

Congress of the Republic of Guatemala, Central America

Legislative Direction- Control of Initiatives

Date Presented to Full Congress- February 17, 2005

Law Initiative Presented by Representative Jorge Luis Ortega and  
Companions

Subject: Initiative that seeks to approve Adoption Law

Process: Proceeds to the Commission of the Minor and the Family for  
its study and corresponding recommendation.

# Law Initiative:

## Exposition of Motives:

Honorable Congress:

This present law initiative has as its regular objective, as established in the Law of Integral Protection of Childhood and Adolescence, everything relative to the noble institution of adoption<sup>1</sup> and bring to reality the principles contained in the Convention On the Rights of the Child, which is law in Guatemala since 1990 and the Hague Convention Relative to the Protection and Cooperation in the Material of International Adoption.

In spite of the transcendence and nobility of the institution of adoption, it is necessary to recognize that the current regulations has not satisfied the social function which it should fulfill due to the existence of a series of defects and normative insufficiencies. In effect, for Guatemalan society, "International Adoption" has been converted into a synonym for the illegal sale and trafficking of children and until this time there has not been a legislative response that duly regulates this institution in order to impede the frequent and uncontrolled abuses that have converted a child into a object of trafficking, violating in this way his human rights. This problem is not only seen in Guatemala but also exists at a world wide level and has given rise to the elaboration of specific international instruments of protection, in fact just like article one of the Hague Convention Relative to Protection and Cooperation in the Material of International Adoption, whose objective is to prevent the kidnapping, the sale or the trafficking of children. In Guatemala, some of the causes of this phenomenon are the situation of poverty in which more than half of the population of Guatemala lives, the great demand for children for adoption by foreign countries, the lack of institutional control and transparency of the adoptions, the armed internal conflict, and the lack of a culture where human rights are respected, have permitted the creation of an international network from which many sectors profit both in our country and in the receiving country.

In the year 2004, Guatemala occupies the fourth place in the world for the number of international adoptions according to the United Nations (UN) and it is because the process to adopt is so free that it permits any citizen from any State to adopt a Guatemalan child. There also does not exist a strict control on the origin of the child, the consent of the parents and there is not the necessary investigation to know if a child has been stolen or kidnapped illegally. It accuses

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<sup>1</sup> Adoption is a Judicial Institution among the oldest since in the Ius Civile Romano was contemplated the adoption as an institution through which a man without descendants was converted into a Pater Familias and assured his succession. While it is true that in its beginnings its primordial end was to assure succession, with the passage of time it has converted into an institution of social assistance through which is established a relation of filiations between a boy or girl and an adult or couple. The process to complete an adoption is constituted by a series of legal acts directed at legalizing this filial link.

above all in the current legislation an absolute lack of control on the actuaciones which precede the adoption which permits on numerous occasions the illegal traffic of children to which reference was made, giving place to an inadequate selection of the adoptive parents in considering above all else their economic capacity as primordial above the best interest of the boy, girl or adolescent. It is not unnecessary to also mention that the Procuraduria General de la Nación has needed to implement a specific area to attend to adoption cases which lead to penal processes because there exist anomalies constitutive of crimes in the current adoption process.

This Law Initiative introduces improvements in the recognition of the substantive rights of the boys and girls. It equates the condition of biological child with that of adopted child, not establishing differences in the area of filiations or succession because the adopted boy or girl acquires exactly the same rights and obligations as a biological child in accordance with the rights of equality guaranteed by the constitution. Additionally it recognizes adoption as an undissolvable relation just like the connection of biological filiation countermanding the little true revocation contemplated in the current legislation.

It also seeks to guarantee the consent to give a child in adoption is not motivated by an economic motive. It is not a secret that currently they use person to lure pregnant women of little economic means, very young, singles or with numerous children, among other motives, to give in adoption their child with the argument that "she won't be able to give him a good future, she won't be able to maintain him, that the child will be born condemned to underdevelopment while if she gives him for adoption, he will have opportunity to have a better future"<sup>2</sup>. In the same manner, there exist other cases where the consent has been obtained in exchange for an economic help in exchange for the child or in exchange for the medical attention received by the mother during her pregnancy and delivery.

Given that the responsibility for the full enjoyment of the rights of the boy or girl corresponds with to the State, it will be the state who assures that the adoptive parents meet the appropriate conditions to adopt a boy or girl in fulfillment of the Hague Convention Relative to Protection and Cooperation in the Material of International Adoption, an instrument which also indicate that this function cannot be in the hands of the biological parents in order to avoid anomalies in the process and it recommends that there not exist any contact between the biological parents and the adoptive parents before it is shown that the future adoptive parents are adequate and suitable to adopt. It is established that this measure will not apply when the adoption is by the extended family. It should not be forgotten that there exists the institution of guardianship for which the biological parents can intervene in the designation of the person who will have the care for their children in the event they are unable to do so.

