

Adoption Law

Exposition of Motives

The political constitution of the Republic of Guatemala on regulating the family in the chapter 2 of its title 1, referred to as Human Rights, establishes that the State guarantees its social, economic and judicial protection and will protect the physical, mental, and moral health of the minors of age. Equally, in this chapter it arranged that the State recognizes and protects adoption declaring of national interest the protection of the orphans and abandoned children.

The fundamental law guarantees the social, economic and legal protection of the family because it is considered the ideal social nucleus for the integral formation of the person. Therefore the State should adopt, with an urgent nature, the adequate measures which permit them to maintain the child in his family of origin so that never will the lack of material resources of the family be a sufficient reason to give a child for adoption. With the present law, it desired to reinforce the consideration of adoption as an element of full family integration.

Nevertheless, and in spite of the transcendency and nobility of the institution, it is necessary to recognize that the adoption regulations currently in force have not satisfied the social function it should fulfill due to the existence of a series of normative defects and insufficiencies. In effect, for Guatemalan society, International adoption has become synonymous with the illegal trafficking of children, and until now, there has not been given a legislative answer which duly regulates this institution in such a way that it impedes the frequent and uncontrolled abuses which have converted the child into an object of traffic, in this way violating his human rights.

Some of the principal causes of this phenomenon are the extreme poverty in which more than half the population of Guatemala lives which makes that adoption is erroneously used as an escape from the crisis, the lack of public policies for supporting poor families, the lack of a culture of respect towards human rights, including the rights of a child, and the strong demand for adopted children in foreign countries. All of this, along with a lack of institutional control and of transparency of the adoptions (that have their roots in the years of armed conflict) has permitted the creation of an authentic international adoption network from which several diverse sectors profit, in the sending as well as in the receiving countries, for whom the minor children mean millionaire incomes.

The numbers are very indicative:

In a country with a population of 1,824,000 children under the age of 4, there were 1265 adoptions in 1997, 1247 in 1998, and 2109 in the year 2001. This contrasts with the numbers from countries in the same area: in Honduras there were only 78 adoptions between 1997 and 1998, in Ecuador with a similar population in number and richness of ethnicity and similar social situation, the

number of international adoptions annually was 80 between the years 1998 and 1999.

The numbers speak for themselves. In the world ranking of countries which place children for adoption, Guatemala would occupy the 4th place after Russia, China and South Korea. But only in absolute terms because if we look at the population of each of these countries we would realize that in reality Guatemala would be the country which gives the most children in adoption in the world. In effect Russia has a population of 147.4 million, China 1,300 million, South Korea a population of 46 million. Guatemala only has around 12 million.

This activity has become unique, it is lucrative for those who participate in it since the fees for the adoption transaction vary between nine and twenty-five thousand dollars for each one, in virtue of which the adoption process in Guatemala makes it figure in the concert of nations as the one which places most children for adoption in the world.

The majority of the children given for adoption are less than 18 months old. Only 6 percent are under (maybe should read OVER) 5 years of age. When they have reached this age it is difficult to find anyone who wants to adopt them. The boys and girls who live in institutions without the care of a family, have no possibility of being adopted, remaining in the institutions until they reach the majority of age.

82% of the children given in adoption live in private homes colloquially called "Crib homes" or "Fattening Houses" which gets your attention since in reality those who need to find an adoptive family, are those who without any relative who wants to care for them, live institutionalized almost from their birth.

From an investigation done by the United Nations Children Fund UNICEF, in the year 2000, it was shown that for every sixteen cases of adoption that were investigated, only in 2 cases were the addresses given by the family correct. In the remaining cases either the presumed mother had never worked at the indicated place or the address didn't exist, or it existed but there was no inhabited home or nobody knew of the woman at the address.

The "price" paid for the adoptions varies according to country between nine thousand and twenty five thousand dollars.

International adoptions make up 98% of adoptions while National adoptions are just 2%.

Consequently, in Guatemala the adoptions are higher than in any other country and the majority are international, permitting the payment of excessive prices for a child as if he were merchandise when in reality what we should be seeking to satisfy his right to have a family.

Could we conclude that in Guatemala the mothers are worse mothers than in the rest of the world? Could we say that in Guatemala the poverty is worse than in any other country? Rather we should conclude that in Guatemala the process for adopting is so free and with so little control that it permits any citizen of any country to adopt a Guatemalan child without the existing of any control of the origin or of the unvitiated consent of the parents, without the necessary investigation to know if the child has been stolen or removed illegally (as has happened in repeated occasions).

It is accused above all in the existing legislation of an absolute lack of control of the events that precede the adoption, which permits in numerous occasions this odious trafficking of children to which reference was made, giving place in other occasions to an inadequate selection of adopting parents. The system is not founded in the necessary primacy of the best interest of the adopted child which should prevail over the other interests in play such as those of the adopting parents, those of the parents or guardians of the adopted child and of course over the interests of the intermediaries who favor adoption.

For all of these reasons, this law on the other hand, tries to base the adoption in two fundamental principals: the configuration of the adoption as an instrument of family integration, referred essentially to those who most need it, and the benefit of the adopted child that takes precedence, with the necessary equilibrium, over any other legitimate underlying interests in the process of constituting the adoption.

