

## Focus On Adoption's Rebuttal to the FAQ Announcement by Department of State

**Introduction:** Focus On Adoption was stunned and bewildered by the answers the Department of State (DOS) provided to prospective adoptive parents in their announcement on March 15, 2007. Stunned, because we believe it is an over-reaction to evidence gathered over a 6 week period since Mary Bonn, an adoption facilitator, was arrested and charged with harboring of an illegal alien. We understand that investigation has yielded more widespread abuses and the systemic potential for such abuses. However, we find the sweeping generalizations, which condemn the entire current adoption system, to be unsubstantiated and ultimately harmful to the many children who need adoptive families.

Bewildered - because the Department of State knows that U.S. and Guatemalan stakeholders in the adoption process, along with the Guatemalan Congress, have been intensely engaged in developing Hague compliant legislation which would address many of the problems and possible problems identified by DOS. It is no secret that the Guatemalan Executive Branch has been promoting a totally government run adoption system, which would be Hague compliant. Critics of this model have pointed to its failure to provide functional adoption services to the significant numbers of children who need them in countries who have adapted this model, along with no substantial improvement of services to children and families. We know that legislative and regulatory proposals are being developed by the Guatemalan Congress which would, hopefully, comply with the Treaty, but also preserve the opportunity for children to join permanent adoptive families as early in their lives as possible. Therefore, the timing of this announcement, as well as its content, was bewildering as well as deeply disturbing.

The FAQ and answers, along with FOA's rebuttal:

**1.Q:** *I have already begun the process of adopting from Guatemala but have not been matched with a child. After reading the information on your webpage, I am concerned. Do you recommend that I pursue adoption from Guatemala?*

**DOS Answer:** Although we understand many U.S. families have adopted children from Guatemala in the past, we cannot recommend adoption from Guatemala at this time. The situation in Guatemala has changed. There are serious problems with the adoption process in Guatemala, which does not protect all children, birth mothers, or prospective adoptive parents. The Guatemala government is planning to implement new adoption processing procedures to increase protections. The United States is also scrutinizing individual cases more closely than before. We recommend that you bear these facts in mind when choosing a country from which to adopt.

**FOA:** No evidence has been shared with the adoption community regarding any changes in the process or how far such purported changes have spread. We are aware of certain ongoing investigations into the activities of specific U.S. facilitators and the agencies with whom they

work. However, there has been nothing shared that suggests that ethical agencies' activities are impacted by the activities of those under investigation. We applaud the efforts of CIS for investigating and prosecuting those who damage the process that we have worked so hard to develop and implement in an ethical manner to serve the children of Guatemala. Indeed, for the last several years, many ethical adoption service providers have requested such action and have reported individual cases that warrant further investigation. We have further requested the addition of an adequate staff to permit case ratio for CIS to fulfill its mandated role in Guatemalan adoptions (which provides for far greater oversight, already, than any other country's ICA program). We have also encouraged adoptive families who report abuses to seek out official and legal remedies.

**2.Q:** *What are the problems in Guatemala?*

**DOS Answer 2a:** The major U.S. Government concerns about the Guatemalan adoption process include:

- **Conflicts of Interest:** Guatemalan notaries may act as judges and determine a child's eligibility for adoption and issue a final adoption decree. In the same case where he or she is acting as judge, the notary or his/her staff may also directly interact with birth mothers, solicit consents for an adoption, and handle the referral of the child to prospective adoptive parents. The Department of State does not believe that the notaries, given these multiple roles, can truly act objectively and in the best interests of the various parties.

**FOA.** We respectfully suggest that the Department of State has summarized the law incorrectly. The description of the Notarial Process is misstated. The Notarial Process is a constitutionally protected process in Guatemala and permits a Notary to take consents while an attorney represents the adoptive parents. The Notary may also assign the child to foster care as well as assign the child to prospective adoptive parents, with the legal consent of the relinquishing parent. The Notary does **NOT** make any legal finding that a child is eligible for adoption. On the contrary, this finding is made by government authorities after numerous required steps have been followed, including: (1) The Family Court, where a SW interviews the relinquishing parent, determines whether the birthmother is competent to make the decision and if the birthmother has voluntarily made the decision to relinquish, sees the child and foster mother, and evaluates the circumstances of the adoptive family. (2) The CIS office, which preapproves the child's visa status based on determination of orphan status of child, DNA matching of mother and child, documentation for the child's birth, the child and mother identity documents. The CIS can, and does, investigate any anomalies. (3) The PGN (roughly the equivalent of the U.S. attorney general's office). Only after the SW issues a favorable report and the CIS issues a visa preapproval can the entire dossier be approved by the PGN, where documents are reviewed again. Any documentation which is questionable or missing needs to be addressed. **The Attorney General's office approves the adoption.** The Notary prepares the Final Deed, the relinquishing parent(s) sign, and the Final Deed is then archived.