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<sup>2</sup> This information can be expanded on with the report of COPREDEH/UNICEF in the material of adoptions of the year 2001 where there is evidence of these problems.

The Hague Convention Relative to Protection and Cooperation in the Material of International Adoption establishes that the States should establish controls and measures to guarantee various aspects: that the order of priorities in the material of protection of infancy be in charge, first of all, of providing an adequate support for the biological family of the child so that they can assume their responsibilities for the child and if this measure fails, to make sure that the child is adoptable and verify if the child can be placed and adopted by a family in his own country or otherwise verify that international adoption corresponds to the best interest of the child. The preference for national adoption over international adoption is based in the right of a child to conserve their cultural identity.

This initiative creates the National Adoption Rectory as the central authority in adoption processes. In fulfillment of the Convention on the Rights of the Child and the Hague Convention Relative to Protection and Cooperation in the Material of International Adoption, it becomes the competent authority for authorizing adoption processes. It is a technical institution with functional independence, integrated by a multidisciplinary team whose primordial purpose is to determine the adoptability of the child and the suitability of the future parents. The National Adoption Rectory will depend financially on the Procuraduria General de la Nacion (PGN), entity which at the current date has the function of reviewing all of the adoption process. Because of its experience in the process of adoptions, because of being the representative of the interests of the children incapacitated and absent, the Rectory will be coordinated by the PGN. Also will participate in the Rectory, the Secretary of Social Welfare of the Presidency and the National Commission for Childhood and Adolescence because of its new attributes in benefit of the infancy in accordance with the Law of Integral Protection of Childhood and Adolescence. In order to coordinate the relations with the adoption centers of other States, and look out for the respect of the migratory rights of the children, a representative of the Ministry of Foreign Affairs will participate and in order to verify the cases which may constitute a crime, a representative designated by the Public Ministry.

The Rectory will not form part of the Judicial Organization but rather will be an administrative entity therefore it will not impart justice<sup>3</sup>. The process of the adoption is not a contentious affair, there is no litigation, in the case any controversy shall arise, it passes to the tribunals of justice.

The Rectory will be in charge of counseling the participants in the adoption process so that both the biological parents as well as the adoptive parents have a full understanding of the implications brought about by giving a child in

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<sup>3</sup> The Rectory is not trying to assume the functions of a judge. Its functions are restricted to looking out for the legality of the process, verifying that all those involved in the process of adoption are in full understanding of the legal effects which will come with these acts, as well as verifying the suitability of those involved and of the form of giving consent. It does not go against the power to administer justice of the Judicial Organization because this is not its function. In case there should arise a conflict, the case will pass to the competent tribunal of justice just as they operate in the current processes of voluntary jurisdiction.

adoption or adopting a child. This will permit that the consent to give a child will be given without any vices and that the adoptive parents understand the magnitude of the commitment that they acquire and their responsibility to report about the success of the adoption.

Also it should be in charge of all of the responsibilities of investigation relative to the files of adoption, children's homes, adoption centers in other countries, qualities of the persons hoping to adopt and the circumstances under which the consent of the biological mother or parents to place the child for adoption was given.

The preoccupation for fulfilling the constitutional mandate of the State to watch out for the protection of the family brought the conformation of a multidisciplinary group in which a wide spectrum of sectors of the civil society, religious entities of different denominations, human rights entities and noted professionals in the relevant branches of this law project. The Executive branch added itself to this effort involving itself in the discussion and redaction of a proposal which would fulfill the commitments acquired in international instruments in the material of rights of children and youth.

It is my honor to take up this clamor of the people making use of my law initiative and converting myself in the spokesman for this effort.

It fulfills therefore the postulation of the Political Constitution of the Republic which declares of national interest the protection of boys, girls and adolescents that are in situations of vulnerability be it for abandonment, orphaning and with the exercise of the democratic participation, because this proposal is the fruit of a long journey of discussion and seeking consensuses.

# CONGRESS OF THE REPUBLIC OF GUATEMALA

**DECREE NUMBER** \_\_\_\_\_

## **The Congress of the Republic of Guatemala**

### **Considering,**

that the political constitution of the Republic of Guatemala establishes that the state recognizes and protects the institution of adoption and declares of national interest the protection of orphaned and abandoned children, and that the state of Guatemala ratified the Convention on the Rights of the Child, which is in effect since 1990, for which a commitment was made to recognize and permit a system of adoption that in which the most important would be the best interest of the child.

