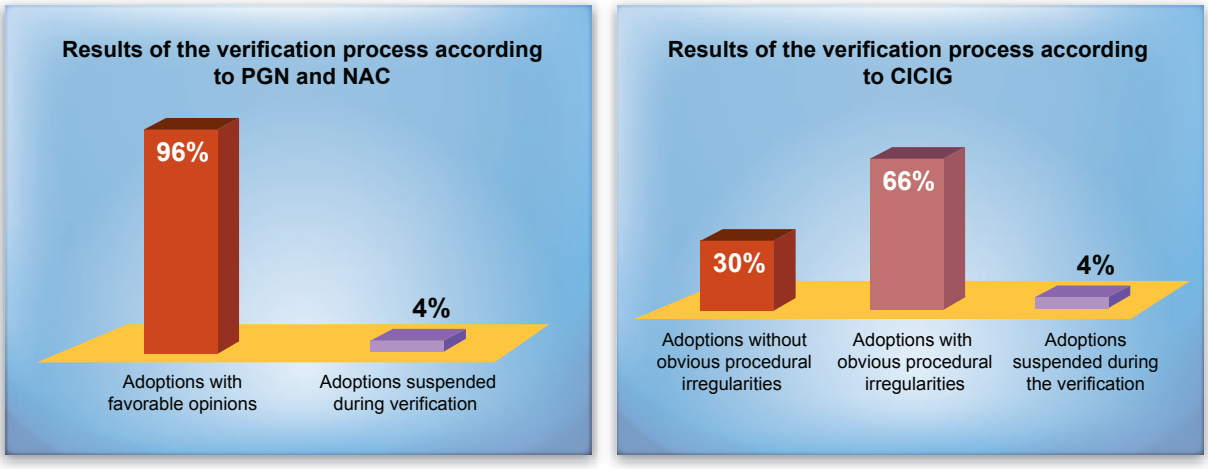
[152] La Hora, Guatemala May 13, 2008, 'Adopciones anómalas no cesan' ('Anomalous Adoptions Continue Unabated'). http://www.lahora.com.gt/notas.php?key=30426&fch=2008-05-13 (as of 31 May 2010).



Source: CICIG Database .

The figure below shows what the verification process was like according to information provided by both institutions (NAC/PGN) and how it compares with the results of CICIG's analysis:

FIGURE No.7



Source: CICIG Database .

Notaries who had filed notices with NAC were summoned more than twice and asked to submit to the verification process and bring children subject to a pending notarial adoption process.

CICIG had access to lists of PGN citations and found that indeed, during the period from 8 May to 31 August 2008, both institutions summoned more than 500 notaries and approximately 18% of them were summoned more than once.[153] According to several sources consulted by CICIG, the main reason for this absence by the notary was the fear that anomalies would be found in their cases. At the end of the verification process, the Council included in its database 1,032 adoption proceedings with the participation of 188 notaries who did not appear, and children subject to such formalities were not physically present either.

In accordance with CICIG's analysis, the actual number of adoption applications that were not submitted to verification, as seen in the next section, was 452. The error was mainly due to lack of communication between PGN and the NAC.

Verification was the first attempt to institutionalize control beyond the superficial one performed regularly by PGN. However, while working on this analysis, CICIG identified the following anomalies in the process:

- No potential crimes were reported to the Public Prosecutor.
- No adoption proceedings that had serious flaws were suspended; the children who were at risk were not remanded to a Judge for Children and Adolescents who would order the appropriate precautionary measures.
- Many children who are registered in the database of the Children's Solicitor are reported stolen or kidnapped. Their birth mothers had filed complaints. However, these facts were never taken into account by those responsible for the verification process, or by officials who gave a favorable opinion in the adoption process.

The fact that some very serious complaints that might lead to the presumption of criminal acts in adoption proceedings did not influence the competent officials' decision to approve them shows at least serious flaws in the management of information in these processes. At the very least, ignorance or indifference on the part of the officials involved should be investigated.

- PGN allowed the extemporaneous filing of more than 250 notarial notices during the verification period. This made adoptions possible that should have been approved under the new law with the relevant controls.
- Favorable opinions were given in cases that had not been registered with the NAC.
- Adoptions were approved with flaws, anomalies and irregularities detected during the verification.
- Serious irregularities that were plainly visible in the forms submitted by notaries were ignored.
- In cases that had flaws that could be remedied, the records show that they were not followed up.

c.3. Third Stage (From 1 February 2009 to the end of this report)

Once the verification process was completed, using the information it had in its own database, NAC recorded 1,032 children whose adoption proceedings had not been verified.

In view of this situation, six months after completing the verification process, NAC asked the Children's Courts to order protection measures for these children. Some judges ordered the measures and supervised the adoption proceedings. Others refused or even ordered the continuation of the notarial

[153] There were 2248 citations.

adoption proceedings of children that had not been brought in for verification, thus making the verification process useless.

Of the cases listed by NAC, 512 had already received a favorable opinion during the first stage, but NAC did not know this because PGN did not report it.

After completion of the verification process, before NAC asked the Courts for Children and Adolescents to order protective measures, PGN gave a favorable opinion in at least 10 cases without any verification.

In these different ways, between August 2008 and December 2009, issuance of favorable opinions in adoption proceedings subject to verification, that were verified by a Judge for Children and Adolescents and that, by contrast, were not subject to any type of verification continued.[154]

As of 15 December 2009, a favorable PGN opinion was still pending in at least 300 cases.

- *Children that were not brought in for verification in accordance with information provided by the National Adoption Council.*

As noted, after the investigation was completed (31 August 2008), a significant number of children were not submitted to the verification process. Given this situation, NAC decided to allow a three-month period for PGN[155] to locate the children and ask notaries to submit them for verification by NAC and PGN and warned that if they failed to do so, it would ask Courts for Children and Adolescents to order precautionary measures on behalf of these children.[156]

However, six months after this request, PGN had not given a response or information about these adoptions, although it had information on proceedings approved since the early months of 2008. In February 2009, the National Adoption Council decided to request protective measures for all the children that had not been brought in for verification.[157]

According to the Council, 1,032 adoptions were recorded. However, an examination of the NAC database showed that there were records with duplicate case numbers and children with duplicate forms among the adoption proceedings reported by NAC as “not submitted to verification”. Later it was determined that 40 of them **had** been submitted for verification. CICIG edited the database and concluded that, in accordance with the information available to the NAC, 964 children were not brought in for verification.

In addition to this, there were 512 adoptions, as already mentioned, that had obtained a favorable PGN opinion during the first stage and this was not reported to NAC at the time.

In accordance with the CICIG database, of all adoptions handled during the transition period, 432 children were not brought in for verification. Their records had not received a favorable opinion as of 31 August 2008.

c.3.1. NAC Application for Protective Measures

964 children were not brought in for verification. NAC requested that the Courts for Children and Adolescents (hereinafter called ‘Courts’) order protective measures on behalf of children that were not

---

[154] There is a difference of 500 cases between the CICIG database and information provided by PGN regarding cases subject to the verification process that received a favorable opinion. However, at the end of this report (June 2010), CICIG did not have the dates of issuance of the favorable opinions and therefore cannot pronounce itself in that regard.

[155] Diario de Centro América, Guatemala, 2 September 2008. ‘Las autoridades de la PGN se han fijado plazo de tres meses para esclarecer el paradero de alrededor de mil niños que serían entregados en adopción’ (‘PGN authorities have given themselves three months to ascertain the whereabouts of about a thousand children who were given up for adoption.’ http://dca.gob.gt:85/diariopdf/080902.pdf (as of 31 May 2010).

[156] NAC, 01 September 2008, ‘Buscan 900 niños que iban a ser adoptados’ (‘Looking for 900 children who were to be adopted.’) http://www.cna.gob.gt/portal/Noticias010908.html (as of 31 May 2010).

[157] EFE, 03 February 2009. . ‘Buscan a más de mil niños guatemaltecos que fueron registrados para adopción’. ‘Looking for more than one thousand Guatemalan children who were registered for adoption.’ http://argijokin.blogcindario.com/2009/02/10031-buscan-a-mas-de-mil-ninos-guatemaltecos-que-fueron-registrados-para-adopcion.html (as of 31 May 2010).

brought in for verification. Protective measures were ordered for some of the children by two different courts and some were brought before the same court twice. CICIG edited the list of applications and concluded that protective measures had been ordered for 879 children.

Based on the Adoption Law, NAC asked the Courts to:

- Request that the Solicitor General's Office carry out the necessary investigations.
- Order notaries handling the adoption proceedings to bring the child or adolescent immediately before the judge.
- Issue a resolution ordering the appropriate precautionary measures to restore children's rights that had been infringed and cease any threat or violation against the child or adolescent.
- If the commission of crimes is suspected, officially report the facts to a criminal court and the Public Prosecutor's Office.

Most applications were filed in courts for children and adolescents whose jurisdiction was based on where the notary had recorded the placement of the child in accordance with information provided by notaries on forms submitted to PGN and in notarial notices filed with NAC. In other cases, because security measures for the children had been ordered prior to NAC's application, their cases were transferred to the court that had handled the protection process.[158]

CICIG had access to all the resolutions reported to the National Adoption Council.

Most protective measures were requested in Guatemala City courts. 50% fall within the jurisdiction of the first and third judges of the Department of Guatemala.

The table below shows the content of each of the resolutions, in accordance with the criteria used by judges who handled the cases.

TABLE No. 6
Court Resolutions in Response to Requests for Protection Measures

COURT ASSIGNED TO HEAR REQUESTS FOR PROTECTION MEASURES											
Type of resolution	First of the Dept. of Guatemala	Second of the Dept. of Guatemala	Third of the Dept. of Guatemala	Mixco	Chimaltenango	Quetzaltenango	Jutiapa	Escuintla	Zacapa	Alta Verapaz	TOTAL
Protection measures denied	198	155	2	123	34	6	4		3	1	**526**
Protection measures ordered	22[159]	6	233	5	76	5		4		1	**353**
Total	**220**	**162**	**235**	**128**	**110**	**11**	**4**	**4**	**3**	**2**	**879**

Fuente: Base de datos CICIG.

[158] The Public Prosecutor and PGN's Children's Solicitor were both aware of the legal situation of children on whose behalf protection measures had been ordered.

[159] Of the 22 cases in which the First Judge for Children and Adolescents of the Department Guatemala granted protective measures, one was a case she had already heard previously and in the remaining 21 NAC brought a request for annulment against the denial of protection measures. [She did] this without hearing the merits or without giving any reasons for the change of position regarding her initial decision in which she had rejected the application for protective measures.

As already mentioned, almost 60% (512) of these adoptions had received a favorable opinion from PGN and about 48% of the children had already left the country. However, judges who denied measures[160] did so *in limine,* without ordering that the children be brought to their presence or having seen them. Thus, they were not in a position to establish the status of these proceedings.

Some judges argued that since these proceedings were to be carried out in accordance with the old legislation (Voluntary Jurisdiction Law), the procedure was entirely in the hands of the notary in charge and not in those of the judge. For example, in most cases, the Judge of the First Court for Children and Adolescents of the Department of Guatemala refused to grant protective measures. Some of the arguments raised were:

> *""(...) The National Adoption Council cannot claim that this judge should provide measures to protect the girl in question, as she would be acting outside the law. The National Adoption Council also intends to invoke the Adoption Law in this case, when this adoption was initiated under Decree 54-77 of Congress, which establishes the procedure for a notarial adoption before that law went into effect."* [161]

Obviously, the resolution of the judge ran counter to the specific language of the Adoption Law, which established the proper procedure in the transitory articles. Similarly, the judge said the subpoena of the National Adoption Council was illegal, since this procedure was not covered by Decree 54-77 (voluntary jurisdiction proceedings).

In its appeals for reversal against this type of resolution, NAC stated:

> *"Contrary to the judge's argument, retroactive application of the law is not sought in this case, because the National Adoption Council's actions do not seek cancellation, amendment or revocation of any proceedings that may be pending or already completed in the notarial adoption proceedings, if it really exists, in connection with the child in question; the primary and sole objective of the action is to DETERMINE THE CHILD'S CURRENT OVERALL PHYSICAL AND LEGAL SITUATION".*

There were 221 appeals for revocation, of which 219 were against rulings handed down by the First Court.

In certain cases, the judges, without having had the child physically present, ordered PGN continue the adoption process and issue a favorable opinion.

In contrast, the Third Court of the Department of Guatemala granted protective measures to almost all the children. In its rulings, it noted that:

> *"There is a likelihood of violation of the previously mentioned human rights. Therefore, with due regard to the principle of the child's best interests, the lawyer is directed to (...) present the child in question to this court (...) and submit certified copies of the proceedings that support the adoption".*

In other cases, PGN was asked to establish the status of the adoption and prohibit children from leaving the country, notifying the Immigration Bureau.

Finally, fact-finding hearings were held and notaries who did not bring the children or the birth mothers to the court were admonished.

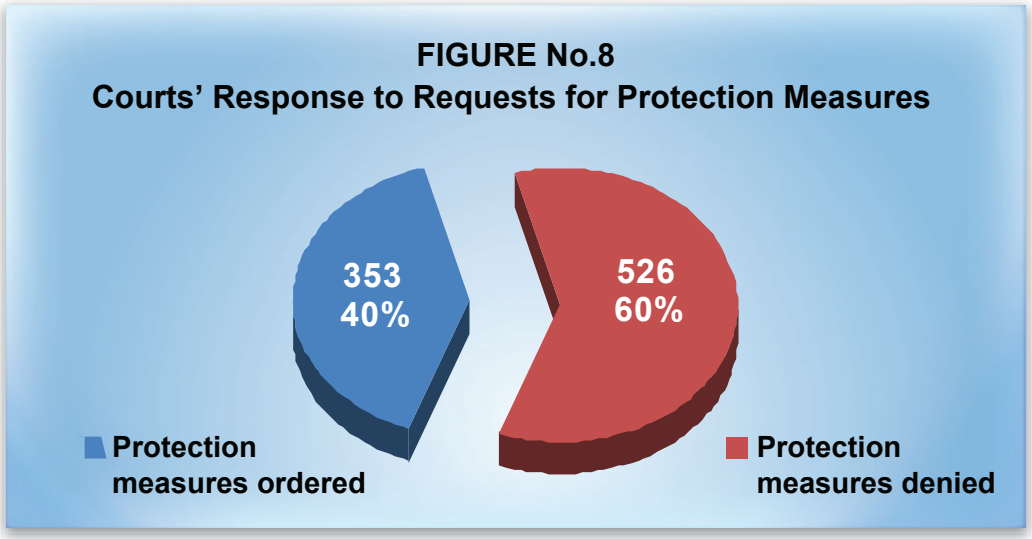
---

[160] Of these, protection measures were ordered for 251 children and denied in 305 cases.

[161] Resolutions of the First Court for Children and Adolescents of Guatemala, for example Proceedings 01064-2009-00291, 1st Clerk, 01064-2009-00293, 2nd Clerk of the First Court for Children and Adolescents, Guatemala, 29 January 2009.

As a result, the status of these children and their adoption proceedings were determined and in some cases the adoption was dismissed and the notary handed over the child to the birth mother.[162]

Protective measures were ordered for 353 children (40%) reported by the National Adoption Council:



Source: CICIG database.

Under Articles 109 and 104, paragraph (a) of the Law on Comprehensive Protection of Children and Adolescents, judges have the power to hear, process and rule on facts or cases referred, reported or known by them ex officio, which represent a threat or violation of the rights of children and adolescents. Consequently, a court ruling restores infringed rights, or violations or threats of violation are ceased.

Faced with a situation of potential risk, Judges for Children and Adolescents had the obligation to verify the physical and psychological well-being of these children, whose right to a family and a name might have been infringed. These are fundamental rights of children protected by the Constitution of the Republic of Guatemala, by international Human Rights treaties and treaties on the rights of the child ratified by Guatemala.

Judges must also consider these cases and rule on the child's legal situation, independently from whether or not it is the subject of notarial adoption proceedings. Judicial rulings that do not provide protective measures requested by NAC not only constitute a denial of justice and a violation of fundamental rights of the individual but ignore international treaties that give priority to ensuring a child's best interests. Systematic decisions of this nature do not provide the special protection to which the child is entitled and are reprehensible behaviors on the part of officials, which led to illegal and uncontrolled adoptions. It is thus ironic that the very judges responsible for the children's protection refused to grant it, leaving the children in a state of vulnerability and danger to their lives and personal integrity.

The denial of justice to these Guatemalan children should be investigated not only because it is the State's obligation to honor its international commitments, but to prevent such proceedings from generating impunity, given judges' obligation to offer children at risk the necessary protection.

By failing to investigate judges' fraudulent actions or omissions, the cycle of impunity is perpetuated and continues and the State then becomes a violator of human rights, because it fails in its obligation not only to guarantee but also to investigate, prosecute and punish its agents' criminal conduct.

[162] E.g. Third Court for Children and Adolescents, Cases P-314-2008, P-58-2009, P-256-2009 and P-202-2009.

c.3.2. Proceedings Pending after the Verification Process

Various types of authorizations of notarial adoption proceedings through favorable opinions issued by PGN were identified through this analysis.

The first one includes adoptions that received favorable PGN opinion without any control or NAC verification.

