

ADA News (English)

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Re: New laws before Guatemalan Congress

UPDATE April 16, 2007

By the name of Manual of Good Practices is known an absurd and illegal interpretation of the adoptions laws of the country, presented by the Vice president of Guatemala Eduardo Stein, with the intention of changing the whole process of adoptions in Guatemala, beginning with suspending all processes of adoption and leaving to the Secretary of Social Welfare the power to decide who can adopt the children whose processes were interrupted. Stein claims that it will be enforced while Congress passes Hague compliant legislation. We find hard to believe that the Vice president ignores that the Executive has very limited legislative powers, and that none of them enables him to pass and to try to enforce so called manuals while the Congress passes real laws.

Nobody is obligated to obey an order that is not based on a law. That is what our Constitution says and that is what we are going to remind our Vice President, and everybody else who tries to enforce the Manual.

Eleven million quetzals (roughly US\$1,500,000.00) – according to the newspaper Siglo Veintiuno in its edition of April 5, 2007, will be supplied by the Executive for the implementation of the Manual of Good Practices. The Manual is NOT a law. It is not even dignified with the signature of any officer. It cannot be enforced. Therefore, any transfer of funds to enforce the illegal measures of the Manual is illegal too, and we will make use of the legal actions, against those who do it. For a government on its way out, it would be a very bad decision to make such a mistake that would cause them a lot of trouble when they are no longer in power. Although it is too early to predict who is going to be the next

president, it is easy to see that the current government made very few friends and a lot of enemies, so their chances to stay in power are very slim.

For those who are adopting a child from Guatemala, or thinking of adopting one, do not worry. There are laws in our country and even if the Vice president ignores them or pretends to ignore them, we are poised to make use of all the legal actions to prevent the Manual from devastating the lives of those children that the State of Guatemala neglects and remembers their existence only to harm them, under the pretense of protecting their rights.

The support of the Manual of Good Practices and of the law proposal known as the Ortega Law by the US DOS is puzzling, since both violate our Constitution and our legal system, and would make adoptions impossible. We do not believe that the US DOS, in their effort to eliminate what they perceive as problems in the current system, support knowingly, changes in the system that would make the process of adoption an interminable maze, without making any provisions for the care of the children, that would result in the death or abandonment of those very same children they claim to try to protect. Thousands of adoptions are the living proof that our adoptions system works and that even with the scrutiny and the investigations made by the PGN and the US embassy, the number of adoptions continues to increase, giving to those children the chance of a better life.

It is also a proven fact that the Office of Social Work of the Wife of the President, - also known as SOSEP - has not invested any of its abundant resources in orphanages or in any kind of care for the abandoned children. When the foreign dignitaries come to Guatemala and want to visit orphanages, they are taken to the Hogar Rafael Ayau, which is totally private, administered by Christian Orthodox Nuns, who do a wonderful job with the children they have.. When Casa Alegria, a hogar given on a silver plate to Wendy de Berger by Buckner International Resources and UNICEF, was closed down due to the bad conditions of the place, its approximately fifty children were transferred, in very

bad shape, to the Hogar Rafael Ayau and some other also private orphanages, according to its directors.

The Guatemalan authorities do not do a thing for the needy children, but when private individuals and entities do it, they attack their work saying that it is lucrative. When the State refuses to fulfill its obligations to provide for the abandoned and orphaned children, it loses all rights to criticize what it is being done to remedy their lack of social services and orphanages. The State collects taxes. Private individuals collect fees. The name is different, but the meaning is the same. The State has no right to demand that private people work for free, because the difference between work and slavery is the payment. And the fact that children are adopted does not make the services provided any less worthy of reimbursement as the work that anybody else does, including the bureaucratic work.

In Congress, different proposals are being discussed. On April 11, 2007 was presented to Congress a new and different proposal of International Adoptions Law, with the support of four political parties that total an amount of 85 congressmen of the 158 congressmen. The proposal has the number 3635 and currently it is at the Committee of Legislation and Constitutional Points for its study and opinion. The link is <http://www.congreso.gob.gt/archivos/iniciativas/registro3635.pdf> This proposal follows the guidelines of the Hague Convention and makes it very difficult for mothers to relinquish their children, having to undergo a series of interviews with psychologists, social workers and bureaucrats of the central authority and declaring before a judge their intention to place their child for adoption. At the same time, it makes it difficult for singles to adopt, because it allows only married couples and any other cases will be decided by the central authority. The good thing about this proposal is that it does not appoint as central authority either the PGN or the Secretary of Social Welfare and that the office of the wife of the president would have nothing to do with it. The central authority would be an

autonomous entity, whose board of directors would be seven delegates of the following: one for each of the three powers, one for the PGN, one for the Secretary of Social Welfare, one for the Human Rights Office, one for the Guatemalan Bar Association and one for the Guatemalan Medical Association. Even though we still have to see if that combination of different people with different agendas can agree on anything, we hope that if this proposal is approved, they agree that their personal and institutional interests should be put aside for the benefit of the children they have to protect.

The proposal 3635 states that it would become effective in two parts. The organization and implementation of the Central Authority would be in October and the rest of the law would become effective in March 2008, more or less when the United States becomes bound by the Hague. Its implementation is estimated in ten million quetzals, none of which would go for the support of the children, but at least a million less than the partial – an illegal - implementation of the Manual of Good Practices,

We know that it is going to take a lot more than our good wishes to get a proposal that would effectively protect the rights of the birthmothers, the adoptive parents and the children in need of a family. But compared to the Ortega Law, this new proposal is much better and gives us hope that the Congress is taking seriously its obligation to pass a Hague compliant law that would allow adoptions to continue. For that only reason, we would not oppose it, although we do not discard the possibility of raising constitutional challenges against certain parts of it, especially the part about the limits to adoptions by singles.

Another good point of the proposal 3635 is that any adoption started before the new law becomes effective, would be finalized according to the old laws. And those laws do not include any Manual of Good Practices, that is for sure. We just need Mr. Stein to fully understand it before he gets himself in trouble.

We can make a difference in the life of a child. Follow your heart and do it. We are here to help you.