### **Considering,**

that it has become necessary to create a legal ordering in accord with the principles contained in the doctrine of the integral protection of childhood in order for there to exist a process which guarantees the transparency of the institution of adoption.

Therefore, in exercise of the attributes conferred it by article 171, incise a of the Political Constitution of the Republic of Guatemala and the article 23 of decree 23-2003 of the Congress of the Republic, law of Integral Protection of Childhood and Adolescence.

### **Decrees the Following:**

## **Adoption Law Title 1 About Adoption**

### **Chapter 1 Object, Ambit of Application and Definitions.**

**Article 1. Object.** The objective of the present law is adoption and its judicial, notarial and administrative process.

**Article 2. Definitions.** For the purpose of the present law it will be understood

- a. **Adoption:** Is the social institution of protection and public order under the charge of the State by which a boy, girl or adolescent has permanently restored their right to a family, integrated in conformity with the legislation of Guatemala, in which they are received and accepted as a proper son or daughter and acquire the same rights and obligations as a biological child in the material of filiations, succession and others.
- b. **National Adoption:** Is that in which the adoptive parents are Guatemalans of origin or naturalized. In the same manner, that realized by foreigners who at the time of the adoption have been residing in Guatemala for at least 5 years.
- c. **International Adoption:** Is that in which the adoptive parents are not Guatemala and have their habitual residence in the exterior.
- d. **Adoptability:** Es the declaration which establishes that the boy, girl or adolescent needs and adoptive family in order to be able to develop physically, psychologically, emotionally, and socially.
- e. **Adoptive Parent:** Es the person or persons that take as their own son or daughter that of another person in virtue of the adoption process.
- f. **Extended Family:** Es that comprised of all the people who have a consanguineous relation or by affinity with the adopted child who are not parents or siblings.
- g. **Biological Family:** Es that comprised of the parents and siblings of the adopted child.
- h. **Substitute Family:** Es that comprised of spouses who receive a boy, girl or adolescent in the home on a temporary basis.

## CHAPTER 2

### GENERAL DISPOSITIONS

**Article 3. Guardianship and Protection.** It corresponds to the state the obligation of protecting the boys, girls, and adolescents in the process of adoption in order to avoid their kidnapping, sale and traffic as well as any other form of exploitation or abuse.

**Article 4. Best Interest of the Child.** Every decision made with relation to the adoption of a child should be made to guarantee the exercise and benefit of their rights.

**Article 5. Equality of Rights in International Adoption.** Only adoptions can be authorized to countries which guarantee for the child potentially to be adopted as a minimum, the same rights given him by the Guatemalan legislation.

**Article 6. Situation of Poverty.** The situation of poverty or extreme poverty of the parents does not constitute sufficient motive for placing a boy, girl or adolescent for adoption.

**Article 7. Nationality.** The boy, girl, or adolescent does not lose his Guatemalan nationality nor its inherent rights to it when he has been given in international adoption.

**Article 8. Reserve.** All of the actuations within the adoption process enjoy the guarantee of confidentiality and copies can only be given to the adoptee, the adoptive parents and the biological parents.

**Article 9. Types of Adoption.** The adoption can be national or international.

**Article 10. Prohibitions.** The adoption is a social institution of protections for which therefore it is prohibited:

- a. The obtaining of economic benefits or benefits of another class for the biological parents of the boy, girl or adolescent given in adoption.
- b. That the biological parents dispose expressly who will adopt their son or daughter except in cases where preference is given to the extended family.
- c. That the adoptive parents dispose of the organs and tissues of the boy, girl or adolescent given in adoption.
- d. That the persons who participate in the process of adoption have relation of any kind with the private entities that are dedicated to the care of boys, girls or adolescents declared to be adoptable.

### **CHAPTER 3 ABOUT THE SUBJECTS OF THE ADOPTION**

**Article 11. Subjects who can be adopted.** The following can be adopted:

- a. Orphaned boy, girl or adolescent
- b. The boy, girl or adolescent who in a final sentence has declared violated his right to family in virtue of being abandoned or abandoned.
- c. The boy girl or adolescent whose biological parents have voluntarily expressed their desire to give him in adoption.
- d. The son or daughter of one spouse or live in partner as long as the spouse or live in partner who is the biological parent has given his/her consent in accord with the law.
- e. Adult, if he expressly manifests his consent.

When 2 or more brothers or sisters are susceptible to be adopted, every effort will be made that they will not be separated, before or during the adoption process. Every effort should be made for them to be adopted by the same family except in justified reasons that attend to the best interest of the child as determined by the National Adoption Rectory..

**Article 12. Subject who can adopt.** The following can adopt:

- a. Man and wife united in matrimony or in civil union in accordance with Guatemalan legislation as long as both are in agreement in considering as their child the boy, girl or adolescent to be adopted.
- b. Single people of recognized honorability.
- c. One spouse the child of the other.