The second type includes those submitted to verification and approved by PGN and NAC during the verification process. Once it was completed, they received a favorable opinion.

Finally, there are the cases that were pending at the time of completion of the verification process, were not presented for verification but obtained a favorable opinion, either because PGN gave them favorable opinion without verification (at least 10 cases) or because the judges checked the status of the child and the proceedings and determined that the process should receive a favorable PGN opinion (at least 13 cases).

NAC requested protective measures for children who according to NAC database were not brought in for verification, because this situation represented a threat to their well-being.

In this context and because of delays during the transition period in the completion of some adoptions, in mid-2009 more than 200 adoptive families from the U.S. started the "Guatemala 900" movement in order to complete the pending adoptions.[163]

These families requested that their cases be resolved promptly and expeditiously and that the children be placed for adoption.

Unfortunately for adoptive families, not all adoption proceedings that were started by notaries and are still outstanding received a favorable opinion, since most of them were handled illegally. Indeed, in many cases, the irregularities identified are characterized as crimes under Guatemalan law.

We also identified adoption cases that were approved by PGN although protective measures had been ordered and their legal status was unresolved. The Immigration Bureau issued them passports, facilitating their subsequent departure as international adoptees.[164]

Issuing passports and allowing children subject to precautionary and protective measures by Courts for Children and Adolescents to leave the country reflect noncompliance with the provisions of the Immigration Law. These stipulate that DGM must ensure observance of the provisions of the Law when Guatemalan nationals and aliens enter, stay and leave Guatemala, primarily by scrutinizing documents and studying any problems that might arise. In particular, this constitutes breach of duty on the part of State officials who must observe the principle of defending children's best interests.

The "Guatemala 900" group of adoptive families asked the United States Congress, UNICEF and the Government of Guatemala to clarify the status of the pending adoptions.

In order to clarify the situation and respond to the adoptive families' request, on 11 September 2009, the Solicitor General's Office issued Resolution No. 97-2009, which created the "Coordinating Unit for Control and Oversight of Adoption Proceedings", which operated for six months. The unit was made up institutionally of the National Adoption Council and the Solicitor General's Office, and was required to implement the necessary actions and/or mechanisms to finish processing adoptions that were pending under the old law.

---

[163] http://guatemala900.org/wp/?page_id=70 (31 May 2010).

[164] CICIG found that, among children that had been issued passports by the Immigration Bureau, there were children whose adoption proceedings were flawed. Others were under investigation by the Public Prosecutor's Office (PGN case Nos. 11562-07, 12872-07, 4380-07, 14661-07 and 8904-07); others had been placed under protective measures by Courts for Children and Adolescents; some adoptions had been declared "suspended" by PGN. CICIG even determined that two passports had been issued to a child (PGN Case Nos. 12458-07, 14270-07 and 11777-07). There was also a girl with three birth certificates and names (PGN Case No. 12925-07).

According to information provided by PGN to the Commission,[165] the main goal of the Unit's report was to identify all adoptions that were being processed, including those with irregularities, which enabled the Unit to identify pending cases.[166] Then it examined the proceedings and obtained the following results:

Status of the Adoption	Number
Cases with a favorable opinion	2,607
Cases with a "Previo" [167]	183
Basic 2006 and 2007 cases	55
Expedientes Cases without a resolution	45
Expedientes en Procuraduría de la Niñez	21
Cases that had not been processed [168]	105
TOTAL	**3,016**

c.3.3. Differences between the results of the 'Coordination Unit for Control and Oversight of Adoption Records' and the CICIG Database

Based on the information provided to CICIG by both NAC and PGN and following the methodology used in this report, the following results should be considered:

File Situation	Number
Proceedings	3029
Pending	360
TOTAL	**3389**[169]

[165] Public Prosecutor's Office, Communication Ref. DS/sce/328-2010.

[166] Favorable opinions and "previos" issued by PGN in 2006, 2007, 2008 and from January to 15 December 2009 were examined for this purpose.

[167] 'PREVIOS': Observations by PGN regarding omissions or anomalies in the records. Notaries are given the opportunity to correct these anomalies and continue the process.

[168] As noted in the report of the NAC and PGN Committee for the Control and Oversight of Adoption Records, of 15 December 2009, this refers to the fact that the database of the National Adoption Council contains the names of children given by notaries in adoption notices, but no papers were filed with PGN.

[169] The difference in totals is primarily due to the 336 children registered with the National Adoption Council and proceedings that were given a favorable opinion by PGN after 31 July 2009.

The **360** pending cases were classified as follows:

- **94** cases started by NAC without meeting the requirement of having been initiated previously by PGN.[170]
- **50** cases with irregularities that constitute crimes. Currently under investigation by the Public Prosecutor's Office.[171]
- **42** cases of children who were placed under some protection measure, including cases with irregularities identified during the verification process.[172]
- **174** cases which currently have a "previo" addressed to the notary handling the adoption proceedings or are simply awaiting the issuance of a favorable opinion by PGN.

As noted, the main difference between CICIG's findings and those of the Coordination Unit are the data referring to children whose adoption proceedings have irregularities.

Some of the children whose adoptions are still pending were returned to their birth mothers because they decided not to give them up for adoption or because an ideal family placement was found with the child's extended family. Therefore, in the best interest of the child, that was done instead of giving it up for adoption.[173]

PGN has information on notarial adoption proceedings that are pending. However, it still has not organized its databases and records to be able to report on the status of all the currently outstanding proceedings and much less on the physical and psychological status of the children in question.

PGN has issued opinions in cases involving children whose adoptions were suspended due to irregularities in the adoption process (mainly during the verification) due to the lack of organization of the information of the Office itself and the lack of communication between Prosecution Unit and the Prosecutor's Office for Children.[174]

Faced with this problem, the Chief Prosecutor of PGN said that there is indeed a lack of communication between the various sections of PGN and this creates serious difficulties when issuing favorable opinions, resulting in charges of human trafficking and dereliction of duty against their officials. However, said the Chief Prosecutor of PGN, "the attorneys responsible for issuing favorable opinions are not under a written obligation to verify the existence of reports of disappearances or thefts or with regard to outstanding protection measures with the Prosecutor's Office for Children".[175]

However, according to information provided by the Public Prosecutor's Office, as of June 2010 it had determined that at least 55 complaints had been filed in 2010 with the Office for Prosecution of Trafficking in Persons and Illegal Adoptions, of which 98% are complaints regarding illegal adoptions processed during the transition period.

---

[170] Attachment Table of the 94 cases initiated at NAC without being processed by PGN. There are at least three children who were placed under protection measures by Courts for Children and Adolescents and as of 15 March 2010 had been declared adoptable under the new law. We call such cases 'recycled cases'. These adoptions should have been processed under the new Adoption Law.

[171] Attachment Table of cases that are under investigation by the Public Prosecutor's Office.

[172] Attachment Table of adoptions that were suspended.

[173] For example, children whose PGN case numbers are 14163-07 and 1378-08 were handed over to their birth mother; the child whose PGN case number is 2041-08 was given to his grandmother and the child whose PGN case number is 4709-08 is with his extended family.

[174] Interview with the Public Prosecutor on 15 April 2010.

[175] Interview with the Public Prosecutor on 15 April 2010.

c.4. Conclusions

The lack of control was a systematic practice in the adoption process. It fostered the proliferation of networks that benefited from the smuggling and trafficking of children for illegal adoption.

Stolen children whose identity was altered by forging documents should be returned to their birth families and the State of Guatemala should look for their families of origin and restore infringed rights, investigate those responsible and prevent a repetition of this situation. It is important to solve these crimes and criminally prosecute those responsible.

This is because illegal networks and possible crimes were detected and not reported. The only way these irregular proceedings could take their course was through the participation or connivance of notaries, attorneys, caregivers, social workers, foster families, officials of the Solicitor General's Office, Registrars of Vital Statistics, Hospitals, Courts for Children and Adolescents and the Immigration Bureau.

The transition period was used to facilitate adoptions and correct procedural irregularities instead of detecting and reporting illegalities, let alone the structure, although in cases in which civil society was actively involved, it was able to stop illegal adoptions.

The transition period was also used to continue processing irregular notarial adoptions.

PGN was responsible for having allowed irregularities during the transition period. Institutional behavior allowed the irregular handling of adoptions and the approval of adoptions that were under criminal investigation or without complying with the requirements of the Adoption Law.

CICIG concluded from an examination of the proceedings that there was no intention of exerting substantial controls or applying protective measures. Examples of this are the lack of communication within PGN, which evidences the absence of control and direction by the official agency in charge.

It also concluded that some of the Judges for Children and Adolescents did not fulfill their obligation to protect children who might be at risk. CICIG found conflicting criteria and systematic denial of measures to ensure the security and safety of children who might be victims of irregular adoption proceedings.

While NAC was not directly involved until the verification process, its involvement did not improve control and supervision standards and was used to "legalize" flawed and irregular proceedings carried out by notaries handling the adoptions.

Serious irregularities were committed during the verification process, such as the processing of cases not registered with NAC, the issuance of favorable opinions regarding adoptions that were being investigated by the Public Prosecutor's Office or had even been suspended during the verification process.

Finally, although there were situations where the actions of illegal networks and possibly crimes are clearly present, they were not reported by officials. On the contrary, justice was denied and the interventions of some members of the judiciary were mere formalities having the color of law.

3 ADOPTION APPLICATIONS PROCESSED UNDER THE ADOPTION LAW

This chapter briefly describes how an adoption is processed under the Adoption Law passed by Congress as Decree 77-2007.

It also identifies a number of anomalies detected by analyzing a sample of cases that are being processed under the provisions of the new legislation.

These anomalies include irregularities in the proceedings and inquiries to determine a child's adoptability. It was found that foster families were used as temporary homes to circumvent the steps outlined in the Adoption Law in order to process a domestic or international adoption legally.

Finally, the chapter highlights the institutional failures that were identified and steps that can be taken to prevent the reactivation of human trafficking networks for irregular adoption purposes.

a. Provisions of the New Adoption Law

The Adoption Law (Decree 77-2007) was enacted on 11 December 2007 to incorporate the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention) into the national legislation and implement its provisions.

The Hague Convention arises from the need (preamble) "... to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights and to prevent the abduction, the sale of, or traffic in children."

In this regard, the system of cooperation between the countries concerned should work as follows:

The country of the adoptive parents must determine that the prospective adoptive parents have been counseled as may be necessary and are eligible and suited to adopt.[176]

- The child's country of origin must give assurances that the adoption is in the best interests of the child. That the biological family has consented or that [the country] has investigated the origin of the child in depth and found that the child cannot be placed successfully with the birth or extended family.[177]
- International adoption is an option only when it has been impossible to find a suitable home in the country of origin of the child.[178]

To implement these international principles, the Adoption Law established a new adoption procedure that ensures respect of these principles and, unlike the old procedure, primarily seeks the best interests of the child. The National Adoption Council was created in 2008 as the central authority for adoption proceedings under the Hague Convention.

[176] Article 5 of the Hague Convention.

[177] Article 4 of the Hague Convention.

[178] Article 4, paragraph (b) of the Hague Convention.

In this regard, and for further clarification, the differences between the process under the Adoption Law and the old system are described below:

TABLE No.1
Table comparing the characteristics of the adoption process[179]

Adoptions from 1977 to 2007	Adoptions from 2008 onwards
Notarial affidavit of voluntary surrender of the child.	The process begins with the judicial declaration of adoptability of the child.
Delivery of a child to a family because of poverty or other reasons.	Restitution of the right to a family to a child who does not have one.
The family selects the child.	The best family for the child is chosen.
The interests of the adoptive family and the economic interests of those involved have priority.	Proceedings based on the best interests of the child.
Priority is given to international adoption over domestic adoption.	Priority is given to domestic adoption.
Selection of family based on its financial capacity.	Suitability of prospective adoptive families is evaluated.
Notarization procedure without controls.	Judicial and administrative control of adoptions.
High professional fees.	Domestic adoptions are free of charge.
Notarial procedure without verification.	The law provides for two judicial and an administrative proceeding with transparency.
There is no follow-up of adoptions.	Domestic and international adoptions are monitored.

Source: Peace Secretariat, "Informe sobre Adopciones y los Derechos Humanos de la Niñez Guatemalteca, 1977-1989" ("Report on Human Rights and Adoption of Guatemalan Children, 1977-1989).

The primary role of NAC is to try to preserve family unity by ensuring that children remain with their birth mother, with their extended family and only as a last resort, to be adopted by a national or international

[179] Peace Secretariat op., cit., p. 28.

family, giving preference to national adoption and keeping in mind the principle of the best interests of the child.[180]

Currently, NAC is the entity that is responsible under the Adoption Law for implementing an adoption system that respects the principle of the best interests of the child.

Its obligation is mainly to:

- Protect children and adolescents in the adoption process.
- Promote national adoption, giving priority to institutionalized children.
- Assign each child in the adoption process to the right family in keeping with their best interests.
- Collect, preserve and exchange information on the situation of children and prospective adoptive parents.
- Ensure the protection of adoptable children in homes and shelters.

A multidisciplinary team is available for that purpose:

(a) Unit for Support and Guidance to the Child's Birth Family.

(b) Expert Unit for Investigation and Supervision of Private Entities.

(c) Support Unit for Adoptive Families and Adopted Children.

69 children were given up for adoption under the Adoption Law in 2008. Only three of them were sent abroad.[181] NAC suspended international adoptions in September 2008[182] after the results of the verification of adoption proceedings during the transition period, since, as shown in previous chapters, different anomalies and irregularities came to light which cast doubt on the legitimacy of international adoption proceedings and NAC decided to give priority to domestic adoptions. As of November 2010[183], international adoptions under the new legislation were still suspended.

Based on the above, NAC has focused its work on domestic adoption; international adoption remains subsidiary and limited to children whose domestic placement has been ruled out.[184] Domestic adoption promotes the integration of children declared adoptable by Children's Judges primarily into Guatemalan families.

In early 2010, NAC reported having assisted 169 families and birth mothers in conflict with motherhood, of which 138 chose to keep their children and only 34 confirmed their consent to adoption, which shows that in most cases, children can stay with their families.[185]

Of approximately 5,295 institutionalized children,[186] 559 have been declared adoptable by the Children's Courts and 253 have been placed with Guatemalan families, which have filed 590 applications.[187]

---

[180] Adoption Law, Decree 77-2007, Articles 22 and 23.

[181] Information provided by National Adoption Council officials.

[182] La Hora, "Guatemala suspende adopciones de niños para extranjeros" ("Guatemala Suspends Adoptions by Aliens", Guatemala, 10 September 2008. http://www.lahora.com.gt/notas.php?key=36519&fch=2008-09-10 (as of 15 June 2010).

[183] Data updated according to information given to CICIG through November 2010.

[184] Adoption Law, Decree 77-2007, Article 9.

[185] National Adoption Council, 2009 Annual Report, pp. 22 and 24.

[186] According to the National Register of Institutionalized Children kept by the NAC. See also Database of the Expert Monitoring and Institutional Evaluation Unit (UNIPSE) of the National Adoption Council.

[187] National Adoption Council, 2009 Annual Report, p. 24.

Some 83 homes and shelters have requested authorization to operate, having to comply with the requirements of the Adoption Law in that regard.[188] As of May 2010, 111 operating entities have been identified, of which seven have been approved and 76 are in the process of receiving approval.[189]

Of the 559 adoptable children, NAC has not been able to place 187 children with special needs with Guatemalan families.

b. Adoption Process under the Adoption Law

NAC has identified three stages in the adoption process:

(1) Procedure whereby a Court for Children and Adolescents declares adoptability

(2) Administrative proceedings by the National Adoption Council; and

(3) Judicial approval by the Family Court.

The declaration of adoptability marks the beginning of the administrative adoption procedure and the final resolution in which the Judiciary gives its approval to the adoption marks the end.

Following the principles of the Hague Convention, a Judge for Children and Adolescents must issue a "declaration of adoptability" of children who will be given up for adoption.

In this "declaration of adoptability", judges must determine[190]:

1. Regarding a child whose right to develop in his own family has been infringed:
    - It is not possible to reintegrate the child into his nuclear or extended family. In so doing, the best interests of the child were considered. This principle seeks to ensure the protection and development of children within their biological family or if this is not possible, in another permanent family environment.
    - The child needs an adoptive family because he cannot be cared for by or reintegrated into its birth family.
    - The child is in emotionally and medically able to benefit from adoption.
    - The child's views about adoption have been considered.
    - Assurances have been obtained that the poverty or extreme poverty of the parents was not the reason to give a child up for adoption.
    - The necessary scientific evidence has been obtained to establish the child's family background, including DNA tests.
    - Where available, the birth parents' fingerprints and the child's palm and footprints were taken.
2. The following should be considered in addition to the requirements mentioned above in the event of voluntary surrender of a child:
    - Both parents have been duly counseled and informed of the consequences of their consent by NAC, particularly with regard to maintenance or severance, by virtue of the adoption, of the legal relationship between the child and his family of origin.

[188] National Adoption Council, 2009 Annual Report, p. 31.

[189] Database, Expert, Monitoring and Institutional Evaluation Unit (UNIPSE) of the National Adoption Council.

[190] Adoption Law, Decree 77-2007, Article 35. Complemented by UNICEF Guatemala.