The social and cultural transformations operated in our society have provoked a change in the social status of the child and as a consequence of it, there has been given a new focus on the human rights of childhood which consist in the full recognition of the entitlement of the rights of minor child and the progressive capacity to exercise them. Thus the concept of “being heard if he has sufficient judgement” has been progressing through all of the legal order in those questions that it affects. And in this dynamic, the present law introduces the obligation that any child over 12 years of age must give his consent to the adoption, also being heard when he has not reached said age, evaluating his opinion based on his development and maturity.

It is necessary in the scope of these new tendencies to adapt the existing legislation to the international norms ratified by the Guatemalan State and converted, from that time, in directly applicable law, since the international norms in the subject of human rights enters in the internal legal ordering with character of constitutional norm, that is to say that it will be given the rank of a constitutional norm according to what was established by the Honorable Court of Constitutionality defining their position with respect to the legal interpretation of the constitutional article 46.

In effect, all of the States acquire a commitment with the “Universal Declaration of the Human Rights” in which it is declared that the childhood has a right to care

and special assistance and that the family is the fundamental base of the society in virtue of which to the children should be guaranteed the right to grow in the heart of a family, in an environment of love and understanding; in the same way the state of Guatemala has acquired a commitment with the ratification of the Convention on the Rights of the Child that obliges in its 4th article to adopt the necessary legislative measures to give effectiveness to the rights recognized by the same. So that, this present law, in execution of what is recognized in the Political Constitution of the Republic, the Universal Declaration, and in the cited Convention, specifically in its article 21, regulates adoption having in mind the following principals:

- The best interest of the child
- Trustworthy and relevant information (that is, no doubt with respect to the identity of the child and his progenitors.)
- Authorization of the adoption only by competent authorities
- Legal situation of the child in a state of adoptability (with out the lack of resources being in and of itself a sufficient motive for the adoption. This should not be an option to poverty)
- Consent from the parts (not just the adopting party but also from the adopted)
- Subsidiary character of International adoption
- Enjoy in the destination country the same rights recognized in the country of origin of the child.
- Prohibition of illicit financial benefits.
- Control by competent authorities and the intervention of the Public Ministry.

The philosophy of said principals brings with it the following new features:

1. Rupture of the legal bonds with the family of origin, the adoption always being total, which also brings the irrevocability of the same after having produced the full familiar integration of the adopted into the family of the adopting party (with the creation of the family and filial status and the total rupture of bonds with the previous family) and the comparison of effects between the biological and adoptive connection.
2. Search for the suitability of the adopting party
3. Judicial procedure of the adoption.

This is an essential new feature: The adoptions stop being a notarial process and pass to be a judicial one.

This new feature must be connected with another: the regulation of an administrative phase prior to the issuing of the adoption by the judge for which would be created the National Adoption Council (CONAD), entity that establishes the link between the adopting and the adopted, choosing and qualifying the family that truly needs the adopted child and seeing primarily to the best interest of the child.

The CONAD would be assigned to the Executive Organism through the Secretary of Social Welfare of the Presidency of the Republic, will register and control

(audit) all of the institutions of a public and private character which receive children likely to be placed for adoption. It will be the CONAD, with its register of applicants, foreign and national, and of children who can be given in adoption, that will, avoiding all types of commerce and profit, establish the connection between the adopting and the adopted, that will later need to be brought before a competent Family Judge, who will be responsible for granting the adoption.

With the judicial adoption, what is trying be achieved is to place the necessary controls for something as serious as placing a child with a family who needs him with the resulting change of civil status.

One looks, with this reform, for the adoption to have a subsidiary place, once there exists the certainty that the family of origin, being understood also as the extended family, does not want to take responsibility for the boy, girl or children, and only after the effort has been made to strengthen the nuclear family if the cause for placing the child for adoption were to be the mere lack of economic means.

It is the judge who is responsible to assure that everything is done precisely. The CONAD is who, in an objective and impartial manner, with the only end of guarding the superior best interest of the child, will provide all of this information to the judge, before whom all parts will express their consent.

Based on the previously presented information, this law attempts to broach a profound reform of adoption, constituting an ample legal framework of protection which brings together the public powers, the institutions specifically related with minor children, the parents of families, and the citizens in general.

It attempts to “assure the right of the children permanently deprived of a family environment to live with a family” establishing a connecting bond in a legal manner.

Guatemala, 27th of August of 2002

Sponsoring Deputy:

Doctor Carlos Mauricio Valladares de Leon.

DECREE NUMBER _____ 2002

The Congress of the Republic of Guatemala:

Considering:

That in conformity with article 54 of the political constitution of the Republic of Guatemala, the State recognizes and protects Adoption and through the same, the adopted acquires the condition of child of the adopting. In the same way, it declares of national interest, the protection of orphaned and abandoned children.

Considering:

That the state of Guatemala signed and ratified in good faith the International Convention on the Rights of the Child, instrument which proclaims the rights of children, recognizing that, due to their lack of physical and mental maturity, they need protection and special care which includes the due legal protection both before and after their birth.