Preferentially consideration will be given to the persons included in incise as long as it corresponds to the best interest of the boy, girl or adolescent.

**Article 13. Suitability of Adoptive Parent.** The person who desires to adopt a boy, girl or adolescent should have a difference in age with the adoptee of no less than 20 years, possess ethical, moral and social-cultural qualities, as well as aptitudes that permit the full development of the boy, girl or adolescent. The previous should be accredited through a Certificate of Suitability issued by the National Adoption Rectory.

**Article 14. Exceptions to Suitability.** It will not be necessary to obtain the Certificate of Suitability:

- a. When the adoption is of an adult.
- b. When the adoption is of the son or daughter of a spouse or civil partner.

**Article 15. Impediments to Adopt.** The following have impediments to adopt.

- a. Those who suffer physical illnesses, mental and personality instability which represent a risk to the health, life, integrity and full development of the boy, girl or adolescent.
- b. Those who suffer physical or psychological dependence of medications or any other addictive substance that has not been prescribed by doctor.
- c. Those who have been condemned for crimes against the integrity of a boy, girl or adolescent.
- d. One spouse or civil partner with out the consent of the other.

## **CHAPTER 4 ABOUT ADOPTABILITY**

**Article 16. Boys, girls or adolescents deprived of their right of family.** The adoptability can be declared of boys, girls or adolescents who have had declared violated their right of family in a final sentence and after a study which shall be completed by the multidisciplinary team of the Rectory.

**Article 17. Boys, girls or adolescents Given Voluntarily.** The adoptability can be declared of boys, girls or adolescents given voluntarily by their biological parents after a study which shall be completed by the multidisciplinary team of the Rectory.

**Article 18. Scientific Proof.** In order to declare the adoptability of any boy, girl or adolescent, beforehand there should be completed the scientific proof of the DNA and the taking of fingerprints of the biological parents and the hand and foot prints of the boy, girl or adolescent.

**Article 19. Preference in the Restitution of the Right of Family.** The boy, girl or adolescent should remain preferentially with its biological family. In case this is not possible, his right to a family will be restored through adoption in the following order of priority:

- a. With his biological or extended family.
- b. With a family within the Guatemalan territory
- c. In international adoption.

## **TITLE 2**

### **ABOUT THE INSTITUTIONS RELATED TO ADOPTION**

#### **CHAPTER 2**

#### **National Adoption Rectory**

**Article 20. Creation.** The National Adoption Rectory is created which will regulate the material of adoption and will be the institution in charge of overseeing the faithful completion of the administrative process of all the adoption files.

**Article 21. Juridical Nature.** The National Adoption Rectory is a technical institution, with functional independence, that has as its primordial end determining adoptability from a biological, psychological, social and legal point of view of the boy, girl or adolescent subject to be adopted and the suitability of the adoptive parents. The National Adoption Rectory will depend financially on the Procuraduria General de la Nacion (PGN).

**Article 22. Integration.** The National Adoption Rectory will be integrated in the following manner.

- a. The Procurator of Childhood and Adolescence from the Procuraduria General de la Nacion will be who will coordinate.
- b. A representative designate by the Secretary of Social Welfare of the Presidency.
- c. A representative designated by the National Commission of Childhood and Adolescence.
- d. A representative designated by the Ministry of Foreign Affairs.
- e. A representative designated by the Public Ministry.

The members of the National Adoption Rectory will retain their functions for 4 years and will reach their agreements by majority.

Simultaneously with the designation of a titular position a alternate will be named.

All the members of the National Adoption Rectory will have the power of decision and will not be able to delegate their functions.

**Article 23. About the requisites.** In order to be a member of the National Adoption Rectory, it is required to fulfill the following requisites:

- a. Be Guatemalan of Origin
- b. Be of recognized honorability
- c. Be a university professional, active professional society member in social sciences or related field and have a minimum of 5 years of professional experience.
- d. Be in the free exercise of their civil rights.

In addition to these requisites, the persons who integrate the National Adoption Rectory should be chosen preferentially for their experience in the theme of childhood and adolescence.

**Article 24. Prohibitions.** The following cannot be members of the National Adoption Rectory.

- a. Those who have been condemned in trial of accounts.
- b. Those who have been condemned for a crime against public administration.
- c. Those who have been sanctioned by the professional society to which they belong and have not been rehabilitated.
- d. Those who have a relation, connections or represent the interests of private entities that are dedicated to the care or any other relation with boys, girls or adolescents.