- Both parents have given their consent freely in the due legal form and this consent has been given or evidenced in writing.
- The consents have not been induced by payment or compensation of any kind and such consents have not been revoked.
- The mother's consent was only given six weeks after the baby was born.
- The issues that NAC deems appropriate in the court hearing stipulated in the Adoption Law have been evaluated.

Before declaring a child adoptable, it is important to investigate the child's background and, if known, to provide psychological support so the child can remain with its birth mother. If this is not possible, the possibility that his extended family can care for him should be considered. To that end, NAC has a guidance and support program for birth families, but it requires the intervention of the judiciary, PGN and the Social Welfare Secretariat, to restore children's family ties and their rights without resorting to adoption.

PGN is responsible for investigating the child's origin and finding the birth family of a child who has been presented as "abandoned". Before being declared adoptable, such children must be declared abandoned and cared for by children's homes or foster families. Judges for Children and Adolescents base a major part of their decision on the inquiry report submitted by PGN.[191]

c. Anomalies Identified Under the New Legal Provisions

The possibility that human trafficking networks that use the modality of illegal adoption might try to find other ways to commit these crimes is highly likely, especially if one takes into account the financial interests at stake, as stated earlier in this report. In this possible new context, the State of Guatemala must prevent the creation and/or development of trafficking networks in the context of the new law.

Changing the rules has not been enough to dismantle the organized crime structures involved in irregular adoption proceedings. To carry out this task, institutional controls and clear rules regarding responsibilities and consequences at every step of the new adoption process must be implemented.

The primary goal should be to assure all persons interested in adopting a Guatemalan child that the adoption is carried out in accordance with international principles and laws created for that purpose, while protecting the rights of the child and those of his family, always seeking their best interests and welfare.

A study conducted in early 2009,[192] found that some of the mechanisms for establishing the origin of "adoptable" children are flawed: negative DNA tests, false identities of alleged birth mothers, children rescued from a sale and still given up for adoption, children with false identities, fake birth certificates, ages that are inconsistent with forensic tests, among others.[193]

A sample of 153 cases showed that in 78% of cases in which children were declared adoptable by Judges for Children and Adolescents, the provisions of the Adoption Law and the Hague Convention were infringed. This percentage is very high, considering that these adoptions should have been subject to stricter controls.[194]

---

[191] However, PGN has only six investigators for the entire country.

[192] Claudia Julieta Duque, journalist and independent investigator. Survey data for the draft report "Guatemalan Adoptions: Before and after Decree 77-2007", Guatemala, April 2009.

[193] The "declaration of adoptability" granted under these circumstances has been called "child laundering" by researchers specializing in illegal adoption cases.

[194] At a high-level meeting on 21 October 2010, the Director of the National Adoption Council reported that at least 50% of all declarations of adoptability have irregularities. (Information provided to CICIG as of November 2010).

In general, the following points are highlighted regarding the 153 cases, thus confirming the allegations regarding the deficiencies identified under the new adoption law:

1. In 50% of the cases, it was found that the Solicitor General's Office did not conduct a thorough investigation to determine the children's origin because it did not take advantage of all the available means available for the purpose,[195] which left gaps regarding the possibility of locating the children's birth families or origin.

2. In certain cases, complaints were made to the Public Prosecutor's Office regarding the presentation of false identification documents, and although such offenses were identified and reported, the judges issued a declaration of adoptability of children that were probably stolen or bought, without considering that their right to a family and identity was infringed.

TABLE No.7

Declarations of Abandonment in Which Irregularities Were Detected

Declarations of Abandonment T	otal
Adoptability declarations whose origin is unlawful or in the framework of which the commission of a prior offense is discovered (e.g. de facto adoptions, theft, trafficking, etc.)[196]	52
Declarations of abandonment without information[197]	39
Cases of adoptability declarations that really refer to abandoned children	33
Adoptability cases corresponding to children given up for adoption mainly due to poverty or extreme poverty[198] and/or failure to investigate the extended family[199]	29
Total	**153**

c.1. The Institution of the Foster Family

A foster family is a family that temporarily houses and shelters a child or adolescent, providing a family atmosphere that encourages his comprehensive development based on his needs. Its aim is to place children and adolescents whose rights have been infringed by their birth parents, relatives or guardians

[195] The investigators must go to the municipal registry where the child is supposedly registered, interview midwives or doctors who attended the delivery, look for the mother and extended family, identify suitable placements, etc.

[196] Attachment Cases with Irregular Adoptability Declarations.

[197] Attachment Cases with Irregular Adoptability Declarations.

[198] The biological family should not be declared unsuitable due to the lack of financial resources.

[199] Attachment "Cases of Irregular Surrender to Foster Families".

temporarily with a family, thus avoiding institutionalization.[200] The foster family is a legal entity created to provide "temporary" shelter to a child while the relevant protection or adoption proceedings are completed, in keeping with the principle of institutionalization as a last resort.[201]

Families wishing to participate in the foster care program of the Social Welfare Secretariat[202] must register as such and be trained to act as a foster family.[203]

Some Judges for Children and Adolescents have ordered the placement of children with foster families that were not previously registered or certified by SBS. These take the children, not to protect them temporarily, but with the intention of adopting them. Later the family court authorizes the child's adoption by the foster family.[204]

LCICIG is aware of cases where judges have ordered protection and shelter of children by foster families abroad[205] that are not even temporary residents in Guatemala and then direct NAC to give the minor to the foster family for adoption.[206] Using the institution of the foster family to adopt children creates a parallel process and the risk of encouraging the commission of the crime of human trafficking and trafficking in children.

A number of anomalies detected in the new adoption proceedings should be addressed to prevent the reactivation of human trafficking networks involved in irregular adoptions:

- Judges for Children and Adolescents declare children adoptable, give them to "foreign foster families" with "the right of first refusal for the adoption" and order NAC to surrender these children to their new families within 90 days.[207]
- Judges for Children and Adolescents order the registration of children with the surname of the "foster family".[208]
- The child is placed 'permanently' with a foster family by court order. The family is foreign and the adoption began as a 'domestic adoption'.
- According to different sources, some judges for children and adolescents[209] make prior arrangements with international or Guatemalan foster families to give the children up for adoption.
- It is reported that some both foreign and Guatemalan families receive children directly from hospitals.

---

[200] Adoption Law, Decree 77-2007, Article 2, paragraph (h), "temporary home".

[201] On October 6, 2010, the Supreme Court approved the draft Regulations for the implementation of protective measures for children deprived of a family environment by courts with jurisdiction over children and adolescents whose human rights are threatened or infringed." (Information provided to CICIG in November 2010).

[202] See http://www.sbs.gob.gt/newsite2/Wc9103ba4b08b4.htm (as of 30 June 2010).

[203] As of 15 May 2010, the Social Welfare Secretariat had certified 57 foster homes and 33 children had been placed with 24 of these families. Data provided by UNICEF-Guatemala.

[204] Attachment "Cases of Irregular Surrender to Foster Families".

[205] The girl known as SYSH/RMCA is being cared for by an association, which in July 2008 requested that the child be adopted under the old system and surrendered to Mr. and Mrs. JAN and JAVN, foreign nationals. The judge refused but gave the girl to them as a foreign foster family. The last ruling is the 6 October 2008 declaration on adoptability. The judge directed NAC "to consider the couple in question as a foster family for the child". Case P-20-2007, First Court for Children and Adolescents. See Attachment "Cases of Irregular Surrender to Foster Families".

[206] "Cases of Irregular Surrender to Foster Families".

[207] "The child known as CFGP was declared adoptable and NAC has one month to place him with the foreign family." Case 777-2007, First Court for Children and Adolescents. See Attachment "Recycled Cases".

[208] "The the child shall be placed under the permanent care of Mrs. G and the child shall be registered in RENAP Guatemala, with the name XX G, son of unknown parents." Case P-931-2007, First Court for Children and Adolescents.

[209] Interview with NAC officials and members of civil society.

- The origins of "abandoned children" are not properly investigated.[210]
- The possibility of allowing children who were separated from their birth parents in situations of domestic violence, child mistreatment and/or abuse to live with their extended family is not adequately assessed and they are found adoptable.
- Late registration of Guatemalan children by foreign parents.[211]
- Children are taken out of Guatemala by land and the adoptions take place in other countries.

Finally, CICIG had before it at least six cases of children whose international adoption proceedings were conducted under the old legislation. The processes were flawed but they have been declared adoptable and PGN failed to fully investigate their background and birth family.[212]

Despite having identified such situations, NAC has processed the adoptions and intends to process international adoptions of children declared adoptable under these conditions.

In conclusion, the new law is a positive step in controlling the adoption process. However, its implementation does not guarantee that irregular adoption proceedings will cease.

Although judicial intervention is required in the new procedure to approve and authorize adoption formalities, there is still room for flawed adoption proceedings.

PGN must play a more thorough investigative role, study and evaluate children's background and family conditions. Good investigations are essential to the decisions of Judges for Children and Adolescents.

Through mechanisms such as the use of foreign foster families, Judges for Children and Adolescents could be favoring illegal adoptions if they not require that such proceedings meet the legal requirements.

d. Implementation of the Pilot Plan 2010-2012

Implementation of a "pilot plan" for international adoptions began on 5 December 2009 with the support of Hague Conference and UNICEF experts. The institutions responsible for adoption proceedings in other countries were invited participate in the project and express their interest. Eleven countries responded to the call. Questionnaires were sent to assess them and their international adoption agencies.

The pilot plan is a two-year project. It aims to "increase operational capacities to locate families in foreign countries for children it has not been possible to place with a family in Guatemala and to that effect initiate cooperation with the "central authorities" of receiving countries that are members of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption".[213]

The NAC pilot plan is based on the fact that in 2008 and 2009, it developed technical guidelines and institutions which primarily promote national adoption. It believes that "it is time to extend the operational capability of NAC and identify partners abroad who can assist it in finding families for children who could not be placed with Guatemalan families".[214]

---

[210] Claudia Julieta Duque, Investigator. Survey data for the draft report "Adoptions in Guatemala: Before and after decree 77-2007", op. cit. "We have identified at least one case where the child was illegally stolen when his mother gave birth."

[211] In 2008, about 1500 foreign families registered their children in Guatemala extemporaneously.

[212] Attachment "Cases of Recycled Children".

[213] Official invitation to the Central Authorities of host countries to submit a letter of interest in cooperating with Guatemala in international adoptions. In http://www.cna.gob.gt/portal/adopcionesinterncionales.html (as of 31 May 2010).

[214] *Ibid.*

Objectives of the Pilot Plan:

- To restore the right to grow and develop within a family for children who could not be placed with Guatemalan families.
- Select four accredited international adoption bodies and their respective "central authorities". It is important to select countries based on the practices of their central authorities and accredited bodies, which work with children with special needs and in the best interests of the child.
- Develop a policy of cooperation on international adoption with the central authorities of the selected States.
- Establish a cooperation framework to strengthen the system for protection of Guatemalan children, and in particular children who lack or are at risk of being deprived of parental care.
- With the help of the central authorities of the countries selected, determine whether the accredited bodies comply with the procedure and requirements established by Guatemala for international adoption.
- Evaluate the plan, to decide if international adoptions in Guatemala continue to be necessary at the end of the pilot project and, where appropriate, establish the relevant conditions.[215]

The Plan was scheduled to begin operating in the second half of 2010.[216]

Specific Recommendations by CICIG:

CICIG believes that in order to implement the pilot plan, the State of Guatemala must take the following immediate actions:

- The Executive must adopt and publish the Regulations of the Adoption Law. In addition to the functions and powers of the National Adoption Council, the Regulations should govern all stages of the adoption procedure for which each entity is responsible as set forth in the Adoption Law.
- The Supreme Court must order the necessary actions to implement the "Regulations for the Implementation of Protective Measures for Children Deprived of a Family By Courts that Have Jurisdiction over Children and Adolescence Whose Human Rights Are Threatened or Infringed".[217]
- The Supreme Court should pay special attention to the motions for impeachment on which it is required to hand down rulings in order to prevent that judges involved in trafficking for the purpose of illegal adoption continue handling adoption proceedings or criminal cases linked to this matter.
- The National Adoption Council must take the necessary steps for the implementation of the Regulations of the Adoption Law.[218]
- The Solicitor General's Office and the Social Welfare Secretariat should establish the rules regulating the proceedings to be followed by each institution with regard to adoptions.

[215] Information provided by NAC in February 2010.

[216] According to information provided to CICIG, in November 2010 the pilot plan was still suspended. Due to a number of irregularities detected, in July 2010, UNICEF decided to withdraw its support of the Plan and later the Hague Conference did the same. In October 2010, the United States also decided to withdraw from the Pilot Plan for international adoptions of Guatemalan children.

[217] This information was updated based on data provided to CICIG to November 2010, which established that the draft Regulations for the Implementation of Protective Measures for Children Deprived of a Family by Courts with Jurisdiction over Children and Adolescents whose Human Rights Are Threatened or Infringed were adopted and published on 6 October 2010.

[218] This information was updated based on data provided to CICIG to November 2010, which established that the Regulations of the Adoption Law went into effect on 13 July 2010.

- The Social Welfare Secretariat should strengthen the foster care program, including the identification of interested families and their training.
- The National Adoption Council must register midwives and obstetricians in the various municipalities.
- The National Adoption Council must certify children's homes, associations and nurseries that have not been involved in irregularities or engaged in unlawful conduct under the former system.
- The National Adoption Council must not collaborate with international adoption agencies that are involved with illegal adoption proceedings investigated by the Public Prosecutor's Office.
- The Solicitor General's Office should be strengthened and have an adequate number of investigators to effectively ascertain children's background.
- The Solicitor General's Office should receive instructions from the Solicitor to investigate the children's background.
- The Solicitor General's Office should carry out actions aimed at cleaning up institutions.
- In the event that the establishment of a pilot plan for international adoptions is reconsidered, the Solicitor General's Office should be strengthened in connection with the investigation of children's backgrounds and its participation in child protection measures that result in a declaration of adoptability.
- As for the reaction of the justice system, it is important that judges and prosecutors assume that human trafficking for irregular adoption purposes is part of organized crime, especially in transnational cases.

It follows that the investigation and punishment should entail:

  - Punishment of those responsible for crimes committed, to prevent impunity.
  - Combating adoption structures as a criminal policy objective.
  - Using the mechanisms provided in the Law against Organized Crime, including characterization of criminal offenses, special means of investigation and use of defendant informants.
  - Extending the investigation to the assets acquired through criminal activities.
  - Working with financial intelligence units to identify unexplained capital flows that may be of indications of criminal activity and making use of legal mechanisms to seize the property unlawfully obtained by members of criminal organizations.
  - It should also be remembered that coordination with other investigative units in addition to those responsible for trafficking offenses might lead to detection of activities linked to criminal organizations, such as those under the jurisdiction of the Prosecution Offices for Administrative Crimes, Money Laundering, etc.

6 CONCLUSIONS

Based on the results of this study, CICIG determined that international adoption has often been used in Guatemala, not to give an unprotected child a family, but rather as a mechanism for obtaining children for those who want them, turning the institution into a lucrative activity that often involves the commission of crimes.

CICIG was also able to determine the existence of child trafficking networks that resort to illegal adoption proceedings, some of the most usual ways in which they operate and the transnational nature of the offense, as evidenced by the participation of international adoption agencies that act in coordination with private and public individuals based in Guatemala.

The aforementioned networks take advantage of the lack of control over the adoption process and their links with authorities. They even obtain children without parental consent using deception, coercion or not respecting their parents' desires, especially their mothers', to give them up them for international adoption.

The quantitative and qualitative dimensions of irregularities in international adoption formalities, which have been tolerated by the public authorities responsible for monitoring them, leads to the conclusion that they have not been exceptional, but a systematic practice.

The number and severity of these irregularities obviously means that irregular adoptions would not have been possible without the participation or at least the acquiescence of State authorities. These are, in particular, the authorities of the institutions responsible for public oversight of adoption proceedings, such as the Solicitor General of the Nation, the Immigration Bureau, Courts for Children and Adolescents, municipal registers of vital statistics and the National Adoption Council.

Throughout this study, we examined two situations: how adoptions that were pending at the time of entry into force of the Adoption Law (adoptions during the transition period) were processed, and how adoptions governed by the provisions of the Law have been handled.

With regard to adoptions processed during the transition period, CICIG studied the various stages of the adoption process under the old legislation, i.e. by notaries, including registration with NAC and implementation of a verification procedure called for by the Adoption Law.

CICIG recorded, computerized and analyzed the adoptions processed during the transition period and determined that to succeed in processing certain adoptions, the above-mentioned networks committed illegal acts that constitute the crime of trafficking in persons under Guatemalan law.

Irregularities that compromised the actions of institutions charged with protecting and ensuring the rights of Guatemalan children placed for adoption, mainly to foreign families, were identified during every stage of the transition period.

The main deficiencies identified during the transition period are summarized as follows:

- Notarial adoption proceedings were initiated after the entry into force of the Adoption Law.
- Of the 3,342 adoption proceedings 'in transition', about 43% received a favorable opinion from the Solicitor General's Office during the first four months of 2008. There were no special control mechanisms or verification measures during this period.
- 10% of adoption proceedings were not registered with the National Adoption Council, as required by law.