The Notary applies for the amended birth certificate of the child in the Civil Registry where the child was first registered. The Notary then applies for the child's passport, where the child's pictures are taken and matched with the child. The final papers required by the CIS for visa adjudication are translated into English and then submitted to CIS.

**DOS Answer 2b:**

- Lack of Government Oversight: Despite these critical roles in the adoption process, the notaries are largely unregulated. Public oversight is minimal. Particularly in cases in which prospective adoptive parents are told that the birth mother relinquished her rights to her child voluntarily, the U.S. Government is concerned that social services to birth mothers are extremely limited and that their consents may have been induced by money or threats. Monetary incentives and high fees drive completion of the adoption more than protecting the children, the birth parents, and the prospective adoptive parents. The Department is aware of a growing number of cases of adopting parents who have told us that they are being extorted for very large amounts of money by their local representatives in order to complete an adoption.

**FOA.** This is a misstatement. The Notaries and Attorneys are "regulated" by the law and procedures with which they must comply, by the ethical obligations of their profession, and by the Guatemalan Bar Association. As stated above, public oversight plays a large role in any adoption being completed. Extensive documentation and certification of that documentation is required by both the CIS and the PGN in order for an adoption to be finalized. In the past year many cases have been held up in the PGN - some legitimately, but some for frivolous reasons - for inordinate periods of time. Increases in processing time and requirements for excessive documentation, contribute to increased expenses which may be passed on to adoptive families. Unfortunately, the polarization which exists over what is the best way to implement the Hague Treaty has contributed to an increasingly politicized climate which is certainly not in the best interests of the child, or other participants in the adoption triad. The DOS has on its website a "flow chart" for a Guatemalan adoption. While it may not reflect the kind of total government control of the process which some would like, it does reflect very significant government oversight and various checks and balances.

\*Both the Court Social Worker and the CIS Officer may investigate whether the birthmother's consent has been induced by payment, is voluntary, or has been coerced by threats. The U.S. Embassy (a) has at times interviewed thousands of relinquishing birth mothers without evidence of coercion or inducement, and (b) may at all times require an interview with the birthmother. The SW interview also gives the birthmother opportunity to report coercion, threats, or inducements.

\*Social Services are extremely limited in Guatemala. Minimal services are provided by the government for the 80% of the population who live in poverty, including basics like health care, and nutrition. Within the private adoption system, many social services are provided (admittedly, in an inconsistent and unregulated fashion). They include: prenatal assistance and medical care; delivery assistance; pre-adoption education; assistance in collecting necessary documentation to commence and complete an adoption plan for the child; connection with the legal system; child care; and assistance in transport and housing to fulfill legal obligations.

Furthermore, many attorneys and agencies voluntarily provide other social services, including counseling prior to relinquishment, housing, education, training, and employment.

Legislative proposals being considered include a social service delivery system which would be more consistent and regulated. DOS knows this. The Guatemalan Constitution protects the RIGHTS of parents to relinquish the child for adoption. The Notarial process is the route for them to follow, as the Notarial process was established for private, civil, non-litigious matters to relieve an overburdened judiciary system. There are legitimate concerns that further oversight is needed to assure that (a) consistent information about rights and obligations in relinquishment is provided, (b) relinquishing parent(s) understand what relinquishment for adoption means, (c) no coercion exists, and (d) services and assistance cannot be confused with inducement.

There has been legislation proposed which would insert that regulation into the current Notarial system, without compromising the constitution or parental constitutional rights. Recommendations have been made for regulations to identify legal allowable expenses. Private adoption services must be regulated and fees for such services accounted for in a transparent way. However, the current informal social service delivery system has been developed to fill the hole that exists within the current social services available – to compensate for the services that the government does not address in any way, not even supporting the children who are sent to the private Hogars by the courts. While it is inconsistent, it fulfills many needs which are ignored in the government’s proposal - and which would not be met if there were not private adoption services.