Considering:

That for the full and harmonious development of the personality of the child, it is necessary for them to grow up in the heart of a family, surrounded by an atmosphere of happiness, love and understanding,

Considering:

That having the current necessity of providing special protection to the orphaned and abandoned children, as well as in conformity with what is established by the cited Convention, the State of Guatemala has committed to creating a legislation in the area of adoption that attends to the Principle of Superior Well Being of the Child, and at the same time adopt all of the pertinent measures that assure to the children in this condition the protection and care necessary for their security and so that the same can live in a family nucleus.

Considering:

Taking into account that the adoption, is conceived as an instrument of family integration, that must consider the interest of the adopted as well as the suitability of the adopting parent or parents for the exercise of the paternal rights. In virtue of this, the superior interest of the child will be the primordial consideration to which attention will be given throughout all of the adoption process.

Considering:

That this present law guarantees fully the Superior Interest of the Child and reinforces the consideration of this institution as an element of full family integration and to avoid the current international adoption which has been converted into the illegal trafficking of children whose frequent and uncontrolled abuses have converted the children into objects of trafficking violating in this way their human rights,

Therefore,

In exercise of the attributes that are conferred the Congress by Article 171, Paragraph A of the Constitution of the Republic of Guatemala,

Decrees:

The following law:

LAW OF ADOPTIONS

TITLE 1

General Dispositions of the Adoption

Article 1- Concept

Adoption is a legal-social institution protected by the State whose end is that of providing a minor child with a permanent family creating legal bonds between the adopting party and the adoptee.

The adoption will only be constituted by a Judicial Declaration.

Article 2- Effects

The adoption is complete, make equal the adoptive relationship with the biological, and irrevocable.

With the adoption, the relationship between the adoptee and his family of origin cease and new equivalent relationships of consanguinity are formed with the family of the adopting party. The extinction of the parental bond between the adoptee and his family of origin does not exempt him from the prohibitions contained in the numbers 1 and 2 of the article 88 of the Civil Code in what relates to relatives by consanguinity and affinity.

Article 3- Rights of the Minors who are Candidates to be given for Adoption

- a. The child is subject of rights and thus should be heard, when they have sufficient judgement, in any matter related to them. They should also give their consent for the adoption if they are of the age indicated in this present law.
- b. The lack of economic resources does not constitute motive, by itself, for the loss or suspension of the parental rights, therefore one cannot, in any case, declare the susceptibility or aptitude for the adoption for this reason.
- c. The child has the right to remain with his biological family, if that is not possible, with his extended family, understanding as such the group of

persons related to the adoptee by consanguinity or affinity, if that were not possible or appropriate to safeguard the superior interest of the child, he has the right to be adopted by a national family before an international family except when by proof it is demonstrated judicially that this goes against his best interests and necessities.

- d. The adoptee has the right to know his origin and antecedents and therefore the adopting party has the obligation to make it known to him when he has reached the age of 14 or has become of legal age if he requests it. He will not be given such information before he is of legal age if the same information could cause him emotional disturbances or problems or affect his personality unless it is required that he be given it by Judicial order. The request should be given before the judge who ordered the abandonment at request of the adopted who has reached 14 years of age or by an agent or aid from the Attorney General's Office or from the Attorney General for Human Rights Office and it should be transacted by the procedure of the incidents.
- e. No minor child can be given in adoption if the adopting parents reside in a country that does not recognize and guarantee at least the same rights that the Guatemalan State recognizes for its children.

Article 4- DNA Test

When a minor child is given by his parents or by one of them, the CONAD will request a test of Dioxynucleic Acid (DNA). The DNA test should be completed in the laboratories of the Public Ministry. The costs incurred by the rendering of the scientific test of DNA will be assumed by the CONAD and later repaid by the adopting parents who are chosen for the minor child.

TITLE 2- ABOUT THE SUBJECTS AND THE CONSENT

Article 5- Adoptee

The following may be adopted:

- a. Children orphaned of father and mother
- b. Abandoned children or of unknown parents
- c. Minor children whose parents have lost their parental rights by a competent judge.
- d. Children voluntarily relinquished by their biological parents.
- e. When 2 or more siblings are declared in a state of adoptability, they cannot be given separately in adoption unless there are concurring justified causes that suggest it in protecting the best interest and welfare of the children.

Article 6- Adoption without Prior Declaration of Adoptability

Minor children can be adopted without prior declaration of adoptability in the following cases:

- a. When adopting the child or children of a spouse or legally recognized partner.
- b. When a tutor wants to adopt his ward, prior to rendering and approving of accounts.

- c. When the adoptee is of legal age and only if he has previously lived with the adopting party for at least 2 uninterrupted years.

Article 7- Sole Adoption

Nobody can be adopted by more than one person except the adoption realized by both spouses united in marriage or legally recognized union.

Article 7- (Bis)

A minor may be adopted again only in one of the following cases:

- a. Death of the adopting parents before he reaches legal age.
- b. By declaration of Absolute Nullity of the Adoption
- c. By the lost of parental rights of the adopting parents by judicial declaration.