- During the first months of the transition period, officials of the Solicitor General's Office failed to provide information requested by the National Adoption Council with regard to adoptions that had received a favorable opinion, in breach of their duty as public officials and abusing the authority they had by virtue of their positions at that institution.

The Solicitor General's Office had a clear role as a supervisory body in adoption proceedings handled by notaries. However, it failed to fulfill its obligation to protect Guatemalan children and adolescents and prevent violation of their fundamental rights, including the right to physical and psychological integrity, to a name, a family and an identity.

The verification process was the first attempt to institutionalize controls beyond those PGN had performed formally until then, but it became clear that this process facilitated approval of adoption proceedings initiated under the old legislation, rather than being a true exercise of the oversight and protection of minors for which the Council is responsible.

These are some of the most serious irregularities detected by the verification process:

- No adoption proceedings that contained serious irregularities were suspended. The children who were at risk were not remanded to a Judge for Children and Adolescents who would order the appropriate precautionary measures.
- PGN allowed extemporaneous filing of notarial adoption proceedings under more than 250 notarial notices during the verification period, in violation of the provisions of PGN Resolution 51-2007.
- PGN gave a favorable opinion regarding adoptions that were not registered with NAC.
- Adoptions that had anomalies and irregularities observed during the verification process were approved.
- Serious irregularities evident in the proceedings filed by notaries were not flagged.
- Cases that had flaws that could be remedied were not followed up.
- Suspected crimes were not reported to the Public Prosecutor. Once the verification process ended, PGN approved at least 10 adoptions without controls of any kind.

With regard to proceedings that were not subject to verification, and in reaction to protection measures requested by the National Adoption Council for these children, certain Courts for Children and Adolescents consistently denied the protective measures requested by NAC in breach of their obligation to provide special protection to children, which is the reason for the existence of specialized judges.

With regard to pending adoptions of children for whom protection measures were ordered by Courts for Children and Adolescents, PGN gave a favorable opinion and the Immigration Bureau issued them passports, facilitating their subsequent departure from the country as international adoptees, in violation of the DGM's legal obligation to ensure that nationals and foreigners enter, stay and leave Guatemala in accordance with the provisions of the Law, primarily by scrutinizing documents and studying potential problems.

Other courts took a more positive stance. However, the judicial system, which was set up to protect the rights of minors involved in adoption proceedings, showed that it was incapable of preventing the operation of illegal trafficking networks.

The creation of the Coordinating Unit for Control and Oversight of Adoption Proceedings did not stop irregularities or lead to reporting alleged criminal acts, but rather facilitated the continuation of adoption proceedings, regardless of the fact that these might involve irregularities that might be criminal in nature.

In sum, although in some cases it was possible to stop illegal adoptions, the transition period facilitated

the adoption process and allowed correction of procedural irregularities, instead of detecting and reporting illegal practices or shedding light on the existence of trafficking networks.

It only ordered the suspension of illegal adoptions in a few cases.

The State's general lack of will to fulfill its obligations regarding the protection of children and adolescents was evident. In that sense, although it is true that certain institutions have higher levels of responsibility, it is obvious that, despite the existence of new public institutions, the protection and control functions have yielded clearly unsatisfactory results thus far. Examples of this lack of will are seen in situations where "lack of coordination" would have been relatively easy to rectify with minimum political will, such as the lack of communication between the Prosecution Section or Office of the Chief Prosecutor or Assistant Prosecutor and the Prosecution Office for Children, both part of the Solicitor General's Office.

The National Adoption Council, for its part, did implement control mechanisms, participate in the verification process and request protective measures for children that were not brought in for verification, but ultimately this did not substantially improve its control and monitoring performance.

In short, the transition period allowed the continuation of irregular adoption proceedings that had led to approval of the Adoption Law. The transition period was a flawed process.

With regard to adoptions processed under the Adoption Law, it was determined that the records of at least 60% of the children who have been declared adoptable contain irregularities. The current process seems to entail better controls but is limited to a cursory investigation by the Solicitor General's Office, an institution that, as shown, does not to provide protection to Guatemalan children, especially those presented as abandoned, depriving them of their right to a family and a name. Therefore:

- Some children are still taken from their families because of poverty and placing children with their extended biological families is not considered.
- In most cases, we identified an almost complete absence of investigation on the part of PGN.
- Adoption continues to be a preferred measure and not an exception in situations involving children.

Currently the law provides for greater controls. However, this report identified a number of anomalies that might be present in the new adoption proceedings, including the following:

- Surrender to 'foreign foster families' that do not reside in Guatemala of children declared adoptable.
- Registration of children with the surname of a 'foster family' by order of Judges for Children and Adolescents before completion of the adoption process.
- The possibility of placing children who were separated from their birth parents due to domestic violence, child mistreatment and/or abuse with their extended family is not thoroughly investigated and they are declared adoptable.
- Failure by PGN to investigate the origin of 'abandoned children', including children who were placed in temporary arrangements that showed irregularities.
- Giving foster families the preemptive right to adopt has undermined the principle of adoption in the best interests of the child.

Although these situations have been identified and ascertained, NAC has processed these adoptions and intends to process international adoption of children declared adoptable under these conditions.

In sum: The evidence suggests that, while investigation and judicial control of the situation of children subject to adoption does not ensure their effective protection, criminal networks, groups and structures created around the practice of human trafficking for irregular adoption purposes will seek new opportunities to continue their activities, since financial incentives persist. There are no disincentives for such criminal organizations, since they can still count on impunity. To address the situation described above, State authorities must take stringent steps to eliminate obstacles in investigations, intimidation of witnesses and victims and influencing the decisions of judges, prosecutors and investigators by illegal means.

It bears repeating that these crimes are forms of organized crime, which justifies and requires that the competent authorities of the criminal justice system implement the existing standards to address this phenomenon. This includes the protection of judges, prosecutors, victims and witnesses, special investigative methods and the development of methods for the investigation of all the crimes committed by these networks.

The Unit against Trafficking in Persons and Irregular Adoption of the Organized Crime Prosecution Office of the Public Prosecutor's Office is taking the first positive steps in investigating human trafficking networks in the form of irregular adoption. Criminal judges have a major responsibility in putting an end to impunity in these cases, since, by correctly applying the law, they must guarantee suspects' and defendants' rights, authorize the investigation mechanisms prescribed by law and, finally, based on the Public Prosecutor's investigations, punish those responsible for the crime of trafficking in children through irregular adoptions.

At the same time, CICIG emphasizes that the protection of minors against human trafficking networks is not limited to the investigation of structures that have committed crimes linked to illegal adoptions. Prevention policies must also be developed to prevent reactivation of these networks and the creation of new ones, with new arrangements to cover gaps in the protection offered by State institutions.

The State of Guatemala must protect the rights of victims of human trafficking.

First, defenseless minors must be protected from networks that profit from their vulnerability. The denial of justice for these Guatemalan children should be investigated and punished in an exemplary fashion, not only because the State must fulfill its international commitments, but to prevent impunity that such proceedings may generate and ensure the protection that all authorities must provide for children at risk.

Mothers who were victims of deception, intimidation and threat to force them to give their children up for adoption and birth parents who have been deprived of their children through theft or kidnapping have a right to know what happened during the transition period. Those responsible for these irregularities and illegalities must be investigated, the status of all proceedings which contain anomalies should be clarified and the children should be returned to their parents.

7 RECOMMENDATIONS

All the institutions responsible for adoptions in Guatemala must make the necessary changes in their practices and regulations to make adoptions fulfill the purpose of protecting the best interests of the child and in particular finding the best environment for development of children who do not have a birth family.

In this sense, two basic types of policies should be developed. First, the structures involved in the trafficking of children for illegal adoption purposes should be dismantled.

Preventive measures, investigation and punishment of those responsible are needed in order to dismantle these structures. These include the creation of a database, organization and systematization of institutional information, strengthening of investigative units at the Public Prosecutor's Office, the National Civilian Police and the Solicitor General's Office, coordination among institutions, institutional cleansing, development of regulations and instructions and ethical application of Guatemalan law against the crimes characterized by it in order to punish those responsible.

Efficient protection mechanisms must be developed in order to restore the infringed rights of children and their families. Steps should also be taken to recover children that were given up for adoption through fraudulent means.

Secondly, the necessary institutional policies should be developed to achieve real implementation of the provisions of the Adoption Law and international instruments in this field. To do this, regulations and instructions that constitute an appropriate framework for the new legislation are essential. In addition, institutions should make changes in their practices for substantive implementation to ensure that the right decisions are made about the child's adoptability and if the child is adoptable, to ensure that the child can develop in the best possible environment.

To achieve these objectives, the following recommendations are addressed to each of the institutions involved:

Recommendations Addressed to the Office of the Prosecutor General:

1. Continue and strengthen the investigation of crimes committed in connection with illegal adoptions, and in particular investigate serious and/or systematic violations committed during the transition period, file criminal charges and ensure that those responsible are punished.

2. Strengthen a unit specializing in human trafficking with the capability to investigate these structures, especially those in which public officials are involved. It must have a sufficient number of trained and dedicated staff.

3. Conduct investigations of organized crime related to trafficking for illegal adoption, such as money laundering and conspiracy.

4. Use the Law against Organized Crime in cases of human trafficking for illegal adoption, in particular the rules on the use of defendant informants and special investigative methods.

5. Protect witnesses and parties to proceedings, including, if necessary, the application of criminal jurisdiction to high-risk cases.

6. Strengthen investigations of children who were reported stolen and return them to relatives who can claim them legitimately.

7. Expedite international cooperation and pursue investigations abroad when criminal acts may have been committed there.

8. Investigate Public Prosecutor's Office officials (and assistant prosecutors) who have assisted members of trafficking networks during the investigations.

9. Order pretrial impeachment proceedings when there is sufficient evidence to suspect the involvement of judges in this type of crimes.

Recommendations Addressed to the Judiciary:

1. Order disciplinary measures against Judges for Children and Adolescents who systematically breached the provisions of the law by denying requests for protective measures.

2. Social workers of the Judiciary should act in the best interests of the child and rule that the lack of financial resources is not sufficient cause to give a child up for adoption.

3. Correct irregular institutional adoption practices and report illegalities committed by officials taking advantage of their position, and where appropriate, inform the competent authorities regarding administrative or ethical misconduct detected in the course of an investigation.

4. Implement the Law on Comprehensive Protection of Children and Adolescents through jurisprudence and/or internal instructions and ensure the effectiveness of protective measures.

5. Criminal courts should apply the Law against Organized Crime in cases of human trafficking for illegal adoption purposes.

6. Expedite the pretrial impeachment of judges linked to structures involved in trafficking for illegal adoption purposes.

7. Implement internal regulations in the judiciary on the use of foster families as a temporary alternative for the care and shelter of children subject to adoption proceedings.

8. Develop regulations for the implementation by courts that have jurisdiction over children and adolescents of measures to protect children that do not have a family whose human rights have been threatened or infringed.

Recommendations Addressed to the Office of the Solicitor General:

1. With regard to pending adoptions, PGN should stop irregular notarial adoption proceedings and in the case of children that may be adopted legally, send the proceedings to the competent authorities for processing under the new law.

2. Remove from office, investigate and impose administrative sanctions on officials who committed irregularities and bring criminal charges against those who committed crimes.

3. Investigate irregularities committed by officials of the Solicitor General's Office while processing adoptions during the transition period and cooperate actively with the Public Prosecutor by providing all the information required to conduct criminal investigations.

4. Give instructions and training to change the practice of limiting its analysis to formal control aspects regarding the child's origin and its placement with the birth or extended family.

5. Sort and organize information relative to notarial adoption cases and declarations of adoptability under the new system to achieve closer cooperation with investigative agencies in order to identify the whereabouts of children reported stolen and prevent illegal adoptions.

6. In the short term, strengthen the team of investigators to determine the origin of the child; establish the obligation to compare all cases with the database of stolen children and prevent illegal adoptions.

7. The State of Guatemala must resume the postponed discussion of the Organic Law of the Solicitor General's Office. The regulatory body that currently governs this institution is Decree 512, Law of the Public Prosecutor's Office, adopted in 1948, when the Public Prosecutor's Office and PGN were part of a single entity. That legislation gives PGN a number of different functions, including legal representation of the State and representation of minors and incompetents. Mechanisms to strengthen the State's representation, particularly judicial action in defense of its interests, must be established through these legal discussions and a State policy on protection of minors must be created, including determination of the public authorities that are mainly in charge. Furthermore, decisions regarding the representation of minors should involve a clear decision on strengthening the capacity for judicial action in the best interests of child victims of trafficking

Recommendations Addressed to the National Adoption Council:

1. The judiciary should not approve adoptions that clearly contain irregularities.

2. Bad institutional practices should be corrected and irregularities should be reported.

3. The legality of the adoption process should be monitored and illegal adoptions or adoptions where institutions such as the foster family have been misused should not be approved.

4. Irregularities committed by National Adoption Council officials while handling adoptions during the transition period should be investigated and the Council should cooperate actively with the Public Prosecutor's Office by providing all the information required to conduct criminal investigations.

5. Sort and organize information relative to notarial adoption cases and declarations of adoptability under the new system to achieve closer cooperation with investigative agencies in order to identify the whereabouts of children reported stolen.

6. Establish the obligation of comparing cases with the database of stolen children.

7. NAC and the Judiciary should harmonize their functions with the provisions of the Adoption Law in the areas of protection and adoption through internal regulations.

8. Publish Regulations to the Adoption Law that clearly outline the functions of the National Adoption Council and how these should be implemented by its members, as well as the steps in the adoption procedure for which each of the entities is responsible, as set forth in the Adoption Law.

9. Not implement the "Pilot Plan" for international adoptions a long as it does not carry out the actions identified in this document, such as approval of the necessary regulations, including regulations for accreditation of international agencies, and especially strengthen the investigation of children's originso.

Recommendations Addressed to the Ministry of the Interior:

1. Unless another more appropriate institution is found, the Ministry of the Interior should develop a unified database of children who have been reported stolen or unaccounted for.

2. This database should be designed to find the children and prevent changes of their identity. Consultation of the database should be mandatory for institutions involved in adoption proceedings: RENAP, the Immigration Bureau, PGN, NAC, the Judiciary, the Social Welfare Secretariat, NCP and the Public Prosecutor's Office.

3. The Social Welfare Secretariat and the Judiciary should harmonize their functions with the provisions of the Adoption Law in the areas of protection and adoption through internal regulations.

4. The Social Welfare Secretariat should strengthen its protection programs, including the foster care program.

5. The Department of Immigration and RENAP should not provide documentation for adopted children without all the forms that demonstrate compliance with the steps required by law.

6. The forms should be redesigned to improve record control. For example, a harmonized "birth certificate" form should be designed for hospital and non-hospital use. These should include a photograph of the child and his birth mother.

7. The internal control mechanisms of the Immigration Bureau in connection with the issuance of passports and the registration of arrivals and departures of children with foreign parents or subject to domestic and international adoption proceedings should be improved.

Recommendations Addressed to the Executive and Congress:

1. The Executive and the Congress of Guatemala should make adequate budgetary allocations for implementation of the Adoption Law and the policies outlined in this document.

2. The Executive must approve and publish the Regulations of the Adoption Law to regulate the functions and powers of the National Adoption Council and every stage of adoption proceedings for which each entity is responsible as set forth in the Adoption Law.

3. Both branches of Government should conduct a review of the allocation of responsibilities and activities assigned by law to PGN and NAC to ensure that adoptability is declared as a last resort and prevent the adoption of children that were stolen or given up by distorting the parents' will by fraudulent means. They must also make sure that the procedure guarantees that the adoptive parents are chosen among those who can best ensure the child's development. Preparation of an appropriate organic law governing the functions and redesign of PGN must be included in this framework.

Recommendations Addressed Specifically to Congress:

In order to prevent the current interpretative confusion between human trafficking and other punishable acts, including prostitution, irregular adoption, commercial sex and abduction of minors, Congress must approve the reform package submitted to it in August 2009, which considers the need to regulate more specifically the following aspects of the New Law Against Sexual Violence, Exploitation and Trafficking in Persons (Decree 9-2009):

1. Amendment of the characterization of the crime of human trafficking in the Penal Code;

2. Amendment and repeal of criminal offenses related to the crime of human trafficking in the Penal Code.

3. Amendment of the Law against Organized Crime with regard to the crimes of production, marketing or distribution and possession of child pornography.

4. Adoption of CICIG's recommendations with regard to legal reform on the matter of judges' impeachment and international cooperation in criminal matters.

***

8 ATTACHMENTS

ATTACHMENT A.

LIST OF INFORMATION SOURCES

Information sources used in this study were varied and qualitative and quantitative in nature.

All data collection tools were specifically designed for the report and implemented by project staff. Most of the information was collected from the following sources:

Office of the Solicitor General of the Nation (PGN):

- Forms for registration of adoption proceedings
- General PGN database
- Database of adoption proceedings registered with PGN
- List of approved adoptions from 3 January 2008 to 31 July 2009 (includes the file number, child's name and date of approval).
- Verification records
- List of subpoenas ordering lawyers to appear for the verification process
- List of records suspended during the verification process ('rescued children')
- List of suspended files found in the Children's Department of PGN
- Report of the Coordinating Unit for Control and Oversight of Adoption Proceedings of 15 December 2009.