**DOS Answer 2C:**

- Unregulated Foster Care: Like the notaries, Guatemalan foster care providers are not regulated or checked by the Guatemalan government for compliance with any standards. Many Guatemalan foster families have demonstrated their love and concern for the children in their care, and American adoptive parents have expressed gratitude for how the foster families cared for the children while the adoptions were in process. Unfortunately, however, the Department of State is also aware of instances of grossly inadequate care for young children in foster home situations. There are cases in which American adoptive families who have completed a Guatemalan adoption later learned that the foster care provider or others in the household had physically or sexually abused the children.

**FOA.** This argument lacks any merit whatsoever, and in fact, this is one of the features of the Guatemalan adoption system that best serves the children of that country. There is overwhelming evidence that foster care in Guatemala is not only adequate, but also excellent in the vast majority of cases. (See Pediatrics Journal of the American Academy of Pediatrics, *Health of Children Adopted from Guatemala: Comparison of Orphanage and Foster Care*, April 3, 2006). Certainly it is far better than institutional care. Abuses can and do take place in public or private child care systems, in foster families, and in institutions, in developing as well as developed countries. However, in the absence of any government contribution to the foster care system or the private institutions which care for children deprived of parental care - due to abandonment, negligence, abuse or death - these lacks in government services have been compensated in the private system. Removing the private system without replicating the services is not the answer. Training, certification and registration of foster families, with medical

supervision of the child's growth and development and well being, can easily be inserted through legislation and regulation to assure more standardized care. Many foster families have benefited by training sessions, either set up by their attorneys or agencies. One such all day session, led by a Psychologist, had over 200 foster families in attendance.

**DOS Answer 2D:**

- Hague Convention on Intercountry Adoption: Guatemala has been a party to the Hague Convention since March 2003, but it has never enacted Hague-consistent legislation or instituted Hague-consistent practices that would provide children the protections that are now lacking. Guatemala has not established the required "central authority" to oversee intercountry adoption processing under the Convention and has not yet taken numerous other steps the Convention requires. The U.S. Department of State, the Hague Permanent Bureau (which oversees the Convention) and other countries have consistently expressed concern about these and other problems with Guatemalan adoptions. In fact, many Hague Convention countries have stopped adoptions from Guatemala.

**FOA.** It is a well-known fact that Guatemala's accession to the Hague Treaty, which went into effect in March 2003, was overturned by the Guatemalan Constitutional Court six months later. The accession was, at best, precipitous, as Guatemala had never been party to the conventions, and had no implementing legislation in place. Until March of 2006, when the U.S. announced that Guatemala was considered, under international law, to be a party to the treaty despite its internal constitutional conflicts, there was no perceived necessity to comply with the Hague Treaty. However, there were many reform initiatives proposed, which reflected the substantial constitutional and social service delivery issues. In this past year, most stakeholders in Guatemalan adoptions have worked consistently to develop models for Hague compliance. The model which the Guatemalan executive branch has promoted complies with the Treaty, but poses challenges to the Constitution - primarily in regard to parental rights. It is also a model which requires great resources and commitment to implement fully in order to assure that children who need adoption services will receive them. There are neither provisions for the many services currently provided in the private system, nor funding for a childcare system. This model is also criticized because it is the model most countries in Latin America have adopted unsuccessfully, and the flaws in its practical implementation have contributed to deprive tens of thousands of children of permanency as well as contributing to great social problems. Child advocates argue that laws and regulations that do not address all aspects of the ICA procedure provide no real protection. Other stakeholders have proposed alternative models which interface Hague compliant regulation and oversight with the existing laws and procedures - essentially a public/private partnership - which guarantees private funding being applied to mandatory services and oversight. Those of us supporting this model believe that the perceived problems in Guatemalan adoptions can be regulated to a minimum, and that appropriate and necessary services - which have never been provided by the government - can and will continue to be provided through a hybrid of the current best features of the private system, with appropriate oversight.

**3.Q:** *If the United States sees so many problems in the Guatemalan process, why has it continued processing adoption cases and continued to permit Guatemalan children to come to the United States?*

**DOS Answer:** The U.S. Government continues to process adoption cases, but subjects each case to detailed review. For example, in 1998 the United States instituted mandatory DNA testing for Guatemalan women who stated intentions to relinquish their children. This measure was taken in response to numerous cases in which impostors who were not the children's actual birth mothers attempted to relinquish rights to children who were not theirs.

Even with DNA testing, however, it has become increasingly clear that the current adoption process in Guatemala does not protect all children adequately. U.S. authorities have therefore increased their scrutiny of all adoption cases. This increased scrutiny means more time will be needed to conduct individual case investigations and that each case will take longer to process. Similarly, more cases may be denied because the facts uncovered during the investigation show the child is not classifiable as an orphan under U.S. law.