If nobody comes forward requesting the adoption, the minor or minors revert to the power and custody of the biological parents or they will be placed under the tutelage of someone who can exercise it according to the Civil Code or of the Center of Assistance that placed them for adoption.

Article 8- Limitations for being Adopted

The following cannot be adopted:

- a. A descendant
- b. A relative of second degree in the collateral line by consanguinity or affinity.
- c. The ward by his tutor or protutor while the accounts of the tutelage have not been approved and the goods given to the tutor or protutor according to the case.

Article 9- The Adopting Party

The adoption requires that the adopting party be at least 25 years of age and not having reached 50 years of age.

If the child were older than 8 years he could be adopted by an adult who is between the age of 50 and 60 years.

If the adoption is done by both spouse or legally recognized partners, it is sufficient for one of them to have reached minimum age of 25 years counting the limit for the younger adopting parent when it is a couple. In any case, the adopting party must be at least 14 years older than the adoptee.

If there are several adoptees, the difference in age will be taken into account with respect to the adoptee of greatest age.

The previous limitations will not be considered in the case of the adoption of a spouse's or legally recognized partner's child.

Article 10- Suitability of the Adopter

The suitability of the adopter will not only depend on their age but also on the fulfillment of the following requisites.

- a. Have the economic means to maintain and educate the adoptee.
- b. Not suffer from infectious-contagious illnesses, psychological disturbances, or mental deficiencies.
- c. Not have any penal antecedents for serious offenses of family violence while there does not exist an absolving sentence in which the innocence is fully proved or in case that is still in process. Those will not be able to adopt who have been convicted of a serious crime unless they can place in evidence their suitability, honesty and other qualities required by law.

Article 11- Order of preference of Adopters

Any person can adopt who has the free exercise of their rights but if simultaneous requests are presented to adopt a child, the following order of preference will be followed:

- a. Married Couple
- b. Couple in legally recognized union.
- c. Single person, single, widowed or divorced.

Article 12- Belongings of the Adoptee

In the case that the adoptee has personal belongings, the adopting parents will be subject to the same rights and obligations that the biological parents would have with respect to the administration of said belongings, with the particularity that when the adoptee reaches legal age, the adopting parent will have the obligation of giving a documented account and compensate the adoptee for any losses that his negligent administration may have caused the patrimony of the adoptee.

Article 13- Counseling

The persons whose consent is necessary to grant the adoption should be counseled about the effects of this adoption by the National Adoption Council before they grant said consent. The fulfillment of this requisite should be indicated in the respective Affidavit of Consent.

Article 14- Prohibition of Profit

The administrative transactions prior to the adoption and the judicial will be free and therefore it is terminally prohibited any charge or economic compensation for those who in accordance with this law must give their consent for the adoption. The verification of an illegal charge or payment in the administrative or judicial transactions will give place for the judge who is overseeing or oversaw the case to declare the Nullity of everything done or the suspension of the process while they clarify the detected or denounced acts.

TITLE 3- TYPES OF ADOPTION

Article 15- National Adoption

A National Adoption is one completed by Guatemalans residing within the national territory as well as that realized by foreigners who at the time of the

adoption are residing in Guatemala for at least five years and who manifest in an authentic form that they will settle their residency in Guatemala.

Preference will be given to national adoption over international, being able to recur to the later only when there do not exist family members or other person interested in the national adoption who are suitable according to the established in this law or when it can be demonstrated in a concrete form that the international adoption benefits more the best interest of the child.

Article 16- International Adoption

An international adoption is considered that in which the candidates to adopt, regardless of their nationality, have their habitual residence outside of Guatemala.

The adoption can only be completed by an individual person or married couples of foreign nationality when the receiving country of the boy or girl or children guarantees that its legislation concedes to the minors the same or better rights as those contemplated in the Guatemalan legislation and of the countries contracting to the Hague Convention relative to the protection and cooperation in the matter of international adoption which was ratified and approved in Guatemala through decree number 50-3002 of the Congress of the Republic of Guatemala with a date of 13 of August of the year 2002.

TITLE 4- PROCEDURES FOR ADOPTING

Article 17- Administrative Phase

Every adoption process except those from article 6, begin with a prior administrative phase that has as its objective to study the situation of the adoptee, evaluate the suitability of the possible adoptive party and lend the necessary counseling.

Corresponding to this phase are:

- a. Preparation of a report about the identity and other personal information of the child or adolescent who is going to be adopted, life conditions and social environment, personal and family development if possible, level of education in the case of adolescents, personal and family medical history if possible, interests and personal needs.
- b. Study the requests by adoptive candidates to the effect of establishing their suitability, and prepare a report on their identity, legal capacity and other personal information, material resources, life conditions and social environment, level of education, personal and family medical history, personal interests and motives that move them to adopt.

- c. If the adoption were to be international, the CONAD must justify the process that they followed so that the adoption could be national and the reasons which justify the exclusion of national adopting parents; in both cases, national and international, it should also justify the process that was followed so that the child could have been taken in by the extended family and the exclusion of other interested parties.

This phase is the responsibility of the National Adoption Council (CONAD) which is regulated in Title 6 of this law.