National Adoption Council (NAC):

- List of adoptions handled during the transition period
- Cases registered with NAC since the entry into force of the Adoption Law in December 2007
- List of verified records (notarial notices)
- List of cases not submitted to verification
- List of children for whom the Courts for Children and Adolescents were asked to order protective measures
- Decisions of Courts for Children and Adolescents with regard to protection measures requested by NAC

— List as of 15 March 2010 showing the status of adoptions of children subject to protective measures in which NAC took part

Public Prosecutor's Office (MP):

— List of cases involving illegal adoption proceedings

— List of lawyers accused of the crime of trafficking or crimes related to illegal adoptions

— List of public officials accused of the crime of trafficking or crimes related to illegal adoptions

— List of children associated with investigations of trafficking for illegal adoption purposes

National Civilian Police (NCP):

— Statistical data on reports of disappearances, thefts, kidnappings or illegal adoptions in 2007, 2008 and 2009.

Immigration Bureau (DGM):

— List of adopted children who received passports in 2007, 2008 and 2009.

— Record of departures from the country in 2008 and 2009.

Other sources:

— Information on 153 adoption cases processed under the Adoption Law provided by independent investigators.

— Investigations and documents that analyze the problem

— Reports and documents emanating from non-governmental organizations that study the phenomenon of national and international trafficking

— United Nations system reports

— Interviews with members of civil society, UNICEF (HQ) and UNICEF Guatemala officials, PGN officials, NAC officials, MP prosecutors and assistant prosecutors, National Civil Police (PNC) officers and members of international organizations such as International Social Service and officials of the Committee on the Rights of the Child.

ATTACHMENT B.

CREATION OF THE CICIG DATABASE

Information Gathering

The collection of information took about 6 months. Requesting and photocopying information took a long time and was subject to changes within institutions, primarily related to staff turnover in leadership positions.

Office of the Solicitor General of the Nation (PGN)

PGN gave CICIG access to approximately 5,000 adoption application registration forms for 2007 and 2008 and provided a list of approved file numbers and children's names from 3 January 2008 to 31 July 2009. It also provided in electronic form all verification records issued during the verification process conducted by the National Adoption Council from May to August 2008.

Finally, it provided copies of the Report of the Coordinating Unit for Control and Oversight of Adoption Proceedings of 15 December 2009.

While computerizing this information, a number of difficulties related to forms containing duplicate data, inconsistencies in the information and lack of data arose.

National Adoption Council (NAC)

The Council provided 3,062 scanned notarial notices in a digital database that allows easy access to the file. It also gave CICIG more than 900 copies of rulings handed down by Courts for Children and Adolescents on requests for protective measures made by the Council on behalf of children that were not brought in for verification. Finally, it also provided the list as of 15 March 2010 of the status of adoptions of children subject to protective measures in which NAC participated.

NAC provided information in a slightly more orderly manner, but there were also some inconsistencies, such as duplicate names and missing data.

Immigration Bureau (DGM)

DGM provided photocopies of the lists of names and passport numbers of children who were adopted in 2007, 2008 and 2009. Subsequently DGM was asked to provide departure records for all the children who received passports in 2008 and 2009.

Information Management

With regard to PGN, to date there is no order or control in the content of the files that come and go to and from the Office. The compilation showed that a case might be registered more than once, registered with incorrect incomplete data. Cases are not followed up on its database, so it is not

completely reliable as a primary source of information. However, since no physical copies of the files are kept at the institution, its database and records are the only source of information regarding the status of the adoption proceedings.

PGN does not have a comprehensive database that gives access to a uniform number of records; i.e., information is not cross-referenced or harmonized among the various units/sections, making it difficult to track a specific case. Each of the reports provided by the Office contains different information, making it difficult to computerize the process based on an objective number of adoption files processed by the Solicitor General's Office.

Based on the above, CICIG scanned all the forms that were used in preparing this study with the intention of creating a database called 'Single Database' or 'CICIG database' with a matching database containing all the information provided by different institutions (PGN, NAC, the Judiciary, the Public Prosecutor's Office, DGM), including verification records, lists provided by the Immigration Bureau and the decisions of Courts for Children and Adolescents. The main reference and search element was the names of children.

All the information in the CICIG database is classified in a manner that allows statistical analysis, identifying patterns and identifying those involved in anomalous or illegal proceedings adoption.

ATTACHMENT C.

NUMBER OF CHILDREN ADOPTED BY THE UNITED STATES

	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005
1	China 3001	Guatemala 4122	China 5453	China 6492	China 7903
2	Ethiopia 2277	China 3911	Guatemala 4727	Guatemala 4135	Russia 4631
3	Russia 1586	Russia 1857	Russia 2303	Russia 3702	Guatemala 3783
4	South Korea 1080	Ethiopia 1724	Ethiopia 1254	South Korea 1373	South Korea 1628
5	Guatemala 756	South Korea 1065	South Korea 938	Ethiopia 731	Ukraine 824
6	Ukraine 610"	Vietnam 748	Vietnam 828	Kazakhstan 588	Kazakhstan 755
7	Vietnam 481	Ukraine 490	Ukraine 613	Ukraine 463	Ethiopia 442
8	Haiti 330	Kazakhstan 380	Kazakhstan 547	Liberia 353	India 323
9	India 297	India 308	India 411	Colombia 344	Colombia 287
10	Kazakhstan 295	Colombia 306	Liberia 314	India 319	Philippines 268
11	Philippines 281	Haiti 301	Colombia 309	Haiti 310	Haiti 234
12	China- Taiwan 253	Philippines 292	Philippines 260	Philippines 248	Liberia 183
13	Colombia 238	Liberia 254	Haiti 191	China- Taiwan 187	China- Taiwan 141
14	Nigeria 110	China- Taiwan 219	China- Taiwan 184	Vietnam 163	Mexico 88
15	Ghana 103	Nigeria 149	Mexico 89	Mexico 70	Poland 73
16	Mexico 72	Mexico 105	Poland 84	Poland 67	Thailand 71
17	Uganda 69	Ghana 97	Thailand 66	Nepal 66	Brazil 66
18	Thailand 56	Kyrgyzstan 78	Brazil 55	Brazil 66	Nigeria 65
19	Jamaica 54	Poland 77	Kyrgyzstan 54	Nigeria 62	Jamaica 62
20	Poland 50	Thailand 59	Uganda 54	Thailand 56	Nepal 62

*NOTE: All statistics provided by the Government of the United States refer to data for each fiscal year, which begins 1 October and ends on 30 September.

ATTACHMENT D.

CHRONOLOGY

1977-1989

The armed conflict

- "The files that contain substantive information on children given up for adoption include data that involve members of the Army and the National Police in the transfer of children." The entity in charge of these proceedings was the Social Welfare Secretariat of the Presidency of the Republic.
- The Civil Code required that the Competent Trial Judge request the adoption and approve the formalities for processing it. The Public Prosecutor's Office (which was then part of the Office of the Solicitor General of the Nation) examined the proceedings and had the authority to object to the adoption if it felt that it did not meet all the requirements.

1977-2007

The Trial Judge "was relegated by the Notary and Protection Centers"

- "Adoptions governed by the Civil Code may be executed by a notary public without prior judicial approval of the proceedings". (Decree Law 54-77, 1977).

90s

The Office of the Solicitor General of the Nation (PGN) was practically the only institution in charge of following up private adoptions that were handled under the Law Regulating Processing by Notaries of Matters Falling under Voluntary Jurisdiction, Decree No. 54-77, i.e. by a notary public.

Historic Clarification Commission (Truth Commission)

- The Truth Commission determined that there had been "generalized violation" of children's right to a family, identity and culture, and made specific recommendations on "children who had disappeared, been adopted illegally or separated illegally from their families".

2002

Congress authorized accession by Guatemala to the Convention on Protection and Co-operation in Respect of Inter-Country Adoption (Hague Convention), which was to enter into effect in 2003.

- However, a group of lawyers interested in keeping the old adoption system challenged its validity. The Constitutional Court declared the process for accession to this instrument unconstitutional, thus allowing notarial adoption proceedings to continue with impunity, i.e. with little active State control.

2003

When the Law on Comprehensive Protection of Children and Adolescents (PINA Law) went into effect, it was recognized that the institution of adoption establishes the primary obligation to protect the best interests of children and adolescents.

- Furthermore, adoptions were to be handled in accordance with treaties, conventions, agreements and other instruments ratified by Guatemala on the subject, which stipulate that international adoptions may only be processed by courts and promote the application of basic principles on the issue of adoptions.

2006

Mario Estuardo Gordillo Galindo was appointed Solicitor General of the Nation in 2006 (he remained in office until April 2008) and the largest number of international adoptions per year in the history of Guatemala were registered during his term in office (more than 10,000 children, or approximately 5,000 children a year) left Guatemala during his term in office.

2007

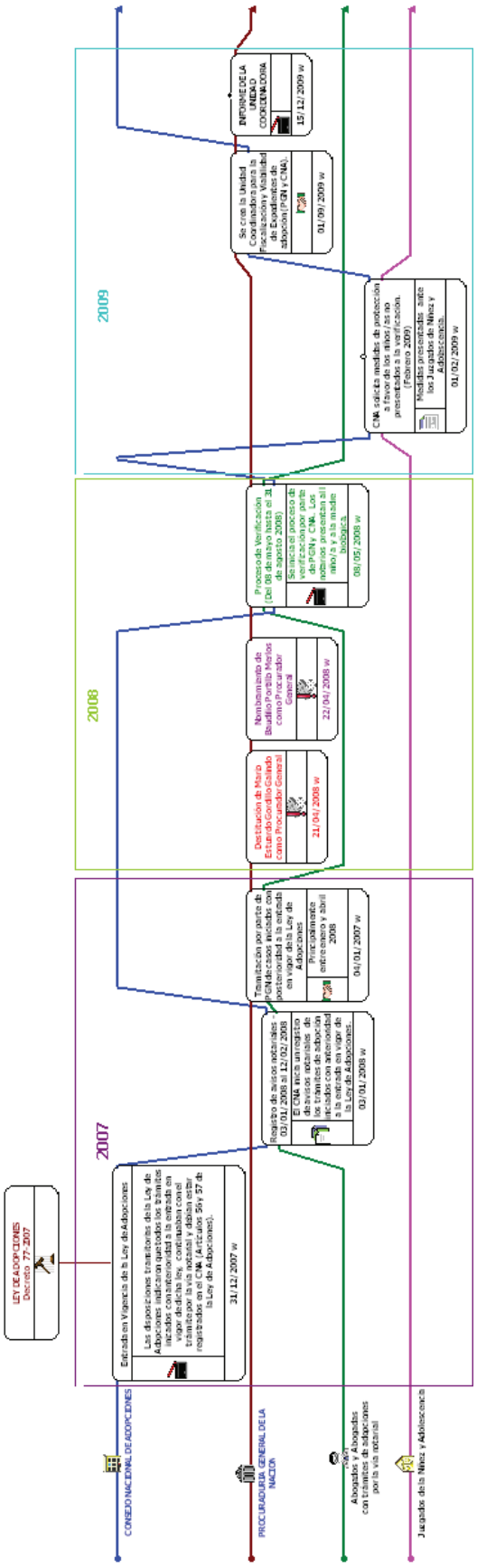
In May 2007, the Constitutional Court recognized the ratification of the Hague Convention by Guatemala and on 11 December 2007, the Congress of the Republic enacted the new Adoption Law (Decree 77-2007).

2008

The Adoption Law went into effect, the National Adoption Council was created and the transition period began.

ATTACHMENT E.

CHRONOLOGY OF ADOPTIONS PROCESSED DURING THE TRANSITION PERIOD



ATTACHMENT F.

PARADIGMATIC CASES

1. "ASOCIACIÓN PRIMAVERA" CASE

a. On November 3, 2006, a 13-month-old girl known as ALHR was stolen by a woman on the street near her residence in the municipality of San Miguel Petapa, department of Guatemala.

b. Her father, DOH, initially filed a complaint with the Citizen Service Bureau of the Criminal Investigation Division (DINC), on 4 November 2006. It was transferred to the Criminal Investigation Division, Division for Children, Adolescents and Missing Persons of the National Civilian Police. This in turn was referred to the Permanent Service Unit of the Office in Villa Canales. On 5 November 2006, he filed a complaint at the Public Prosecutor's Office located in Barrio Gerona, where he was told that the person in charge of taking complaints had already left.

c. On 16 November 2006, DOH filed a complaint with the Office of the Human Rights Ombudsman, who referred it to the Auxiliary Mobile Office of the Human Rights Ombudsman in Villa Canales. Since that time, there was no more contact with the office of the Ombudsman. The Public Prosecutor's Office in Villa Canales was in charge of the case until mid-2008, when it was transferred to the Unit against Human Trafficking and Irregular Adoptions of the Organized Crime Prosecution Office of the Public Prosecutor's Office.

d. On 20 November 2006, he filed a complaint with the Chamber for Children and Adolescents of Guatemala City, who directed the Section for Children and Adolescents and Missing Persons of PNC to locate ALHR.

e. On 7 February 2008, her birth mother, LERM, was sent by the court to the Survivors' Foundation. The Foundation gave her legal advice and psychological counseling.

f. On 11 February 2008, LERM filed a complaint with the Office for Children and Adolescents of the Solicitor General's Office, which also included a photograph of her missing daughter. She requested that, in addition to starting an investigation, an order be issued staying any adoption involving her daughter and to be authorized to review the forms and look at the photographs.

g. LERM identified several children who were physically similar to her daughter, filed a habeas corpus petition and underwent DNA testing. The tests all came back negative.

h. On 22 July 2008, the Trafficking Unit of the Public Prosecutor's Office received the investigation that had begun in the Villa Canales Prosecution Office in 2006.

i. In early 2009, LERM received authorization to review adoption records in the National Adoption Council, and identified a girl who resembled her daughter. The Survivors' Foundation filed a writ of habeas corpus against the Asociación Primavera (A.P.) children's home, where her daughter was allegedly being kept while her international adoption was processed with the name of KALG. The personal exhibition took place on 26 March 2009.

j. KALG's alleged birth mother called herself FALG. Further investigation of the handling of the adoption of a girl known as KALG showed a number of irregularities (use of forged documents, failure to report, dereliction of duty) involving lawyers, notaries and State officials who participated in the process.

k. Irregularities in KALG's adoption process:

i. On 12 January 2007, a notarial record was made of the initiation of the adoption proceedings, using a false identity card. While the adoption was being processed, the child was placed under the care of VCSG.

ii. The notary in charge stated that the alleged mother, FALG "is a single mother who has absolute parental authority over her above-identified minor daughter and has decided to give her up for adoption. She works and is not allowed to bring the child to her workplace, because she cannot work and care for her at the same time. She also said that none of her relatives were able to take care of her daughter and she had not found a Guatemalan family willing to adopt her, i.e. that she had considered every possibility of a domestic adoption."

iii. A fake birth certificate, purportedly issued by the Register of Vital Statistics of the Municipality of the City of Iztapa in the Department of Escuintla, was used.

iv. The home study conducted on 1 August 2007 by the First Social Worker of the Fourth Family Court of the Department of Guatemala in Case 8970-2007 on the adoption of KALG gave a favorable opinion on the adoption.

v. The DNA test result of 9 July 2007, to determine the relationship between mother and child, came out negative. Immediately thereafter, the alleged mother, FALG, abandoned the child. Subsequently, in an affidavit of 12 September 2007, the caregiver, claiming that she was unable to take care of the child, delivered her to the representative and head of a children's home, "Asociación Primavera" (AP). The notary of the children's home issued an affidavit of child custody in favor of Asociación Primavera.

vi. The file that was delivered to the new notary stated that the DNA test was negative.

vii. Tthrough a writ received on 18 September 2007, the legal representative of AP requested that the Judge for Children and Adolescents of the Department of Escuintla, who lacks jurisdiction to hear the case, order temporary shelter for the child at AP and that it be allowed to join the adoption program. The judge granted both requests and began processing the declaration of abandonment of the child.

viii. On 5 December 2007, the Children's Judge of Escuintla gave custody to AP and ordered the registration of guardianship of the child by that institution, which is clearly illegal and inappropriate, since that child is not the one that was registered on the birth certificate of the municipality of the Port of Iztapa, Department of Escuintla, and FALG was registered as the child's mother notwithstanding the negative DNA result.

ix. The declaration of abandonment was issued after the writ containing the arguments of PGN Representative in Escuintla, who asked that the girl be "declared abandoned; that she be given shelter in Asociación Primavera and that her adoptability be established in an effort to protect her right to grow up in a family ...." The adoption proceedings were reactivated and the same family who would have adopted her from the outset was chosen.

x. These adoption proceedings were irregular, since it was decided to continue identifying the child with a false birth certificate. The lawyer who took over the case after the declaration of abandonment is the aforementioned notary.

xi. PGN issued a favorable opinion on 28 July 2008 and authorized the Final Deed of Adoption declaring the child legally adopted. The decision was issued despite the fact that the girl's disappearance had been reported to PGN as early as 11 February 2008 and photographs had been submitted.

xii. The child known as KALG received a passport on 26 November 2008 and left Guatemala for the United States on 9 December 2008.

xiii. When the child was in the United States with her adoptive family, a clinical comparison was performed of the results of the child's DNA test that appeared in her record. Her DNA matched that of the alleged mother, LERM, by 99%.