**Article 25. About Causes for Removal.** The following are causes for removal from the National Adoption Rectory.

- a. Proof of having realized any undue act or action in the processing of an adoption without negatively affecting and penal actions this may also bring.
- b. Actuation with evident disregard or neglect with their functions.
- c. Lacking the discretion which guarantees the confidentiality of the adoption process.
- d. Anything else that may be considered a grave error.

**Article 26. Attributes and Functions.** The following are attributes and functions of the National Adoption Rectory.

- a. Assure the protection of the boys, girls, and adolescents in process of adoption.
- b. Take the appropriate measures to prevent undue material benefits in relation to adoption.

- c. Receive the request for adoptions as well as form and maintain the respective file under custody until the moment it is sent to the respective judge or notary.
- d. Maintain and facilitate the control and register in the adoption process.
- e. Promote and give services of counseling to the biological and adoptive parents in the area of adoption.
- f. Maintain the register of national and international adoptions which have been completed.
- g. Maintain a register of the adoption processes and consents of authorization in order to begin the process.
- h. Maintain a registry of notaries that participate in the adoption process.
- i. Maintain a registry of the boys, girls, and adolescents in a state of adoptability.
- j. Maintain a registry of persons who wish to adopt.
- k. Maintain a registry of scientific proof, photographs, and foot, hand and fingerprints of the boys, girls and adolescents in state of adoptability.
- l. Declare and certify the adoptability of boys, girls and adolescents in the process of adoption.
- m. Give proof of the induction to adoption.
- n. Declare and certify the suitability of the adoptive parents.
- o. Require the certificate of suitability from the Central Authority or its equivalent of the country of origin of the adoptive parent when they are foreigners.
- p. Supervise the period of socialization and emit the empathy certificate.
- q. Verify that the consents of the parts are emitted in conformity with the present law.
- r. Emit recommendation about the approval of the adoption based on the report of the multidisciplinary team.
- s. Request from the institutions they consider necessary, the information required to fulfill their attributes and functions.
- t. Provide and request information about the national legislation in the material of adoption to the Central Authorities or their equivalents of other countries.
- u. Provide follow up of the national adoptions according to the respective regulations.
- v. Provide follow up of the international adoptions, maintain constant communication with the Central Authorities or their equivalents in coordination with the Ministry of Foreign Relations.
- w. Interchange general reports of evaluation with the different Central Authorities or international organizations in order to create an adequate supervision in the receiving country in the receiving country in coordination with the Ministry of Foreign Relations.
- x. Realize sessions in accord with what is established in the regulations of this law.

- y. Provide annually reports and accounts to the President of the Republic or whenever they are requested in accord with the regulations of this law.
- z. Any other function that is considered pertinent for the effective fulfillment of its attributes.

**Article 27. Exercise of Functions.** The members of the National Adoption Rectory will exercise their functions independently of the organization or entity that designated them and in conformance with the principles of impartiality and dignity inherent in the investiture.

**Article 28. About the Multidisciplinary Team.** For the effective fulfillment of its functions, the National Adoption Rectory will count with the support of a multidisciplinary team made up of clinical psychologists, social workers, psychiatrists, internist doctors, pediatric doctors, and other professional that the National Adoption Rectory considers pertinent.

**Article 29. About the Requisites for being a member of the Multidisciplinary team.** In order to be a member of the multidisciplinary team, the same requisites are required as those established to be members of the National Adoption Rectory.

**Article 30. About the Functions of the Multidisciplinary Team.** The following are attributes of the Multidisciplinary team.

- a. Advise the parties involved in the adoption process.
- b. Prepare a report about the boy, girl or adolescent susceptible of being adopted which will have the data referring to his identity, social environment, personal and family evolution, personal and family medical history, and anything relative to his particular needs. If for some reason any of this information cannot appear in the report, confirmation of that will be left.
- c. Complete the studies and investigations that are requested of it by the National Adoption Rectory and suggest others it considers necessary.
- d. Emit opinion regarding the suitability of the adoptive parents, the adoptability of the boy, girl or adolescent, the empathy between the adoptee and the adoptive parents.
- e. Emit the final report to the National Adoption Rectory.
- f. Other functions in accord with its technical work as required by the National Adoption Rectory.

### **CHAPTER 3. ABOUT THE SECRETARY OF SOCIAL WELFARE OF THE PRESIDENCY OF THE REPUBLIC.**

**Article 31. Secretary of Social Welfare of the Presidency.** The Secretary of Social Welfare of the Presidency is in charge of looking out for the boys, girls, and adolescents in a state of adoptability, that enter in the nurseries, homes,

or substitute families of the State. In the case it becomes necessary, with prior judicial authorization at the request of the Secretary of Social Welfare of the Presidency, they will be entered into private entities that have been duly registered and authorized in conformity with this law.