Article 18- Request

The national candidates to adopt will present a request by means of a formal petition that must fulfill the requisites required by the article 61 of the Civil and Mercantile Process Code.

The requests for national adoption will be presented before the National Adoption Council if the candidate resides in the capitol, in its defect, the request should be presented to the Family Court of the locality where they reside who will remit it to the Council for their evaluation.

In the case of request for international adoption, these will only be presented only before the Council through the respective authorities of the country where the petitioners reside.

The council should perform an investigation on the suitability of the candidates in a fixed time frame of three months and will notify the results to the petitioner in the case of a national adoption and to the respective authorities of the country where the candidates reside in the case of international requests. The notification will be done within thirty days of concluding the investigation.

If for extraordinary cause it were not possible to fulfill these timeframes the National Adoption Council should justify it and inform the petitioners in writing. In this case the timeframe for the investigation could be extended to five months and the timeframe for the notification could be extended to sixty days.

Article 19- Cohabitation of the Adoptive Parents

The future adoptive parents, once they have been selected and declared suitable by the National Adoption Council, should live for at least one month with the adoptee prior to the granting of the adoption by the Family Court Judge.

TITLE 5- DECLARATION OF ABANDONMENT AND STATE OF ADOPTABILITY

Article 20- Declaration of Abandonment

Prior to the adoption proceedings, it will be necessary that the judge of Family Courts of the place where the minor is located, to issue the corresponding

declaration of abandonment in which it will declare his “State of Adoptability” without which it will not be possible to initiate the adoption proceedings except in the case of clause d of article 5 and exceptions established in article 6.

The request to issue the declaration of abandonment and of adoptability, may be requested from the family judge by:

- a. the president of the National Adoption Council
- b. by the proposed adopting parents
- c. by the person or persons placing the child for adoption.

Article 21- Requisites of Declaration of Abandonment

The declaration of abandonment and the corresponding declaration of State of adoptability is a guarantee for the minor so that it will need to be done promptly in order to avoid a long institutionalization, but with guarantees to control that an adequate search was done for the family which may exist and wish to take charge of the child.

Said declaration should be issued observing the following requisites:

- a. For cases of abandonment, orphanhood or unknown parents, the declaration should be issued in a maximum time frame of 8 months except when circumstance that would have made the search exceptionally difficult for relatives or the concurrence of elements that recommend it for the best interest of the child, it is necessary to extend the timeframe in which case the Judge will issue a resolution in which it is justified. In this case the prorogation of the timeframe cannot exceed three months.
- b. In the case of termination of parental rights, the maximum time frame to issue the declaration of abandonment will be eight months from the signing of the judicial resolution but not before having exhausted the ordinary and extraordinary resources that the Guatemalan legislation contemplates that guarantee due process.
- c. Prior to issuing the declaration it will be necessary to have published 3 edits with an interval of 15 days in 2 of the newspapers of greatest circulation in the country as well as having given 10 notices by radio in the 2 stations of greatest coverage during the peak listening hours. Both in the newspapers and the radio announcements, there should be spread the information about the child so that he could be identified by family members or others who know him and can give news or information of him, such as place of rescue, physical characteristics, description of clothing, weight, and other important details. It is obligatory the publication of a photo of the minor taken at the time of his disappearance.
- d. Parallel to the publication of the edicts and the announcements by radio, an Official Notification to the National Civil Police should be made so that they perform the pertinent investigations about the identification of the minor, his parents and family members sending everything that is done to the Attorney General’s Office of Minors of the Public Ministry.

The National Civil Police should act with the speed that the case requires and in the timeframes set by the judge who will be able to warn and resolve what is conducive in the case of negligence or disobedience from the Police.

Article 22- Documentation

A certified copy of the resolution in which it states the declaration of Abandonment and the declaration of state of Adoptability should be sent to the National Adoption Council when these are firm.

Article 23- Appeals

The declaration of abandonment will be appealable for a period of 15 days following the notification. The following may appeal: the president of CONAD, any adopting party, Attorney Generals Office (PGN), or anybody who must give their consent to the adoption whether it be biological parents, the directors of the Center of Assistance in which the child or the tutor is located.

JUDICIAL PROCESS

Article 24- Beginning of the Judicial Process

The judicial process is started with the request that should be presented by the person or people trying to adopt. The formal request should meet the requirements established in the Civil and Mercantile Process Code and should be accompanied by all the documentation that is required including complete certification or of the important steps of the administrative process. In any case, the judge of record, and in the first resolution that is dictated admitting the adoption transactions, should request from CONAD so that the administrative file is sent which will become part of the process.

At the request of the interested parties, there will accompany also the respective adoption proposal in which will be expressed the personal, family, and social conditions as well as the means of life of the possible adopting person or people selected.

The adoption proceedings, pensions, parental rights, custody and protection, for the function in the best well being of the child, will have preference in the transactions over any other that is being heard.

Article 25- Hearings

Once the request and adoption proposal are received, the judge will have a period of 15 days in order to set the adoption hearing, which will be verified in the following fifteen days unless he needs for the Council to amplify, clarify or rectify the information which has been sent in which case the timeframe for the hearing could be extended in the following manner:

In the first resolution he will order that the administrative file be incorporated in the process.