A. Criminal Proceedings

The Unit against Human Trafficking of the Prosecution Office for Organized Crime is responsible for this case.

The alleged birth mother of the child, LERM, has been named as provisional complementary plaintiff under the guidance of the criminal law department of the Survivors' Foundation.

The lawsuit is being tried at the Sixth Criminal Trial Court for Drug Trafficking and Environmental Crimes of the Department of Guatemala. On 5 October 2009, the Survivors' Foundation and the Public Prosecutor filed a challenge against the judge, alleging a lack of impartiality[219].

The challenge was upheld by the Third Chamber of the Court of Appeals in a decision dated 14 January 2010. The case was assigned to the Fourth Criminal Trial Court for Drug Trafficking and Environmental Crimes of the Department of Guatemala.

In a resolution of 2 March 2010, CICIG was admitted as a complementary prosecutor.

Currently there are eight accused, a judge against whom pretrial impeachment was petitioned and a list of suspects against whom the Prosecution is preparing arrest warrants. The investigation remains open.

a. On 5 May 2009, a criminal complaint and lawsuit were filed against the Judge for Children and Adolescents of the Department of Escuintla on charges of trafficking, failure to report a crime and conspiracy. A petition for pretrial impeachment was filed.

b. In July 2009, a Supreme Court Justice abstained from ruling on the impeachment against the Judge alleging that the documentation was not reliable and there were substantive defects because he went to high school with the judge in question. A judge of the Third Chamber was assigned as inquiry judge in his stead.

c. An arrest warrant was issued on 14 May 2009 against an assistant counsel of the Prosecution Section of PGN who had given a "favorable opinion". She is indicted for the crime of dereliction of duty and on a second count for the crime of trafficking in persons. She was released on Q5,000.00 bail.

d. The person linked to the child's of was indicted for the crime of human trafficking and on a second count for the crimes of trafficking and conspiracy. According to data obtained in the investigation, this person is allegedly responsible for a network of 'snatchers' which operates by stealing and kidnapping children to be placed for adoption.

e. On 22 April 2010, an indictment and preventive measures were ordered against the Notary representing Asociación Primavera on charges of trafficking and use of false documents. The

[219] Antecedentes de la recusación: el 4 de agosto de 2009, el MP solicitó orden de aprehensión contra las abogadas por su presunta implicación en el caso KALG. El 6 de agosto de 2009, la juez resolvió, alegando igualdad procesal en relación a un, que no había lugar a la aprehensión ni allanamiento en relación a las dos sospechosas, y ordenó en su lugar su citación para que prestaran su primera declaración el 11 de agosto de 2009.
En su recusación, la Fundación Sobrevivientes alega que la juez extralimitó sus funciones al vulnerar el principio de motivación y fundamentación que debe regir el dictamen de resoluciones, así como el principio de congruencia. Así mismo, cuestionan la igualdad procesal indicada por la jueza, dado que indicó que no existía peligro de obstaculización a la investigación ni riesgo de fuga. En consecuencia, la Fundación Sobrevivientes ha recusado a la jueza por falta de imparcialidad (Artículos 123 y 125 de la Ley del Organismo Judicial), dado que su actuación estuvo encaminada a favorecer a las sospechosas, puesto que ha evitado asegurar su presencia en el proceso al no ordenar su aprehensión.

lawyer remained a fugitive since late 2009 and was deported from the U.S. as an illegal alien.

f. Another lawyer was arrested on 14 May 2009. He was indicted for the crimes of trafficking and conspiracy.

g. On 18 May 2009, the Assistant Prosecutor of the Solicitor General's Office in Escuintla turned himself in to testify and was released on Q5,000 bail.

h. On 19 May 2009, a PGN official turned himself in to testify before the judge hearing the case and was indicted and arrested for the crimes of human trafficking and dereliction of duty.

i. On 28 May 2009, an indictment and arrest warrant were issued against the representative and director of Asociación Primavera, on charges of trafficking and use of forged documents.

j. On 7 September 2009, an indictment was issued and preventive measures were ordered against a PGN official for the crime of trafficking.

k. As of 30 April 2010, one of the lawyers had not been indicted.

2. ESRE CASE

a. The girl known as ESRE was born in Guatemala City in San Juan de Dios Hospital on 5 September 2006. Her parents are AJE, who then was 26 years old, and CERR.

b. Esther was stolen from her mother on 26 March 2007 at 6 months of age at the shoe store where her mother worked, in the neighborhood of La Parroquia. Two women and two men came to the shoe store pretending to be customers. One of the men pulled a gun, locked the mother in the bathroom and tried to rape her. The man fled and when she managed to escape from the bathroom, several pairs of shoes had been stolen and her daughter was no longer in the store.

c. That same day, AJE filed a complaint with the Criminal Investigation Division (DINC) and the Citizen Service Office of the National Civilian Police (PNC).

d. On 7 May 2007, CER, the father of the child, filed a social complaint before the Second Court for Children and Adolescents of the Department of Guatemala, where orders were given to locate ESRE through the Section on Children and Adolescents and Missing Persons of the PNC.

e. In April 2007, AJE went to the PNC to look at the photo albums. She identified the man who threatened and tried to rape her and one of the women who was with him on the day in question.

f. On 24 June 2007, AJE filed a complaint with the Prosecutor for Children and Adolescents of the Solicitor General's Office (PGN) and requested suspension of any adoption proceedings involving her daughter. For the purpose, she filed a photograph of the girl.

g. On 13 July 2007, AJE filed a complaint with the citizen service unit of the Guatemala District Prosecutor's Office of the Public Prosecutor's Office. In the complaint, AJE states that she suspects that the girl's father is involved in the case, since he has been coercing her to desist from continuing the criminal proceedings: "The girl's father left me fifteen days after her disappearance." This line of investigation was not pursued because there was not sufficient evidence to confirm this suspicion.

h. On 6 August 2007 she went to the Survivors' Foundation and received legal and psychological support.

i. Raids, social events and advocacy were carried out throughout 2007, considering that ESRE had been trafficked in the guise of irregular adoption.

j. In May 2008, a verification process was launched by PGN and NAC (during the transition period) of adoption proceedings started under the old legislation. The verification involved bringing in children for whose adoptions were being processed. AJE and the Survivors' Foundation were present during the entire verification process.

k. On 9 May 2008, AJE recognized one of the girls brought in by one of the notaries. The adoption had already been received a favorable opinion from PGN on 7 March 2008 (only 7 months after the proceedings started).

l. The girl recognized by AJE was recorded in file No. 1510-2007 of Adoption Proceedings by the Solicitor General's Office with the name of SAHM. As a result, the Court for Children and Adolescents temporarily handed the child to AJE and ordered a DNA test.

m. The adoption record review made it possible to identify the individuals who were carrying out this process. The Public Prosecutor's Office brought legal action through the Prosecutor's Office for Organized Crime Unit against Trafficking in Persons.

n. On 27 May 2008, DNA testing was done to determine the relationship between ESRE/SAHM and AJE. The results were received on 2 June 2008 and showed that there was a 99.9% likelihood that they were mother and daughter.

o. On 17 July 2009, the Second Children's Court awarded AJE custody, guardianship, parental authority and protection of her daughter.

Adoption proceedings at PGN:

i. The Notary began the adoption process by filing a notarial notice on 15 October 2007. The alleged mother, EHM, gave the girl known as SAHM up for adoption because she was financially unable to support her.

ii. A fake medical birth certificate and official birth certificate were used.

iii. The social worker of the Judiciary issued a favorable socioeconomic adoption study. The alleged mother and the adoptive parents were interviewed.

iv. A DNA sample was taken of SAHM and her alleged mother on 16 October 2007 at Multimédica labs. The tests came back positive, with a 99.83% chance of motherhood. The test was performed by LabCorp Laboratories, Laboratory Corporation of America, in the United States of America, on 22 October 2007.

v. The adoption was processed with the participation of an international adoption agency whose legal representative was in Guatemala.

p. On 5 September 2008, the United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child, Najat M'jid Maala, made a special appeal to the State of Guatemala for reports on the case of ESRE.

q. The criminal suit was brought in the Third Criminal Trial Court for Drug Trafficking and Environmental Crimes, Department of Guatemala, Case No. 01081-2007-09871/3.

The physician, the alleged mother, caregiver, notary and attorney-in-fact were charged.

The Third Judge amended the charges and accused the defendants of child abduction, rather than human trafficking and conspiracy.

Finally, the Eighth Criminal Trial Court for Drug Trafficking and Environmental Crimes of the Department Guatemala issued a ruling on 2 October 2009, convicting the notary of the crime of trafficking for illegal adoption purposes. This is the first conviction for the crime of trafficking for illegal adoption purposes in Guatemala.

3. CASE OF GDHC

a. In late 2006, the girl known as GJCS lived with her mother, SSC, and her younger brother. When GJCS was five months pregnant, RARE, the woman who lived across the street and knew she was pregnant, threatened to kill her younger brother if she did not give up her child who was about to be born. For this reason, GJCS and her family moved around January 2007.

b. On 11 May 2007, GJCS gave birth to a boy at Roosevelt Hospital. The child was later illegally registered under the name of GDHC. On 12 May 2007, GJCS was discharged from the hospital and while waiting for a taxi to go home, accompanied by her mother, SSC, a yellow car pulled up. The passenger, RARE, violently snatched the baby from his mother's arms and told her not to look for it or she would kill her younger brother. She took the baby and papers she had received from the hospital.

c. In June 2007, RARE handed the victim a copy of a false identity card, issued fraudulently by the Municipal Clerk of San Antonio La Paz, department of El Progreso, in the name of LMHC. She told her to learn the information on the card by heart and get the birth certificate for her son. [RARE] obtained a false medical certificate from the physician and subsequently took the mother to register the birth of her son in the municipality of San Juan Sacatepéquez with the name GDHC.

d. On 30 July 2007, the Notary granted custody of GDHC to RARE through an affidavit.

e. In September 2007, RARE threatened the mother and submitted her and the baby to blood collection and swabbing at a laboratory. During these tests, she also took photographs of the victim and her baby. The mother was forced to leave the fingerprints of both on papers and a footprint of the baby.

f. RARE took GJCS to the Seventh Family Court for an interview with the social worker, appearing as a caregiver at this hearing.

g. The notary public carried out the notarial proceedings for adoption of GDHC, forcing GJCS, also a minor, to leave her fingerprints on the documents to demonstrate her desire to give the child up for adoption through deception, threats and coercion. Among the irregular adoption proceedings, the notary identified the mother, a minor, as LMHC with a false identity card, knowing that it was false, since there were significant differences between the copy of that document, which he notarized, and the certified copy of LMHC's identity card. It could be seen at first glance that this was not the same person. The notary handled the irregular adoption proceedings and asked the Solicitor General's Office to issue a favorable opinion and approve the subsequent proceedings. On 13 November 2007, a lawyer from the Solicitor General's Office gave a favorable opinion on behalf of PGN, notwithstanding the irregularities in the adoption file.

h. In mid 2007, the notary was hired by an international adoption agency to coordinate adoption

services for families seeking to adopt children from Guatemala.

i. Another lawyer served as attorney-in-fact and used false documents. Knowing that they were forged, he appeared as applicant in the initial adoption proceedings dated 1 October 2007 and signed the final adoption certificate dated 6 December 2007, which completed the irregular adoption process. Subsequently, on December 10, 2007, the Immigration Bureau issued GDHC's passport under the new name of GDZ, thus allowing him to leave the country on 17 January 2008 for the United States.

j. RARE's home was raided on 6 May 2008 and the children BB, WR, L, JG, JDCS, HCC, HC, DMP, HES and LAG were found. All these children were to be given up for international adoption by the same notary who handled GDHC's adoption.

k. Subsequently, on 8 May 2008, GJCS filed a complaint with the Public Prosecutor against RARE because she stole her son and threatened her in order to conduct the adoption process with false documents.

l. CICIG filed a complaint on 19 December 2008 against five people and others who may be responsible for the crimes of human trafficking, conspiracy, racketeering and forgery.

m. CICIG was accepted as a complementary prosecutor on 26 December 2008.

n. According to the indictment, the following people are involved in the commission of crimes:

   i. There is an arrest warrant against the notary, who is on the run.

   ii. The attorney-in-fact is indicted on charges of human trafficking and conspiracy.

   iii. The Registrar of Vital Statistics of San Antonio La Paz, El Progreso, for the crimes of human trafficking, forgery and conspiracy.

   iv. RARE for the crimes of human trafficking and conspiracy.

   v. The physician for the crimes of trafficking in persons, forgery and conspiracy.

   vi. Currently, only the Registrar of Vital Statistics is in custody. The others were released on bail.

   vii. A PGN attorney and the Registrar of San Juan Sacatepéquez are still being investigated. The judge only decided to summon the PGN attorney to make a first statement at a court hearing, which has yet to be held because of constant interruptions of the proceedings.

o. The trial is in the intermediate phase, i.e. the public prosecutor filed charges against the accused and the hearing that will begin the trial is pending.

p. The Constitutional Court dismissed one of the appeals on grounds of unconstitutionality petitioned by the accused, but another one has just suspended the trial again because the Trial Court admitted it. The accused filed an appeal that is now before the Court of Constitutionality.

In October 2009, dates were set for the opening hearing, but these were suspended by dilatory appeals submitted by counsel for the accused. The trial is still suspended.

4. CASE OF JAMS

a. JAMS was born on 21 May 2007. His parents are TCSS and JCM, 19 and 26 years old, respectively.

b. On 21 June 2007, JAMS was taken from his mother, who worked in a tortilla factory. Two women came to buy tortillas. Once inside the store, they said it was an assault. They attacked JAMS's grandmother, MASH, who gave them all the money she had. The attackers rejected the money, assaulted TCSS and took her son.

c. TCSS she filed a complaint with the National Civilian Police Mobile Unit in Ciudad Nueva. The officers whom she spoke to did not take action or provide the necessary support. However, they called the media, who reported the assault.

d. The Survivors' Foundation provided support to TCSS and gave her legal and social support.

e. A complaint was filed with the Public Prosecutor's Office. JAMS was rescued 28 days later. He had been taken by a woman to a children's home where JAMS received the name of PP.

f. JAMS was referred to the Court for Children and Adolescents, where his immediate delivery to the birth mother was ordered.

g. The people in the children's home were identified by MASH and TCSS as the two women who were "monitoring Jonathan's existence of before his birth, since they frequented the tortilla business". She also identified another woman as one who abducted JAMS.

h. JAMS was delivered to the children's home under the custody affidavit prepared and authorized on 22 June 2007 by a [notary] for the purpose of adoption under the name of PP. NPP was the alleged mother. She could not be identified, although checks were written in her name by the legal representative of the children's home, dated on the date of issue of the custody affidavit. Five days and nine days later, however, all the checks were cashed by the person who abducted JAMS.

i. A false birth certificate, purportedly issued by the Register of Vital Statistics of the Municipality of the City of Iztapa in the Department of Escuintla, was used.

j. The four individuals identified were named codefendants and released on bail.

k. The oral and public debate began on 30 September 2008. The Tenth Criminal Court for Drug Trafficking and Environmental Crimes heard the case.

l. The defendants were prosecuted for the crimes of trafficking and abduction.

m. The debate ended in December 2008. The following sentences were handed down:

   i. The representative of the children's home: The indictment was changed from the crime of trafficking to abduction and a commutable sentence of three years in prison was imposed.

   ii. The woman who monitored the tortilla factory was acquitted.

   iii. The caregiver at the children's home was acquitted.

   iv. The person who took the minor was convicted for kidnapping, not for the crime of human trafficking, and was sentenced to three years, which was suspended by the Court.

   v. The court gave no value as evidence to the testimony issued by TCSS and MASH.

   vi. The Court did not grant any reparations.

n. The ruling was appealed. On 14 April 2009, the Third Appeals Chamber sentenced three of the women accused of trafficking to eight years in prison. Additionally they were sentenced to pay a fine of Q 25,000 to the family of the child that was stolen in order to give it up for adoption. The caregiver was sentenced to one year in prison for conspiracy. The verdict is not final because those convicted filed various appeals.

o. **This is the first case of irregular adoption brought to oral and public trial for the crime of trafficking in Guatemala.**

p. CICIG gave technical assistance to the Public Prosecutor's Office in the oral and public trial and subsequently assisted it in preparing an appeal against the first court ruling.

ATTACHMENT G.

NOTICE OF COMMENCEMENT OF VERIFICATION PROCEEDINGS

THE NATIONAL ADOPTION COUNCIL AND THE SOLICITOR GENERAL'S OFFICE INFORM INTERESTED PARTIES THAT:

Verification of the pending adoption proceedings that is underway in the Solicitor General's Office aims to:

I. Comply with the statutory mandate contained in Article 57 of the Adoption Law.

II. Ascertain the legal origin of the child and that birth mothers have given their consent freely, spontaneously and without pressure.

III. Provide legal certainty to adoptive parents.

THEREFORE:

a) We guarantee that the verification is being conducted following technical and objective criteria.

b) The verified cases that meet the legal requirements are being expedited so that the children can join their adoptive families in the shortest time possible.

c) The public is advised that the verification process is free, public and transparent. It is conducted by members of the Office of the Human Rights Ombudsman and the Public Prosecutor's Office.

d) The adoptive families and the public can have confidence in this verification process.