**Article 32. About the Attributes of the Secretary of Social Welfare of the Presidency in the material of Adoptions.** In addition to the functions which it currently fulfills, the Secretary of Social Welfare of the Presidency shall:

- a. Prepare a file on each boy, girl, or adolescent in a state of adoptability who is housed in its institutions or in private institutions where the following appear:
  - 1) Their personal data and circumstances including photos of the child.
  - 2) Their full identification by means of the birth certificate and the document which contains the impression of their hand and feet, the fingerprints of the mother and father when available, and other scientific means.
  - 3) Medical History
- b. Maintain a current register of the boys, girls, and adolescents violated of their rights to a family and the name of the institution where they are refuged.
- c. Maintain a register and monitoring of the private entities that are dedicated to the care of boys, girls, and adolescents in state of adoptability.
- d. Authorize, supervise, control, and sanction the private entities that are dedicated to the care of boys, girls and adolescents in a state of adoptability.

## **CHAPTER 3**

### **About the Private and Public Entities Dedicated to the Care of Boys, Girls and Adolescents.**

**Article 33. About the Authorization and Supervision of Private Entities.**

The private entities in charge of the care of boys, girls and adolescents will be authorized and supervised by the Secretary of Social Welfare of the Presidency in conformity with this law and its regulations.

**Article 34. About the Registry of the Private Entities.** The private entities in charge of the care of boys, girls and adolescents in addition to fulfilling the legal requisites, should register themselves in the Secretary of Social Welfare of the Presidency, indicating the place where the boys, girls and adolescents are located, their installed capacity, and the type of population they care for and attach a legalized photocopy of the following documents:

- a. Testimony of the Constitution Papers operated in the corresponding registers.

- b. Declaration of their legal representative.
- c. Names of their employees and roles they fulfill.
- d. Favorable recommendation for operation emitted by the Ministry of Public Health and Social Assistance.
- e. Others that may be required at the criteria of the Secretary of Social Welfare of the Presidency.

**Article 35. About the Obligations of the Private Entities.** The private entities that are dedicated to the care of boys, girls, or adolescents, are obligated to look out for and assure their integral development and guarantee them:

- a. Their due attention, alimentation, education, and care.
- b. Their physical, mental and social health.
- c. The maintenance of adequate hygienic conditions of the installations required by the Secretary of Social Welfare of the Presidency.
- d. Provide reports and information of the boys, girls and adolescents under their care to the Secretary of Social Welfare of the Presidency and to the National Adoption Rectory.
- e. Others that the Secretary of Social Welfare of the Presidency considers pertinent.

**Article 36. Sanctions.** The homes, crib houses, nurseries, and any other private institution that is dedicated to the care of boys, girls or adolescents that fails to meet the norms established in the present law, its regulations and dispositions of the Secretary of Social Welfare of the Presidency, will be sanctioned in the following manner:

- a. If the breach is small they will be advised and a time frame will be fixed for them to overcome the breach.
- b. If they continue in the breach or if the error committed is serious according to the regulations, application of the respective sanction will be requested of the corresponding authority.

If the institution is public, the Secretary of Social Welfare of the Presidency will take the measures so that the functionaries and public servants that work in it, will fulfill the present law and its regulations.

### **TITLE 3**

## **ADOPTION PROCESS**

### **CHAPTER 1**

## **ADMINISTRATIVE PROCESS OF ADOPTION**

**Article 37. Phase Prior to the Adoption Process.** Prior to initiating the adoption process, an induction into the same shall be satisfactorily completed in a time frame no greater than 10 days.

**Article 38. Induction Process.** The induction process to the adoption consists in a process of orientation and professional and individual counseling directed by the multidisciplinary team of the National Adoption Rectory with the objective of informing about the principles, rights and consequences of the Adoption. This process of induction should be verified by the National Adoption Rectory in the respective registry.

**Article 39. Induction of the Adoptive Parents.** The persons who desire to adopt a boy, girl or adolescent should submit themselves to the process of induction and when it is an international adoption, they should present confirmation extended by the Central Authority or their country or its equivalent statement that they were already submitted to such a process in their country.

**Article 40. Induction Process of the Biological Parents.** The biological parents of the boy, girl or adolescent, who voluntarily desire to give them in adoption, only after the son or daughter has been born, will come before the National Adoption Rectory to express their will to give them in adoption.

If after having been submitted to the induction process, the parents continue with their intention of giving their son or daughter for adoption, they will appear before the National Adoption Rectory to fulfill the required scientific proofs and pertinent evaluations.