- a. If it is a national adoption, a timeframe will be fixed for the council of 15 days to provide the information requested by the judge.
- b. If it is an international adoption, the timeframe that will be given to the Council to provide the new information will be 45 days.

Article 26- Summons for Hearings and Consents

The Judge will summon for the hearing:

- a. The biological parents, who should express their consent to give their child in adoption except if they had their parental rights definitively terminated.
- b. The tutor and other legal representatives that must emit their opinion before the judge regarding the conformity or not with the adoption.
- c. The adoptee, who if he is at least 12 years old should give his consent to be adopted. If he has not reached said age the judge should still hear him as long as he has sufficient judgement to express his own opinion which should be taken into account based on his development and maturity.
- d. The adopting party so that they can express their consent to adopt.

The biological mother cannot give consent to give her child in adoption until she has had at least 90 days of living with the child counted from the date of birth of the child.

A representative from CONAD and from the Attorney General's Office (PGN) will be present in the hearings for which reason they should also always be summoned.

Article 27- Course of the Hearing

The hearing will be concentrated, hearing all of the summoned in the same act.

The judge should verify during the hearing:

- a. With respect to the biological parents, that their consent to place the child for adoption lacks any legal vice and that they have been informed about the definitive effect of the adoption and the revocations will not be admitted.
- b. With respect to the adopting party: their identity and suitability; that they have had access to all of the antecedents of the minor they are going to adopt, that they have had the counseling prior to giving their consent about the implications and responsibilities of the adoption and that they are sufficiently informed of the follow-up of which they will be the object for the 5 years following the adoption until the said minors reach the legal age of the country where they will reside.
- c. With respect to the adoptee: his identity, being able to order new tests or testimony if there were any doubt, as well as that he has been sufficiently informed about the effects that the adoption produces when he has the sufficient age or maturity to understand.
- d. In addition to the tests which are obtained, the Tribunal will order that a social worker practice a Social-Economic investigation of the adopting party and the adoptee in the form which is contemplated by the Law of Family Tribunals.

Article 28- Opposition

If during the hearing an opposition is planted or if proofs are presented to the contrary, the judge will set another hearing in a period no greater than 10 days in which the interested party should provide the means of proof which justify the motives of the opposition or those which the contrary part have to contradict the arguments of the opposition. The judge can also request official proof. The opposition will be resolved by a declaration if the said opposition was to areas of form and by a sentence if the said opposition affects the basis of the affair or if it refers to the suitability or prestige of the presumed adopters.

Article 29- Sentence

The sentence should be issued within three days following the last hearing and if there had been any incident, from the date that the declaration was signed. The judge of record or at his request, can issue the declaration in order to better resolve, in the form established in the Civil and Mercantile Process Code, including in the same, the testimonial declaration when in his judgement it is indispensable and when its reception can affect the result of the process.

Article 30- Sentence

Against the sentence that is dictated comes the resource of appeal, which should be presented within 3 days of the last notification and will be transacted according to the Civil and Mercantile Process Code for the process in oral judgements.

Article 31- Irrevocability

The adoption has the character of irrevocable.

Article 32- Nullity

Against acts or resolutions dictated during the transaction of the process, comes the nullity whether it be for breaking of procedures or violation of the law as indicated in the articles 613 to 618 of the Decree Law 107.

Article 33-

While minor adopted child(ren) have not reached the legal age, an action of declaration of full or partial nullity of the process and declaration of adoption can be presented. It can be presented by anyone who accredits in an indubitable form to have an interest in the affair, when any of the following cases happen.

- a. falsification or alteration of documents
- b. presentation of false testimony
- c. For cruel or inhumane, physical or psychological treatment of the adopted minor, for inducing them to crime, prostitution, or to commit any other act prohibited by law, moral convention, or morality, for abandoning them, or for any other motive which injures the interests of the minor.
- d. For firm sentence dictated against the adopting parents for the commission of serious crimes.

- e. For attempt by the adoptee against the life or honor of the adoptive party, their spouse, ancestors or descendants.
- f. For maliciously causing the adopting party the considerable loss of his property.
- g. For accusing or denouncing the adopting party, imputing to him some crime, except in his own case, or that of his descendants, ancestors of his spouse.
- h. For abandoning the adoptive party who is physically or mentally ill and in need of assistance.

The cases listed in clauses e, f, g, and h, can be presented even after the adoptee has reached legal age.

Article 30- Registration

Once the sentence that decree the adoption is signed and executed, it will be registered through the respective annotation to the margin of the birth certificate for which person a certification of the sentence will be remitted to the Civil Registry.

In the sentence it will order that the annotation of the adoption to the margin of the birth certificate be completed, with the Civil Registrar being able to emit certification in which it will state the names of the adoptive parents as well as other identifying information of the minor that would favor the identity of the minor and that are perceived by the laws of the country.

The registrar, when issuing the certification should omit the names of the biological parents.

Article 35- Reserve

All of the administrative and judicial actions enjoy the guarantee of confidentiality and copies or certifications can only be given to the adopting party or to the adoptee when he has reached legal age or at the request of a competent judge.