Visit us at the following websites: http://www.cna.gob.gt y http://www.pgn.gob.gt

Guatemala, may 2008

NATIONAL ADOPTION COUNCIL

OFFICE OF THE SOLICITOR GENERAL OF THE NATION

ATTACHMENT H.

TABLE OF 94 ADOPTION PRCEEDINGS FILED WITH NAC WITHOUT PGN OVERSIGHT

No.	REPORT OF THE MONITORING COMMISSION	NAME OF THE CHILD	ANC FORM N°
1	AT NAC, WITHOUT PGN	AST	2327-2008-CNA-EN
2	AT NAC, WITHOUT PGN	ADTP	0796-2008-CNA-ET
3	AT NAC, WITHOUT PGN	ASTV	2714-2008-CNA-EN
4	NIÑEZ PGN	AS	010-2008-CNA-PR
5	AT NAC, WITHOUT PGN	AFJ	0726-2008-CNA-ET
6	AT NAC, WITHOUT PGN	BVCR	0850-2008-CNA-EN
7	AT NAC, WITHOUT PGN	BJCP	0697-2008-CNA-EN
8	AT NAC, WITHOUT PGN	BAGP	016-2008-CNA-PR
9	NIÑEZ PGN	BARR	2271-2008-CNA-EN
10	AT NAC, WITHOUT PGN	BARS	1393-2008-CNA-EN
11	AT NAC, WITHOUT PGN	CAGC	2707-2008-CNA-EN
12	AT NAC, WITHOUT PGN	CMP	2428-2008-CNA-EN
13	AT NAC, WITHOUT PGN	CCI	1813-2008-CNA-EN
14	AT NAC, WITHOUT PGN	CPC	2649-2008-CNA-EN
15	AT NAC, WITHOUT PGN	CM	0117-2008-CNA-EN
16	AT NAC, WITHOUT PGN	CMDPG	22-2008-CNA-PR
17	AT NAC, WITHOUT PGN	CMGN	2167-2008-CNA-EN
18	AT NAC, WITHOUT PGN	CMMP	2261-2008-CNA-EN
19	AT NAC, WITHOUT PGN	CRMT	1812-2008-CNA-EN
20	AT NAC, WITHOUT PGN	DAL	2166-2008-CNA-EN
21	AT NAC, WITHOUT PGN	DAMR	2754-2008-CNA-EN
22	AT NAC, WITHOUT PGN	DFRM	1826-2008-CNA-EN
23	AT NAC, WITHOUT PGN	DACDC	2274-2008-CNA-EN
24	AT NAC, WITHOUT PGN	DGC	2282-2008-CNA-EN
25	WITHOUT A RESOLUTION	DMTB	1743-2008-CNA-EN
26	AT NAC, WITHOUT PGN	EGP	2286-2008-CNA-EN
27	AT NAC, WITHOUT PGN	EVLA	2867-2008-CNA-EN
28	AT NAC, WITHOUT PGN	EEVS	0876-2008-CNA-EN
29	AT NAC, WITHOUT PGN	ESBF	2720-2008-CNA-EN
30	AT NAC, WITHOUT PGN	EDLAVB	0222-2008-CNA-EN
31	AT NAC, WITHOUT PGN	ELC	2751-2008-CNA-EN
32	AT NAC, WITHOUT PGN	GGP	1669-2008-CNA-EN
33	AT NAC, WITHOUT PGN	GPTG	1338-2008-CNA-EN
34	AT NAC, WITHOUT PGN	GZL	0942-2008-CNA-EN
35	AT NAC, WITHOUT PGN	HGMT	2834-2008-CNA-EN
36	AT NAC, WITHOUT PGN	HJLC	2254-2008-CNA-EN

37	AT NAC, WITHOUT PGN	IDRS	0564-2008-CNA-EN
38	AT NAC, WITHOUT PGN	JYLH	0110-2008-CNA-EN
39	AT NAC, WITHOUT PGN	JBL	1184-2008-CNA-EN
40	AT NAC, WITHOUT PGN	JLPDP	1807-2008-CNA-EN
41	AT NAC, WITHOUT PGN	JKLP	1863-2008-CNA-EN
42	AT NAC, WITHOUT PGN	JDOS	1915-2008-CNA-EN
43	AT NAC, WITHOUT PGN	JEPDP	1805-2008-CNA-EN
44	AT NAC, WITHOUT PGN	JAMG	2648-2008-CNA-EN
45	AT NAC, WITHOUT PGN	JJP	1176-2008-CNA-EN
46	AT NAC, WITHOUT PGN	JML	0122-2008-CNA-EN
47	WITH A "PREVIO”	JAM	2548-2008-CNA-EN
48	AT NAC, WITHOUT PGN	JLG	2780-2008-CNA-EN
49	AT NAC, WITHOUT PGN	JGG	1427-2008-CNA-EN
50	AT NAC, WITHOUT PGN	JDCG	0181-2008-CNA-EN
51	AT NAC, WITHOUT PGN	JCAXY	2223-2008-CNA-EN
52	AT NAC, WITHOUT PGN	JECC	0883-2008-CNA-EN
53	AT NAC, WITHOUT PGN	KGEO	2361-2008-CNA-EN
54	AT NAC, WITHOUT PGN	KAS	0918-2008-CNA-EN
55	AT NAC, WITHOUT PGN	KCV	2125-2008-CNA-EN
56	AT NAC, WITHOUT PGN	KIVS	1949-2008-CNA-EN
57	AT NAC, WITHOUT PGN	KMEO	2360-2008-CNA-EN
58	AT NAC, WITHOUT PGN	KNCG	2452-2008-CNA-EN
59	AT NAC, WITHOUT PGN	KEPDP	1806-2008-CNA-EN
60	AT NAC, WITHOUT PGN	LABHR	2392-2008-CNA-EN
61	AT NAC, WITHOUT PGN	MARD	2401-2008-CNA-EN/62-2008-CNA-PR
62	AT NAC, WITHOUT PGN	MLG	0695-2008-CNA-EN
63	AT NAC, WITHOUT PGN	MMHG	1412-2008-CNA-EN
64	AT NAC, WITHOUT PGN	MADRPC	1337-2008-CNA-EN
65	AT NAC, WITHOUT PGN	MECY	2321-2008-CNA-EN
66	AT NAC, WITHOUT PGN	MFTC	2755-2008-CNA-EN
67	AT NAC, WITHOUT PGN	MFEA	66-2008-CNA-PR
68	AT NAC, WITHOUT PGN	MFNL	2665-2008-CNA-EN
69	AT NAC, WITHOUT PGN	MGG	0891-2008-CNA-EN
70	AT NAC, WITHOUT PGN	MMS	2855-2008-CNA-EN
71	AT NAC, WITHOUT PGN	MTSE	0851-2008-CNA-EN
72	WITH “PREVIO”/AT NAC, WITHOUT PGN	MATA	0213-2008-CNA-EN
73	AT NAC, WITHOUT PGN	MMS	2856-2008-CNA-EN
74	NIÑEZ PGN	NECV	1111-2008-CNA-EN
75	AT NAC, WITHOUT PGN	ODHR	2713-2008-CNA-EN

76	AT NAC, WITHOUT PGN	OVG	2737-2008-CNA-EN
77	AT NAC, WITHOUT PGN	ORA	2123-2008-CNA-EN
78	AT NAC, WITHOUT PGN	PABZ	2429-2008-CNA-EN
79	AT NAC, WITHOUT PGN	PJS	2578-2008-CNA-EN
80	WITH “PREVIO”	PJDLG	2255-2008-CNA-EN
81	AT NAC, WITHOUT PGN	PRRG	2547-2008-CNA-EJ
82	AT NAC, WITHOUT PGN	PCLO	2214-2008-CNA-EN
83	AT NAC, WITHOUT PGN	RDD	2750-2008-CNA-EN
84	AT NAC, WITHOUT PGN	RDFHZ	1814-2008-CNA-EN
85	AT NAC, WITHOUT PGN	RMMR	2754-2008-CNA-EN
86	AT NAC, WITHOUT PGN	SFHX	2427-2008-CNA-EN
87	AT NAC, WITHOUT PGN	SICA	0888-2008-CNA-EN
88	AT NAC, WITHOUT PGN	SVV	1128-2008-CNA-EN
89	AT NAC, WITHOUT PGN	SGCG	2391-2008-CNA-EN
90	AT NAC, WITHOUT PGN	VPDH	0832-2008-CNA-EN
91	AT NAC, WITHOUT PGN	VME	2753-2008-CNA-EN
92	AT NAC, WITHOUT PGN	VLCH	0629-2008-CNA-EN
93	AT NAC, WITHOUT PGN	YNZC	2281-2008-CNA-EN
94	NIÑEZ PGN	YMMH	2393-2008-CNA-EN

CICIG IS AWARE OF AT LEAST THREE CHILDREN FOR WHOM THE COURTS FOR CHILDREN AND ADOLESCENTS WERE ASKED TO ORDER PROTECTIVE MEASURES AND WHO, AS OF 15 MARCH 2010, HAD BEEN DECLARED ADOPTABLE UNDER THE NEW LAW.

CICIG CALLS SUCH CASES “RECYCLED CASES”.

ATTACHMENT I.

TABLE OF ADOPTION PROCEEDINGS THAT ARE BEING INVESTIGATED BY THE OFFICE OF THE PUBLIC PROSECUTOR

No.	REPORT OF THE MONITORING COMMISSION	NAME OF THE CHILD	ANC FORM N°	PGN File	Type of Resolution	Current Status (as of March 15, 2010)
1	WITH A "PREVIO"	NAME OF THE CHILD	1544-2008-CNA-EN	13528-07	Judge granted protective measures.	No information as of 15/03/2010.
2	WITH A "PREVIO"	ANC FORM N°	PGN File	8627-07		S/I
3	WITH A "PREVIO"	Type of	Current Status (as of March 15, 2010)	1041-08	Judge denied protective measures.	Did appear. Notary is complying wih "previos".
4	NO DECISION	ASRT	0776-2008-CNA-ET	1997-08	Judge granted protective measures	Child is in a children's home.
5	WITH A "PREVIO"	CET	1195-2008-CNA-EN	11839-07		S/I
6	NO DECISION	CESA	2658-2008-CNA-EN	2730-08		S/I
7	WITH A "PREVIO"	EAXC	0487-2008-CNA-EN	1206-08		S/I
8	WITH A "PREVIO"	FDMSR	1538-2008-CNA-EN	7921-06		S/I
9	WITH A "PREVIO"	FJP	2368-2008-CNA-EN	14973-07		S/I
10	WITH A "PREVIO"	ILHE	1999-2008-CNA-EN	14923-07	Judge denied protective measures.	Judge requested that the notary exhibit the child.
11	S/I	JDC	2031-2008-CNA-EN	8485-07	Judge denied protective measures.	No information as of 15/03/2010.
12	NO DECISION	MSC	0808-2008-CNA-EN	3292-08	Judge denied protective measures.	The child is in a children's home.
13	WITH A "PREVIO"	MRG	1540-2008-CNA-EN	6765-07	Judge granted protective measures.	No information as of 15/03/2010
14	AT NAC, NOT PROCESSED BY PGN	MEGG	2115-2008-CNA-EN	6629-08	Judge granted protective measures.	Child was brought in. Adoption proceedings suspended.
15	WITH A "PREVIO"	MALC	1082-2008-CNA-EN	8353-07	Judge denied protective measures.	No information as of 15/03/2010.
16	WITH A "PREVIO"	NVV	2248-2008-CNA-EN	1301-08	Judge denied protective measures.	No information as of 15/03/2010.
17	WITH A "PREVIO"	NYHC	1865-2008-CNA-EN	9950-07		S/I
18	WITH A "PREVIO"	ORLM	1361-2008-CNA-EN	8147-07		S/I
19	WITH A "PREVIO"	PBS	2927-2008-CNA-EN	2823-07		S/I
20	PGN PROSECUTOR FOR CHILDREN	SNCC	1074-2008-CNA-EN	3270-09	Judge denied protective measures.	Notary states that proceedings ended.
21	WITH A "PREVIO"	VM	1543-2008-CNA-EN	14900-07	Judge granted protective measures.	No information as of 15/03/2010.

22	WITH A "PREVIO"	WAYH	2795-2008-CNA-EN	12438-07	Judge granted protective measures. Child was brought in.	Hearing on 14 July 2010.
23	WITH A "PREVIO"	WLCB	1547-2008-CNA-EN	13587-07	Judge denied protective measures	Child is in a foundation.
24	NO DECISION	WRT	0739-2008-CNA-ET	4323-08	Judge denies protection.	Did not appear at the hearing.
25	2006-2007	ACGR	1075-2008-CNA-EN	-	Judge denied protective measures.	PGN issued decision with a "previo"
26	2006-2007	CFGP	2033-2008-CNA-EN	-		
27	2006-2007	EEVT	0784-2008-CNA-ET	12387-07		
28	2006-2007	GMVT	0774-2008-CNA-ET	12387-07		
29	2006-2007	GSJL	1071-2008-CNA-EN	5183-09		
30	2006-2007	ITP	1073-2008-CNA-EN	-		
31	2006-2007	JDLB	1076-2008-CNA-EN	-		
32	2006-2007	JACH	1085-2008-CNA-EN	7973-07		
33	2006-2007	JACV	2105-2008-CNA-EN	15001-07		
34	2006-2007	JHRP	1539-2008-CNA-EN	13937-07		
35	2006-2007	JJG	2444-2008-CNA-EN	3032-06	Judge denied protective measures.	The notary was given a deadline to bring the child in.
36	2006-2007	JVOH	2116-2008-CNA-EN	4328-06	Judge granted protective measures.	Child is with a foster family.
37	2006-2007	JRML	1089-2008-CNA-EN	-		
38	2006-2007	LMT	1194-2008-CNA-EN	11839-07		
39	2006-2007	LMAM	1067-2008-CNA-EN	14989-07		
40	2006-2007	MLPC	1081-2008-CNA-EN	-		
41	2006-2007	MTS	1078-2008-CNA-EN	-		
42	2006-2007	MAM	1086-2008-CNA-EN	-		
43	2006-2007	RAVG	2583-2008-CNA-EN	-		
44	2006-2007	SDSC	0191-2008-CNA-EN	4167-06		
45	S/I	JACC	0693-2008-CNA-EN	14988-07	Judge denied protective measures.	S/I
46	WITH A "PREVIO"/ APPROVED.	AHGG	2374-2008-CNA-EN	14978-07	Judge granted protective measures.	Brought in. Hearing 14 July 2010.
47	AT NAC, WITHOUT PGN	KIVS	1949-2008-CNA-EN	-	Judge denied protective measures.	Child is in an Association.
48	AT NAC, WITHOUT PGN	MECY	2321-2008-CNA-EN	-		S/I
49	NO DECISION	YNM	0708-2008-CNA-ET	3291-08		
50	WITH A "PREVIO"	YGC	2793-2008-CNA-EN	14239-07		

ATTACHMENT J.

TABLE OF ADOPTION PROCEEDINGS SUSPENDED BY PGN

No.	Report of Monitoring Commission	Name of Child	NAC Form No.	PGN File	Type of Resolution	Current Status (as of 15 March 2010)
1	WITH A "PREVIO"	AAA	1483-2008-CNA-EN	14634-07		S/I
2	NO DECISION	AJBM	2298-2008-CNA-EN	6577-08		S/I
3	WITH A "PREVIO"	AEXC	1099-2008-CNA-EN	2951-09		S/I
4	WITH A "PREVIO"	ADJGC	2551-2008-CNA-EN	723-04	Judge denied protection.	No information as of 15/03/2010.
5	WITH A "PREVIO"	AYX	0429-2008-CNA-EN	8487-07	Judge granted protection.	No information as of 15/03/2010.
6	WITH A "PREVIO"	AXA	0628-2008-CNA-EN	6499-08		S/I
7	WITH A "PREVIO"	ADEC	1558-2008-CNA-EN	3069-08		S/I
8	WITH A "PREVIO"	AS	2159-2008-CNA-EN	8831-08		S/I
9	NO DECISION	BMCC	0009-2008-CNA-EN	2932-08	Judge granted protective measures	Was brought to fact-finding hearing.
10	WITH A "PREVIO"	BGC	0775-2008-CNA-ET	2341-08		S/I
11	WITH A "PREVIO"	BEJEE	2204-2008-CNA-EN	1511-08		S/I
12	WITH A "PREVIO"	BRN	2556-2008-CNA-EN	14163-07	Judge denied protection.	Delivered to birth mother.
13	PGN CHILDREN'S COURT	CAMC	0780-2008-CNA-ET	2030-09	Judge denied protection.	No information as of 15/03/2010.
14	WITH A "PREVIO"	CAPC	2005-2008-CNA-EN	12476-07		S/I
15	WITH A "PREVIO"	DBCC	2292-2008-CNA-EN	6595-08		S/I
16	NO DECISION	DMM	2532-2008-CNA-EN	8829-07		S/I
17	PGN CHILDREN'S COURT	DMCC	1433-2008-CNA-EN	1811-09	Judge denied protection.	No information as of 15/03/2010.
18	NO DECISION	EGCL	1833-2008-CNA-EN	6510-08		S/I
19	WITH A "PREVIO"	ECC	2858-2008-CNA-EN	14955-07	Judge denied protection.	No information as of
20	NO DECISION	HBLT	1665-2008-CNA-EN	6422-08	15/03/2010.	Sin Información al 15/03/2010.
21	WITH A "PREVIO"	JDCS	2802-2008-CNA-EN	1160-08	Judge denied protection.	No information as of 15/03/2010.
22	PGN CHILDREN'S COURT	JECL	1832-2008-CNA-EN	6510-08		S/I
23	WITH A "PREVIO"	KMAM	0602-2008-CNA-EN	11351-07	Judge granted protection.	There is a criminal complaint.
24	NO DECISION	KACS	2888-2008-CNA-EN	5537-08	Judge denied protection.	No information as of
25	WITH A "PREVIO"	LNM	2299-2008-CNA-EN	6579-08		S/I
26	WITH A "PREVIO"	LADRG	2557-2008-CNA-EN	1159-08	Judge denied protection.	Was declared adoptable and is in a home.