**FOA.** Actually, DNA testing was instituted after a group of activist adoption attorneys and agencies called for DNA testing in all relinquishment cases, to defray the accusations of children being stolen or identities being changed in the adoption process. Recently, certain practitioners and practices have come under increased scrutiny, and we hope that investigation culminates in the criminal punishment of anyone who engaged in irregularities. However, at this time, there has been no evidence to substantiate a sudden, systemic disregard for ethics and legality, which would justify the DOS's negative blanket characterization of the entire adoption process. Nor do we think it is appropriate or well conceived to impute every adoption case, past and present, by suggesting that every adoption is corrupt.

We do think it is extremely important to investigate all wrong-doing and wrong doers and bring them to justice, enforcing existing laws both in Guatemala and the U.S. We also think it is valuable to evaluate the weaknesses revealed in the system, and develop realistic remedies to minimize the incidents which compromise the integrity of the process. We believe that many of these actions are addressed for the future, when Hague regulations take effect in the U.S. - namely accreditation and accountability for adoption service providers. Legislative proposals in Guatemala include development of accreditation standards for Guatemalan adoption service providers, along with a streamlined complaint procedure.

However, we believe there are ways to regulate the system now in order to STOP the most egregious possible violations of ethics and the laws, which are: coercion of birthmothers, identity fraud, switching children after DNA, and inadequate foster care and medical care. We do not think that U.S. needs to systematically foreclose the rights of Guatemalan children to have families when families are appropriate to parent them and are ready and waiting to do so. Such regulatory improvement may include:

- (1) Accurate and validated Documentation - to assure that parties are who they claim to be
- (2) Videotaped interviews when the birthmother relinquishes
- (3) A psychologist's or social worker's report to assure birthmothers have been counseled
- (4) A second DNA for the child - samples and pictures taken at the U.S. embassy, prior to visa application, (or other means of ensuring children who are adopted are the same children who leave the country, such as cornea scans or fingerprint verification)
- (5) Requiring the child's passport with the final documentation submitted before "pink slip"

- (6) Mandatory monthly medical reports and pictures of the child in duplicate - one set for the Embassy with final papers and one set for the adoptive family
- (7) A transparent and consistent PGN policy - with all previos submitted at one time
- (8) Bi-monthly foster care training
- (9) More embassy staff to manage the caseload in an efficient, timely fashion

**4.Q:** *My agency is very reliable and they tell me that the adoption process they use in Guatemala is good and transparent. Can I rely on their assurances?*

**DOS Answer:** The Department of State has long advised all prospective adoptive parents, irrespective of the country from which they are hoping to adopt, to fully research any adoption agency or facilitator they plan to use for adoption services. For U.S.-based agencies, prospective adoptive parents should contact the Better Business Bureau and/or the licensing office of the appropriate state government agency in the U.S. state where the agency is located or licensed.

Even if a U.S. adoption agency has an unblemished record with such offices, however, and even if the agency itself is operating completely with the best intentions, the lack of oversight and regulation over the other actors in the Guatemalan adoption process make it extremely difficult for even the most ethical agency to be completely certain that everything has been done in accordance with the law and in the best interests of all the parties.

**FOA.** Unfortunately, as virtually all systems set up in civil society are prone to some abuse, this statement has universal truth. On the other hand, like most generalizations, it has no substantive value and only serves to undermine the ethical, moral, and legally observant adoption service providers. When scandals erupt in government, banking, hospitals, nursing homes, police, or the military for example, there is no call to stop the functioning of an entire industry, or implication that all participants in that industry contribute knowingly or unknowingly to the problem. A child's right to a family is as fundamental and necessary as a person's right or need for healthcare. Even acknowledging the presence of bad actors in Guatemala, it still is unconscionable to suggest that many or most adoption service providers do not have sufficient "ethical radar" and personal integrity to operate with high standards, common trust, and mutually defined values and practices. By discouraging potential adoptive parents from working with agencies who have unblemished records, in an effort to "protect" adoptive families and children's rights, several thousands of children may be put at risk - UNICEF's statistics show that in Guatemala over 30,000 children a year die of treatable illness, the infant and child mortality rate is the highest in the region, more than 50% of children are malnourished, and that a very high percentage of children between 5 and 15 years of age are already working under near "slave" conditions.