TITLE 6

NATIONAL ADOPTION COUNCIL

Article 36- National Adoption Council

The National Adoption Council is created which will be the central authority in all things related to adoption.

Article 37- Legal Nature

The National Adoption Council, whose abbreviated denomination will be CONAD, is a technical and decentralized institution. In conformity with this law it enjoys technical and functional independence. It depends administratively and financially on the Secretary of Social Welfare of the Presidency of the Republic through whom will be channeled all of the financing for its functioning. Its duration will be indefinite. It is competent in all of the national territory with the

capacity to establish offices in any part of the country when the necessities merit it. For its functioning, it will also be able to receive donations from national and international entities. In order to realize its functions it will have the cooperation of all the state, administrative and judicial dependencies for the protection of minors.

Article 38- Scope of Competence

It corresponds to CONAD the governing function in the area of adoptions as well as the control of the organizations and institutions that are responsible for the care and custody of the child who is in the adoption process when he is not given by his own parents. In this last case, it should be assured that the child stays with his parents if this is not detrimental to the child.

Article 39- Office of CONAD

The CONAD will have its social domicile in the capital city in which it will establish its central office.

It will be able to create departmental offices in all of the national territory when merited by necessity.

Article 40- Functions of the CONAD

The CONAD will have the following functions:

- a. To know the institutions in all of the country that have in their care minors declared in state of adoptability with the objective of protecting and looking out for the wellbeing of the said minors.
- b. To promote the Declaration of Abandonment and the consequential Declaration of State of Adoptability of those minors referred to in article 5 of this law.
- c. Maintain a current registry of the minors declared in a state of adoptability.
- d. Receive the national adoption requests, register them chronologically and emit the pertinent reports on the profile and suitability of the petitioners.
- e. Receive international adoption requests, register them chronologically, analyze them and emit the corresponding reports. The Council can ask the petitioning country the explanation or amplification of information that it deems necessary. The request and sending of information to the Council should be done by an entity accredited before the receiving country with faculties to complete international adoptions. For the effects of eligibility, both national and foreign, it is prohibited altering, by any means, the chronological registry of the adoption requests.
- f. Maintain a registry of the persons who have presented a request to adopt a minor, distinguishing between those who have residency in the country and those who reside outside of the country.
- g. Give counseling about the effects of adoption to the biological parents who wish to give their child and try to strengthen the parental bonds to exhaust family resources before turning to adoption.
- h. Investigate and register all of the information and relevant circumstances for the minor who could be adopted.

- i. Require the completion of the DNA test for those cases of voluntary relinquishment by those claiming to be the biological parents.
- j. Present to the competent Family Judge the adoption proposal for each minor child which will initiate the actual adoption proceedings. This proposal should be accompanied by a report on the suitability of the adopting party as well as the justification as to why they were selected and if it is the case, why international adoption was opted for if there were to exist national petitioners.
- k. Give to the judge technical advice and information about any aspect of adoption.
- l. Perform the follow-up to prove the wellbeing of the minors given in adoption during the 10 years following the registration of the adoption in the civil registry except when before that period the child has reached the legal age.
- m. Maintain a registry of national and international adoptions completed. In this registry should be stated the information on the child given in adoption, being sure to state the complete name of the boy or girl given in adoption, the age, information from the birth certificate, place of residence, physical description that includes stature, sex, weight, color of skin and eyes, as well as any other visible characteristic. In the case of international adoption it should also include the name of the country and legal domicile of the adopting party. In the registry should be the hand and finger prints of the minor, if possible on the card should be included a recent photograph of the minor given in adoption.
- n. Channel all of the adoption requests by Guatemalan Residents to a foreign country.
- o. Maintain a constant relation and interchange of information with other countries about adoptions, legislation and the problems encountered.
- p. Anything else that its internal regulations determine.
- q. Verify through the central authority of the country where the adopted minors reside the state of said minors, looking out for the physical, mental and psychological integrity of the same.

Article 41- Organization of CONAD

The Conad will be composed of:

- a. Directive Commission
- b. Technical-Administrative Secretariat

Article 42- Directive Commission

The Directive Commission should guarantee the fulfillment of the principals and rights recognized by the Political Constitution of the Republic of Guatemala, the Convention on the Rights of the Child, the international standards in the material and the functions specified in this law, in all of the process of the adoptions that are completed.

For that they will have the following areas of competence:

- a. delineate the policies and strategies of the CONAD

- b. Analyze the adoption requests, both national and international, which arrive at the CONAD.
- c. Assure that the information contained in the requests is true.
- d. Choose the adoptive parents most suitable in light of the criteria indicated in this present law.
- e. Be present for the giving of the child to the adoptive parents.
- f. Supervise the welfare of the child who, subject to the adoption transactions, is living in an institution or with the biological parents who are giving him voluntarily.

Article 43- Makeup of the Commission

The Commission will be comprised of the following:

- a. One representative from the Secretary of Social Welfare of the Presidency of the Republic.
- b. One representative from the Attorney General's Office (PGN).
- c. One representative from the Magistrature of Minors
- d. Two representatives from the Majority churches of the country.
- e. One representative from Non-governmental organizations dedicated to the protection of children and adolescents.