27	WITH A "PREVIO"	LMS	0689-2008-CNA-EN	13108-07		S/I
28	WITH A "PREVIO"	MAC	2912-2008-CNA-EN	6660-07		S/I
29	WITH A "PREVIO"	MLCL	1401-2008-CNA-EN	4665-08		S/I
30	WITH A "PREVIO"	MACC	0124-2008-CNA-EN	1478-08		S/I
31	NO DECISION	MAG	0835-2008-CNA-EN	3524-08		S/I
32	WITH A "PREVIO"	MSF	2153-2008-CNA-EN	1931-08	Judge denied protection.	No information as of 15/03/2010.
33	NO DECISION	MMGG	2108-2008-CNA-EN	6629-08	Judge granted protection.	Brought in for hearing. Proceedings suspended.
34	NO DECISION	OSPS	1816-2008-CNA-EN	2906-08		S/I
35	NO DECISION	RRCM	2616-2008-CNA-EN	1763-08	Judge granted protection.	No information as of 15/03/2010.
36	NO DECISION	RCY	0752-2008-CNA-ET	4356-08		S/I
37	WITH A "PREVIO"	SCC	2221-2008-CNA-EN	4990-08		S/I
38	WITH A "PREVIO"	SAHM	1664-2008-CNA-EN	1459-08	Judge denied protection.	Returned to her birth mother.
39	WITH A "PREVIO"	VAPC	0134-2008-CNA-EN	1329-08		S/I
40	NO DECISION	VYJLM	1550-2008-CNA-EN	5102-08	Judge denied protection	
41	WITH A "PREVIO"	YRBS	0786-2008-CNA-ET	2524-08		S/I
42	WITH A "PREVIO"	ZMXJ	2375-2008-CNA-EN	14975-07		S/I

ATTACHMENT K.

CASES WHERE ADOPTABILITY HAS BEEN DECLARED ILLEGALLY

Case 1: RMCA

The case is from 2007. The complaint was filed by the lawyer, who reported that Mrs. SMCA came to his law office to initiate voluntary adoption proceedings of her alleged daughter, RMCA, and produced a false identity card and birth certificate and gave a fake address, which was determined when the results of DNA testing came back negative. In February 2007, another woman claimed that she was the girl's real mother. She stated that her daughter's name was actually SYSH and that she was born on 12 September 2006. She produced the birth certificate. A social study of the "real mother" was performed and it was determined that she was an appropriate caregiver for the child. She was given permission to visit the child. On 15 May, the woman stated that she wanted to give her daughter up for adoption because of poverty. It is unclear how it was verified that she is the birth mother. On 27 September 2007, the girl was declared abandoned and placed under the permanent custody of "Los Niños de Guatemala". Case P-20-2007, First Trial Court for Children and Adolescents, Department of Guatemala.

Case 2: MDLM

The case began on 26 May 2006, when the director of a children's home reported that on 23 May of that year Mrs. AM, 24, had arrived there "without producing an ID", saying that it wanted to give up her newborn daughter, named MDLM, because she had gotten pregnant as a result of rape. She claimed that she had very limited financial resources and had two children to support. The alleged mother promised to bring her identity card and the child's birth certificate the next day. She never came back. A copy of the note signed by the alleged mother was attached and the child was declared adoptable without checking if there was a birth certificate or confirming the identity of the mother. Case 1066-2006-699, Second Trial Court for Children and Adolescents, Department of Guatemala.

The records on the investigation do not contain data to confirm the identity of the mother, or whether there is a birth certificate. The court declared her adoptable and NAC was given three months to place her with a family.

Case 3: OMRV and CLV

The case began on 19 May 2008 because two girls (OMRV and CLV) were sent to a children's home in October 2008, when they were found with their mother who was under the influence of liquor, "placing their physical safety at serious risk". The mother was not found at the address she gave for the social study. The record does not indicate when they were separated.

The girls (aged 2 and 3) report that they want to be with their mother. She says that this was the first time she [became intoxicated]. She says that she now works as a "domestic". The father says he is willing to give the mother Q 1200 a month and asks for a chance to show that they love the girls and want to raise them. The girls were declared adoptable at the same fact-finding hearing. The director of the children's home said that "the girls can benefit emotionally and medically from adoption" and "are legally adoptable". Psychological evaluation was ordered "to corroborate that [the parents] are not an ideal family" and NAC was given three months to place them with a foster family. Case P-261-2008, Trial Court for Children and Adolescents, Department of Chimaltenango.

Case 4: LEMZ

A child known as LEMZ was abused by his stepfather. His siblings and grandparents are in the United States. His mother does not protect him from the stepfather because he hits her as well. The boy filed a complaint with the Human Rights Ombudsman when he heard about it on the radio. His adoptability was declared without notifying his relatives in the United States. The child is in a temporary home in Quetzaltenango. Judgment of 16 July 2008. P-31-2008, Trial Court for Children and Adolescents, Department of Quetzaltenango.

Case 5: BPDCLC and JCCLC

An adolescent girl, BPDLC, 17, was raped countless times. She became pregnant and had a son (JDDLC). Neither she nor her son are registered. She says she has no relatives except for a cousin. There are various PGN reports. In one she is considered fit to raise her son, but not in another. The teenager wishes to keep her child. She even hired a lawyer. However, both were declared adoptable. They are in different homes. The child is with a foster family. There has been criminalization of the victim. First Trial Court for Children and Adolescents, Department of Quetzaltenango.

ATTACHMENT L.

CASES OF IRREGULAR PLACEMENT WITH A FOSTER FAMILY

Case 1: SYSH/RMCA

The girl known as SYSH/RMCA was being cared for in an association. In July 2008, the association requested that the girl, whose adoption started under the old law, be given up for adoption under the old system and placed with Mr. JAN and Mrs. JAVN. The judge refused, but placed her with the couple as a foreign foster family. The last sentence is the October 6, 2008, declaration on adoptability, which directed NAC "to place the girl with the couple as a foster family". Case P-20-2007. First Trial Court for Children and Adolescents, Department of Guatemala.

Case 2: MEGT

Mrs. CGT stated that she wished to give up her son, MEGT, up for adoption because of poverty and gave him directly to a foreign couple, JLM and MKM, who filed a request for precautionary measures on behalf of the child. The judge designated the couple as his foster family although the Social Welfare Secretariat had not certified them and they were not temporary or permanent residents in the country. In a hearing dated 25 May 2009, the mother confirmed her consent to up her child for adoption. PGN social worker said that there are no suitable families to care for the child. The DNA test was positive. The foreign foster family filed an application to adopt the child in their care. The court issued the declaration of adoptability and resolved to start the adoption proceedings requested by the foster family. Case P-328-2009. Trial Court for Children and Adolescents of the Department of Chimaltena

ATTACHMENT M.

'RECYCLED' CASES

Case 1: BARS

Study declaring abandonment under the new legislation. Trial Court for Children and Adolescents of the Department of Chimaltenango.

There is a birth certificate. The birth mother died. (The death certificate was issued in Mixco, Guatemala).

Irregularities:

The hearing took place on 19 May 2008. BARS was born on 8 August 2007. The lawyer and notary is the legal adviser of a children's home. Before dying, the mother asked the notary to help her arrange his voluntary adoption by foreigners. The DNA test was positive. The mother died on 12 January 2008. The Solicitor General's Office reported that it conducted the required studies on behalf of the child. PGN failed to conduct the social study, because the representative of the children's home produced documents in which a woman named ARS says she has custody of her son BARS. However, the birth documents are for a child with a different name, BAB. The central authority of PGN stated that the study could not be conducted because the documents do not match, since they belong to different persons. However, PGN endorsed the declaration of abandonment.

CICIG Information Regarding Proceedings during the Transition Period:

- There are no records at PGN.
- The proceedings were registered with NAC on 24 January 2008. They contain information regarding the mother. They do not show that the mother died on 12 January 2008.
- According to NAC data, the proceedings started on 21/12/2007.
- **The prospective adoptive parents have the last name mentioned in the declaration of abandonment under the new law**, which shows that arrangements had already been made for the child to take the adoptive parents' name before the declaration of adoptability.
- NAC did not order protection measures. The proceedings were not submitted to verification.
- The mother's identity was known but the extended family was not considered.
- The proceedings are shown as 'pending' in the CICIG Database'.

Case 2: CFGP

Study for declaration of abandonment under the new legislation. Trial Court for Children and Adolescents of the Department of Chimaltenango.

Case 777-2007, First Court. 10 June 2008. The proceedings were started when the Public Prosecutor's Office raided a children's home. A boy named CFGP was transferred to another children's home on 22 August 2007. However, on 29 October 2007, *"in response to a request made by the representative of the home, the court ordered the child's return to the [previous] home to continue the notarial adoption proceedings, since the mother had stated her desire to give up her child for adoption.* On 10 December 2007, a man of foreign nationality presented a writ which stated that his client *"was unable to continue*

the proceedings for the notarial adoption of the child, because the boy's mother had disappeared and there is no information as to her whereabouts as of this date." On 5 June 2008, PGN requested placement of the child in another institution that was not being criminally investigated, *"since the persons who started the adoption proceedings used false documents."*

Irregularities:

PGN stated that the alleged mother used a false identification document, since the birth record actually corresponds to a child born dead in 1988. The birth certificate was issued in San Lucas Tolimán (Sololá). According to the investigation conducted by the Public Prosecutor's Office, *"it interviewed the midwife who allegedly attended the birth of the child, who said she had not attended the young woman's delivery when she was shown her photograph."* Permanent shelter in the children's home was ordered. The child was declared adoptable and NAC was given a period of one month to place it with the foreign family. Registration of the child, born on 19 July 2007, was ordered. The Public Prosecutor's Office was asked to investigate.

CICIG Information on Proceedings during the Transition Period:

- There is no record at PGN.
- They were registered with NAC on 11/02/2008. The record contains information regarding the mother.
- According to NAC, the proceedings were initiated on 12/06/2007.
- Protection measures were requested by NAC and the court in Chimaltenango ruled on 27/01/2010 "Not applicable – Not qualified to hear the case", according to information provided by NAC.
- A complaint was filed with the Public Prosecutor's Office. However, the adoptability ruling was NOT appealed and objections to the adoptive family were not filed.
- **The Judge set a deadline for NAC to place the child with a foreign family, which was the prospective adoptive parents.**
- In the CICIG Database the proceedings are listed as "pending."

Case 3: JDC

Study for declaration of abandonment under the new legislation. First Trial Court for Children and Adolescents of the Department of Guatemala.

This case started with a complaint filed on 13 November 2007 by a PGN lawyer, and (sic) reported that Mrs. JC appeared as the boy named JDC's birth mother. In adoption proceedings, according to investigation by that institution, it was determined that at the time of his birth (sic), he was born dead, so the alleged mother could not have given that child up for adoption. Protective measures were requested for the child in question. The boy was sent to a children's home; a forensic medical examination to establish his chronological age and publications to locate relatives were ordered. He is currently with a foster family with a foreign surname that matches that of the adoptive family named in the above proceedings.

Irregularities:

First Court for Children and Adolescents of Guatemala: ruling of 26 May 2008.

Case P-993-2007.

The midwife stated in the proceedings that she brought forth a stillborn child. However, it was established that the alleged mother who produced false identity is the child's mother (DNA test).

Additionally, the boy is still in a children's home. In addition, the alleged mother's identity papers are false.

The foster family is a foreign man who was named as the adoptive father under the old system. The child's birth record was canceled and his name was changed to JDPS. An investigation of the Registrar of San Antonio Suchitepéquez, Suchitepéquez was ordered. PGN had requested that the Public Prosecutor prepare a report regarding the notary who represented the children's home and other individuals involved with it, that the child's custody by this home be revoked and that the child be transferred to another shelter.

CICIG Information on Proceedings during in the Transition Period:

- The proceedings were registered with PGN and NAC and contained information regarding the mother.
- According to NAC, the proceedings began on 17/04/2007.
- Protection measures were requested by NAC. The Chimaltenango court declared itself not qualified to hear the case and referred the case to the Appeals Chamber for appointment of the court that is to continue hearing the case. According to information provided by NAC, a date has not been set for the hearing to consider protection measures for this child.
- The adoption proceedings are under investigation by the Public Prosecutor.
- **The foster family designated after the declaration of abandonment is the adoptive family named in the proceedings started by a notary.**
- The case is listed as "pending" in the CICIG Database.

Case 4: KJZ

Study for declaration of abandonment under the new legislation. Trial Court for Children and Adolescents of the Department of Chimaltenango.

Case P-338-2007. Sentence of 14 November 2008. The girl known as KJZ was placed with a "permanent foster family", which is the adoptive family named in the notarial adoption proceedings.

Adoptability was declared and NAC was given three months to process the adoption.

CICIG Information on Proceedings during in the Transition Period:

- The proceedings started on 04/11/2005.
- Registered with NAC on 25/01/2008.
- The NAC's records contain information regarding the mother. However, there is no information on where the child was born. PGN reported that the file number that corresponds to the child is No. 1920-06 of 2006. According to information provided by the, PGN, it was approved on 02/05/2006.
- The National Council did not request protective measures. The child was not brought in for verification.

— The adoption proceedings stipulate a domestic adoption by **foreign parents, who are named in the declaration of abandonment under the new law**.

Case 5: MEBF

Study for declaration of abandonment under the new legislation. Trial Court for Children and Adolescents of the Department of Quetzaltenango.

Case 224-01. Ruling of 10 October 2008. MEBF is with a foster family, which is the adoptive family named in the notarial proceedings. The girl was abandoned by her birth mother at birth, 19 July 2001. She was in a children's home while her mother was being located. On 22 August 2008, the couple stated their desire to adopt the girl.

On 3 September 2008, the child was placed with a foster family. The abandonment was declared on 28 October 2002.

NOTE: the girl has the surname of the foster family.

Adoptability was declared. According to the declaration of abandonment, a ruling was handed down in 2002.

CICIG Information on Proceedings during in the Transition Period:

— No notarial notice was filed with NAC.

— PGN record is No. 882-06 of 2006. **The child was brought in for verification and the adoption was suspended for administrative reasons:**

"...The undersigned notary notifies all parties that the notice that should have been given to the National Adoption Council does not appear in the record for unknown reasons. Therefore, under Article 56 of the Adoption Law, Decree number 77-2007, these proceedings are suspended since proper notice was not given in this case." (PGN verification record No. 882-06).

— Listed as "pending" in the CICIG Database".

Case 6: SFL

Study for declaration of abandonment under the new legislation, First Trial Court for Children and Adolescents, Department of Guatemala.

On 24 October 2007, the PGN social worker stated, *"the lawyer surrendered the boy named SFL to PGN since the notarial adoption proceedings contained irregularities consisting of certain information in the birth certificate of the child's birth mother. In view of this, PGN remanded him to the Appeals Chamber for Children and Adolescents, which should order protection and custody measures."* The boy is in a children's home since 24 October 2007.

Irregularities:

File P-931-2007 1st Court for Children and Adolescents, Department of Guatemala. Between October 2007 and August 2008, the court ordered various measures to determine the child's origin and the identity of his alleged mother. It found that the documents provided (child's birth certificate and mother's identification card) are false. Therefore, in a ruling dated September 8, 2008, it ordered that the National Institute of Forensic Sciences (INACIF) determine the chronological age of the child, that PGN evaluate

Mrs. GBGDXX as a foster mother, and that a complaint be filed with the Public Prosecutor *"against the Registrar of Vital Statistics of the Municipality of Chiquimula for issuing false documents and against the Registrar of Vital Statistics of the Municipality of Zacapa for issuing false documents."*

It also ordered the cancellation of the child's registration (in Chiquimula), which proved to be false. In the sentence of 2 October 2008, it ordered the child's placement with Mrs. GBGD (foster family) and the child's registration in the RENAP Guatemala, under the name of AGH, child of unknown parents. Date of birth: 14 February 2007.

CICIG Information on Proceedings during in the Transition Period:

- The case was initiated on 20/04/2007 or 16/07/2007
- Registered with NAC in February 2008.
- PGN and NAC records contain the names of the foreign adoptive parents.

  In the declaration of adoptability under the new law, the child was placed with a Guatemalan family for permanent custody and registration the child at RENAP under another name was ordered.
- According to the status of the security measures requested by NAC, there is no information about a hearing regarding this child.
- Listed as "pending" in the CICIG Database .

***