**Article 41. Certificate of Suitability.** The disposition and aptitude to adopt of the petitioners will be defined by a certificate which will be issued by the National Adoption Rectory for which in addition to age, the following will be taken into account:

- a. That the adoptive parents possess ethical and moral qualities.
- b. That the adoptive parents possess physical and psychological aptitudes that permit the integral development of the boy, girl or adolescent.

This certificate of suitability will not be required in the exceptions contemplated by this law.

**Article 42. Period of Socialization.** The National Adoption Rectory will authorize a period of coexistence and socialization between the petitioners and the boy, girl or adolescent, of no less than 5 working days both in the national adoptions as well as the international adoptions.

This period will be supervised by a specialist designated by the National Adoption Rectory who can be assisted by the Multidisciplinary Team if deemed necessary. The National Adoption Rectory shall inform the judge or notary formed the file of authorization about the period of coexistence and socialization.

**Article 43. Opinion of the Boy, Girl, or Adolescent.** Two days after completing the period of socialization, the National Adoption Rectory will cite the boy, girl or adolescent so that they appear to ratify their desire to be adopted in accord with their age and maturity.

**Article 44. Certificate of Empathy.** Upon concluding the socialization process and taking into account the opinion of the boy, girl or adolescent, the multidisciplinary team will immediately emit a report of empathy that will indicate the quality of the relationship established between the boy, girl or adolescent and the petitioners.

**Article 45. Recommendation.** Once the mentioned administrative process is completed, the National Adoption Rectory will issue its recommendation within the following 5 working days based on the appropriateness of the adoption.

The National Adoption Rectory will extend certifications of all of these steps so that the involved parties can attach them to the request before the judge or notary that is hearing the case.

**Article 46. Oppositions.** In order to oppose any of these processes, the recourses contained in the Law of Administrative Contentions, decree number 119-96, will be applied.

## **CHAPTER 2 JUDICIAL AND NOTARIAL PROCESS**

**Article 47. Petition before a Judge.** The adoption petition can be presented to a judge of Family Court of the domicile of the child susceptible to be adopted and said jurisdictional organ will remit a duplicate of the file to the National Adoption Rectory.

**Article 48. Petition before a Notary.** The involved parties can make their adoption petition before a notary, fulfilling the requisites of the adoption petition. The notary will remit the duplicate of the file to the National Adoption Rectory.

**Article 49. Inventory.** If the boy, girl or adolescent has belongings, a notarial act of inventory will be prepared and will constitute sufficient guarantee for the petitioner at the satisfaction of the judge or notary. The mentioned act will be included in the file.

**Article 50. Requisites of the Adoption Petition for National Adopters.** The adopter of Guatemalan nationality should indicate in his petition his complete name, age, civil status, nationality, domicile, identification document, and the

place to receive notifications. Additionally he should propose the declarations of two witnesses. Also he should attach to the petition, the following documents:

- a. Certification of the Birth Certificate and the recording of the registry of his Residency Card (Cedula de Vecindad).
- b. Lack of Penal Antecedents for each of the petitioners.
- c. Certification of the marriage certificate of the petitioners or of the civil union if appropriate, emitted by the corresponding Civil Registry.
- d. Confirmation of employment or economic income for the petitioner(s).
- e. Medical Certification of the physical and mental health of the petitioners and those who reside with them.
- f. Recent photographs of the petitioners.
- g. Certificate of having attended the induction process given by National Adoption Rectory and having completed the process.
- h. Certificate of Suitability emitted by the National Adoption Rectory.
- i. Certificate of Empathy emitted by the National Adoption Rectory.
- j. Recommendation of the National Adoption Rectory.
- k. Declaration of 2 witnesses who will testify about the honesty, good conduct and suitability of the adoptive parents and their economic conditions and moral ability to fulfill the obligations of adoption.

**Article 51. Requisites for the Guardian.** If the petitioner has been the guardian of the boy, girl or adolescent, the notary or judge should have before them the documents which prove that his accounts were approved and that his belongs were delivered.

**Article 52. Requisites for the Adoption Petition for Foreign Petitioners.** The foreign petitioner shall attach to the petition that they present before the Central Authority of his country or its equivalent, the documents detailed in following:

- a. Special Power of Attorney in favor of a person who can represent them in Guatemala.
- b. Legalized photocopy of the documents which accredit their personal identity.
- c. Certification of the birth certificate extended by the competent authority.
- d. Lack of Criminal History for each of the petitioners emitted by the corresponding authority of his country.
- e. Certification of the marriage certificate of the petitioners or of the civil union emitted by the corresponding authority of their country.
- f. Confirmation of employment or economic income of the petitioners.
- g. Certification of the physical and mental health of the petitioners and those residing with them.
- h. Recent photographs of the petitioners
- i. Testimonial declarations under oath before the central authority, its equivalent or a notary public of the country of origin of the petitioners of

2 people that have known the petitioners for at least 2 years and indicate that relative to their economic and moral capacity that permits them to fulfill the obligations that the adoption imposes.