Each of these representatives, chosen by their respective entity or institution that they represent, should be of recognized honorability and in the case of the non-governmental organizations, additionally have at least three years of professional experience in the area of the protection of the rights of children and adolescents.

The members of the commission will meet once a week, receiving honorariums for each session except when circumstances require extraordinary meetings. The convocation and development of these as well as the election of the president, will be regulated by the internal regulation of the CONAD.

Article 44- Technical-Administrative Secretariat

The Technical-Administrative Secretariat will be composed of:

- a. a secretary
- b. a technical team
- c. administrative personnel

The technical team will be composed of attorneys, psychologists, pediatricians, and social workers that will establish the internal regulations.

It will be responsible for the investigation of whatever information that petitioners provide to them, the elaboration of a technical opinion in each adoption case, to give counseling to both the biological as well as the adoptive parents, and any other functions assigned to them. They will also provide advice and support to the commission.

Article 45- About the Budget

The General Budget of Income and Debits for the State, should contain a special financial entry that will be created so that the CONAD can execute its actions in

the fulfillment of this present law. In the same manner, CONAD will enjoy an initial contribution from the budget of the State of TEN MILLION Quetzales (about USD\$1,300,000) which should be for the exclusive use of the CONAD and which will come from the approved budget of the Secretary of Social Welfare of the Presidency of the Republic for the fiscal exercise of the corresponding year. With this purpose, the Ministry of Public Finances will effectuate the necessary budgetary and accounting operations so that, at the latest, the indicated amount is totally or partially assigned 60 days after the entrance into effect of this present decree.

Article 46- Control

The National Adoption Council will be subject to the process of rendering of account established by the article 241 of the Political Constitution of the Republic of Guatemala.

FINAL DISPOSITIONS

Article 47- Creation of CONAD

The government, in a period of one month from entering in vigor this law, will create, through the Secretary of Social Welfare of the Presidency of the Republic, the National Adoption Council, with the budget, functions, and instruments referred to by Title 6 of this law and will order the Ministry of Finances the assignment of the initial contribution for the corresponding year.

Article 48- Convocation

The Secretary of Social Welfare of the Presidency of the Republic will solicit in written form from the State Institutions established in Article 43 that they name their representatives and in the same manner solicit from the 2 majority churches of the country for them to designate the persons who will represent them before CONAD. It will publicly summon all of the non-governmental organizations dedicated to the protection of the rights of children and adolescents so that they can elect the person who should represent them before the CONAD. This convocation should be done by two written means of great circulation and if possible by any other means of social communication.

Article 49- The Regulation

The executive organism should prepare the Internal Regulations of the National Adoption Council in a period of 6 months counted from the publication of this present law in the Official Newspaper.

Article 50-

Upon finalizing the adoption, the adopting party acquires the parental rights over the adoptee and the adoptee acquires the right to use the surnames of the adoptive parent(s).

Article 51-

The adoptive parent is not the legal heir of the adoptee, but the adopted child is the heir of his adoptive parent(s).

If the adoptee is not the heir, he will have the right to a pension until he reaches legal age by those who are the heirs.

In the case of a willed inheritance, the pensions will only be given in the part of the goods and the work of the pensioner are unable to satisfy his necessities.

Article 52-

The adoptee and his natural family conserve their rights of reciprocal succession. If the adoptee should die before the adopting parents, or should renounce his inheritance, or be excluded from it, his children do not have the right of representation or to be pensioned by the adopting parent.

Article 53-

If the adopting parent should die, the adoptee returns to the power of his natural parents, his tutor, or the institution that placed him for adoption.

Article 54-

The adoption can be terminated by the mutual consent of the adoptive parent and the adoptee when the latter has reached legal age. It also can be terminated by a Judicial Declaration of Absolute Nullity.

Article 55-

All modifications that operate in adoption, such as the suspension or termination of parental rights, declaration of absolute nullity and other relevant causes should be annotated in the margin of the birth certificate of the adoptee.

Article 56-

The adoption processes will be transacted by the oral procedures established in the Civil and Mercantile Process Code and auxiliarily the dispositions of the referred code, the Civil Code, the Law of Family Tribunals, Law of the Judicial Organism and International Treaties ratified by Guatemala in the area of adoptions, in everything which is not expressly established in this law.

Article 57-

The rehabilitation of the adopting parent in order to exercise parental rights, leaves in effect the adoption according to the terms established in the sentence.

TRANSITORY DISPOSITION

Article 58-

The judicial and notarial processes of adoption that are in process when this law takes effect will continue their transactions following the procedures established by the law effective at the time of their beginning.

DERROGATORY DISPOSITION

Article 59- Annulment

Chapter 6 of title 2 of book 1 of the Civil Code (Law Decree 106) and the articles 28, 29, 30, 31, 32, and 33 of the Law Decree 54-77 of the Congress of the Republic are annulled.

Article 60- Entering into Force

This present decree will enter in force the day following its publication in the official newspaper.

Sponsoring Deputy
Carlos Mauricio Valladares de Leon