**5.Q:** *What if I have begun the process of adoption from Guatemala and my child has already been identified? I consider this child my child and I cannot walk away at this point.*

**DOS Answer:** At this time, the U.S. Embassy is continuing to adjudicate each adoption case based on the merits of the information provided in that individual case. The Embassy, however, will adjudicate each case with even more scrutiny than has been its practice in the past. In addition, Guatemalan authorities have recently indicated that they plan to look more closely at each adoption case. Guatemala has introduced a new manual of adoption good practices. At this time, we cannot predict the full effect of the new manual on current or future cases. We do expect that processing individual cases will take longer due to the necessity of government scrutiny.

**FOA.** It is simply unfair to put prospective adoptive families into the panic that is invoked by this vague and foreboding statement. If the DOS expects to stop pending adoption cases, it should be honest and forthcoming about its intentions at the earliest time possible. Further, it should advise of what specifically the Guatemala government is prepared to do to find homes for the thousands of children who would suddenly become wards of the state.

**6.Q:** *My agency tells me that it is unlikely that Guatemala will change its adoption laws this year, because of elections and other political factors. Isn't this good for me, because my case may not be delayed?*

**DOS Answer:** Adopting a child in a system that is based on a conflict of interests, that is rampant with fraud, and that unduly enriches facilitators is a very uncertain proposition with potential serious life-long consequences. When you decide whether to move forward with adoption in Guatemala, you should consider factors beyond timing. Some American prospective adoptive parents are deciding against adoption from Guatemala now because they do not want to support negative child welfare practices. In addition, a child's long-term psychological well-being may be affected if the child later learns that his birth family did not freely choose to give him up or that he, and perhaps siblings, were "produced" for the sole purpose of adoption. U.S. parents have also discovered that their adoptive children have undisclosed serious special needs due to inadequate foster care and/or fraudulent medical information.

**FOA.** We consider this statement to be extremely contradictory and inflammatory. We have no reason to believe that the U.S. government has suddenly received evidence of substantial numbers of children being "produced for adoption" or being "sold" for adoption. Nor does it make sense to deprive children who are in the "adoption system" because of inadequate child welfare policies and practices the opportunity to join permanent families as early in their lives as possible under the guise of "protecting them". There is no excuse in Guatemala for inadequate foster care or medical information, as it is being funded by private parties (through adoption fees) except in the case of children living in very inadequately funded orphanages, most of which do the best they can without any government support. We maintain that a significant number of children adopted from Guatemala are receiving life saving services. International medical experts consider Guatemalan adopted children, in general, to be in better health and emotionally and developmentally at age level in comparison to children coming from other countries. Agencies could document hundreds of children each year who are "saved" from debilitating illnesses or medical conditions which might not be identified or treated if the child were not in

“the system”. We believe that this vast overgeneralization is a knee jerk reaction to a limited number of stories that have arisen, and discards the life saving blessing that international adoption has brought to thousands of children from Guatemala.

**7.Q:** *We only want to adopt a child who is truly eligible for adoption and most certainly a child whose birth parents have legally terminated their parental rights. With these goals, can we adopt in Guatemala?*

**DOS Answer:** For the reasons stated above, we cannot say that the system of adoption currently in effect in Guatemala provides any assurances that your goals can be met.

**FOA.** As has been touched on already, there are numerous safeguard inherent in the current system. We believe that through enforcement of current laws and the additional safeguards mentioned, such assurances would not be a realistic issue.

**8.Q:** *I understand that the process in Guatemala does not adequately protect children, but there are children in the adoption process now who will be hurt if adoptions are stopped abruptly. Will there be a process to help those children?*

**DOS Answer:** A number of foreign governments and non-governmental organizations have pledged their willingness to help the Government of Guatemala with technical support for a new adoption process with reliable oversight. Many good practices have already been identified.

**FOA.** This statement reflects yet another vague promise of illusive social services for children with no details of such services, no estimates for timetables for implementation, and no suggestion that such pledges will promote the needs of children. These governments and organizations have pledged willingness to help the government of Guatemala with “technical support”, which translates into setting up a bureaucratic mechanism for government control (Bienestar). This mechanism does not provide for improved prenatal services for birthmothers (the lack of such services accounts for a high rate of infant and maternal mortality), it provides no means for a relinquishing birthmother to get to the government “authority” or to even know about it.

It puts children at risk by not providing child-care options for the children while their adoptability is being established. In our opinion, it represents one model of good child welfare policy in theory, but in practical terms will create enormous damage to the children it is meant to protect. If there is funding to implement an entirely new system - which has no legislative legitimacy - then why has there been no funding to provide accessible healthcare and adequate nutrition to the millions of Guatemalans living in abject poverty?