- j. Certification of having attended and completed the induction process.
- k. Certificate of suitability issued by the Central Authority or its equivalent in the country of origin of the petitioners.
- l. Certificate of Empathy issued by the National Adoption Rectory.
- m. Recommendation of the National Adoption Rectory.

**Article 53. Additional Documents for International Adoption.** In addition to what is required in the previous articles where applicable, when the adoption is international, the petitioners should include the following documents:

- a. Certificate of having attended and completed the induction process given by the Central Authority of the state of origin of the country of the petitioners.
- b. Commitment of the Central Authority and of the Adoption Agency in the foreign country when it is the case, of providing all of the information necessary that will permit the follow up of the boy, girl, or adolescent given in adoption.
- c. Confirmation of the commitment given by the Central Authority or the consulate of the receiving country in which it indicates that the boy, girl or adolescent can enter and permanently reside in said country in the moment that the adoption is formalized.

**Article 54. Judicial or Notarial Resolution.** Having fulfilled all of the previously indicated requisites and based on the recommendation of the National Adoption Rectory, the judge or notary will issue in a time frame no greater than 5 working days, the corresponding resolution through which they approve or deny the adoption process.

Having approved the adoption by the judge he will issue a resolution, or in the case of the notary, he will order the authorization of the corresponding public document in which it will state the consent of the parents of the boy, girl or adolescent or of the institution that in in charge, the acceptance of the adoptive parents, and the transcription of the resolution that approves the adoptions.

**Article 55. Registry of Adoptions.** The testimony of the public document, or the judicial resolution of adoption shall be presented to the Civil Registry for the purpose of being noting the inscription in the corresponding books.

## **CHAPTER 3 TRANSITORY DISPOSITIONS**

**Article 56. Adoptions in Process.** All of the processes that are in process at the moment this law takes effect, will be directed by the previous law until their conclusion.

**Article 57. Regularization.** Within 30 days of this law taking effect, the Secretary of Social Welfare will confirm the situations of the boys, girls, and adolescents that are in the care and protection of substitute families and private institutions dedicated to the care of boys, girls or adolescents.

**Article 58. Time Frame for Registration.** All of the private entities which have in their charge the protection and care of boys, girls, or adolescents shall be registered in the Secretary of Social Welfare of the Presidency within 15 days following the entry of this law into effect.

**Article 59. Regulations of the Law.** Within the 60 days following the entry into effect of the law the respective regulations shall be issued.

**Article 60. Time frame for integrating the National Adoption Rectory.** The entities which should designate representatives before the National Adoption Rectory will make it known to the Procuraduria General de la Nacion (PGN) within the 30 days following the entry into effect of this law so that the National Adoption Rectory can be formed and they can take possession of their responsibilities within 5 days following their designation.

## **CHAPTER 4 REFORMS AND ANNULMENTS**

**Article 61. Reforms.** Articles 228, 258, 435, and 1076 of the Civil Code, Law Decree Number 106 are reformed and they shall be as follows:

Article 228. All aspects relative to adoption will be directed by the law specific to the material.

Article 258. The parental rights over the child shall only be exercised by those who have adopted him.

Article 435. The adoption will be registered in a special book in light of the testimony of the public document or the judicial resolution that approves it in accord with what is established in the special law of the material.

Article 1076. The children, whether they be or not of marriage, biological, or adopted, will inherit from their parents in equal parts. The adopted child has the same rights as the biological children in regards to succession rights between family members of the adoptive parents, but does not

conserve rights of succession with his old biological family except in the case of testamentary dispositions.

**Article 62.** Article 28 of the Law Regulating the Notarial Processing of Affairs of Voluntary Jurisdiction, Decree number 54-77 is reformed and shall be as follows:

Article 28. Formalization. The adoption can be formalize before a notary public in accord with what is established in the special law of the material.

**Article 63. Annulments.** The following articles are annulled from the Law Regulating the Notarial Processing of Affairs of Voluntary Jurisdiction, Decree number 54-77 of the Congress of the Republic: 29, 30, 31,32,33 and 34.

**Article 64.** The following articles are annulled from the Civil Code, Law Decree Number 106: 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251.

## **CHAPTER 5 FINAL DISPOSITIONS**

**Article 65. Entry into Effect.** This present decree will enter into effect 8 days after its publication in the Official Newspaper.

Given in the Legislative Palace.....

Presenting Deputies:

Jorge Luis Ortega Torres  
Mario Taracena  
Eduardo Zachrisson