

INTERNATIONAL ADOPTION / TRAFFIC OF CHILDREN

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I. GENERAL SITUATION

This report is restricted solely to "international adoptions" made in Paraguay through liable authorities. However, these adoptions are made in such a way that, in spite of their legal appearance, they take on characteristics of traffic of children. (1)

According to Paraguayan Criminal Court Judge, Nelson Mora: "Paraguay is a baby market". He also declared that "There is a very dubious situation in the voluntary handing over of babies on the part of mothers, which must be investigated". Furthermore, he said he was "surprised by the impressive promptness with which international adoptions' paperwork was carried out(2)". The Attorney General of the State, Luis Escobar Faella admitted, in an interview with the press, that "generally, a traffic of children was carried out by means of the international adoption procedure." (3)

The excessive growth in the amount of these adoptions may be observed in the following figures: In 1987, 6 international adoptions were made. In 1990, they went up to 130. In 1991 to 209. In 1992 to 256 and the estimated figure for 1993 is approximately 600. (4)

July 1993 official data on national adoptions differ greatly from those presented by the press. The former quote 106 national adoptions by the middle of the year while the latter quote 47. (5) Nonetheless, both figures are well below the figures for international adoptions, which are inexplicable bearing in mind the long list of national interested parties. (6)

New delinquent practices have emerged together with the international adoption modality, some of which are not even envisaged by the Law (for example, financed surrogate wombs or contract during gestation) and others have increased, such as traffic of children, kidnapping or illegal retention, change of identity or filiation).

The main factor, the stimulus that pushes the balance in favor of international adoptions, is the pressure of foreigners to get Paraguayan children and the money they pay per child. Presently, the cost of a girl or boy fluctuates from 15 to 20 thousand dollars. (7)

In spite of the fact that Paraguay has signed the United Nations Convention for the Rights of Children, it has not legislated the international adoption procedure. Neither has it signed The Hague Convention on Child Protection and

Cooperation in matters of international adoption 1993), nor has it attended the discussions of the same. (8)

95% of the children who leave the country by way of adoption go to the United States of America. (9)

2. Modality and main parties

Judges and assistants do not ensure minimum conditions:

From the beginning until the final ruling for international adoption, the only intervening jurisdictional level is the Judiciary and the procedure is based solely on the Court decisions of the same.

Presently there are three female judges for Guardianship of Minors: Irma Alfonso de Bogarín, Sonia Telechea de Miller and since 1993, Mercedes Amidei de Estigarribia. Strangely, one of them, Sonia Telechea de Miller, is the only one to grant international adoptions in 1993. (10) This distribution is due to personal decisions and definitions regarding this kind of adoption, and not to organic considerations.

In one year approximately 600 adoptions were granted. This means that one judge alone granted an average of 50 adoptions per month, that is to say, between two and three adoption rulings per day (average for working days). This number of rulings must be added to many other lawsuits to be considered at the same time by the judge for the Guardianship of Minors. Thus, it may be inferred that international adoption rulings are not considered with due attention and control.

The Court of Appeal for Minors controls each international adoption proceeding. (11) A member of the Court declared that "apparently all adoptions are prepared to be international, not national" and that she "can do little or nothing but adhere to the law in effect". She added that they "legitimate the handing over and that's all" (12) because adoption lawyers have already made the agreement between the biological and adopting parents.

The scarce number of social workers and psychologists in charge of the Office of Adoptions and Family Placements that depends on the jurisdiction for Minors (Judiciary) suggests insufficient contribution of data, studies and control which apparently, considering the speed with which the cases are dealt, are not relevant to the judge's decision.

The opposition of some officials to the prompt system implemented in some of these proceedings has resulted in a change in section for some of them. (13)

Among the modalities that **do not ensure** the minimum conditions required in adoption proceedings, the following may be quoted:

1. Regarding biological mothers (and fathers) and their **consent**:
 - a) they are not conveniently counselled and duly informed of the consequences of their consent to adoption;
 - b) they are not giving their consent freely;
 - c) consent is granted by means of payment or compensation of any kind;
 - d) consent is granted before birth of the child.
 - e) mother's identity is not ensured.
2. Regarding **identity of the child**:

The procedure at the Civil Registry still has many inadequacies that increase falsification of Birth Certificates, thus, a superficial and quick procedure does not ensure the child's identity.

Both aspects **-consent and identity-** are key in safeguarding the higher interests of the child to be adopted. The inadequacy due to the absence of a clear control regarding consent implies uncertainty in the safeguarding of the identity of the boy or girl to be adopted.

3. Regarding future adoptive parents:
 - a) No adequate studies of the same are carried out.
 - b) they are not protected from blackmail that the same suffer on the part of certain lawyers and intermediaries.
 - c) they are not provided with adequate and truthful information as to the origin of the child they will adopt.

In brief, without the adequate procedure, it is very difficult for adoption rulings to benefit all the parties involved. Present proceedings submit all the acting parties to situations that range from harassment, detention or blackmail to crimes such as robbery, kidnapping, traffic, trade and sometimes even death of the child.

2.2. Adoption Lawyers

Adoption lawyers are the main protagonists of the events enounced in this report who generate a real market of children. They also fulfil the triple role of acting simultaneously as the person all the parties involved speak to. The description of their performances and the proof of irregularities in specific cases is narrated in detail:

- Business with a biological mother

- a) Directly, or by means of intermediaries, adoption lawyers get hold of children for adoption. This children may be new born, a few months or years old and may be even arranged for before birth. The methods for getting hold of minors are the following: abduction/kidnapping, threats, trickery and deceitfulness, payment for the child before birth (Paraguay has no legislation for financed surrogate wombs) and direct purchasing. (14) (15) (16)
- b) The most frequent procedure is harassment of indigent mothers at key posts such as hospitals (Health Care Centers, Paraguayan Red Cross Hospital, Clinicas Hospital), the Bus Terminal, marginal neighborhoods. Children are acquired in exchange for relatively small amounts of money which are indispensable for their survival. Payment of delivery expenses in the hospital, help with some other sick child or relative or paradisiac promises for the child about to be born are the reasons given to these mothers.

-The child: merchandise in the business

- a) With the child already under their control, they obtain from the Judge for the Guardianship of Minors a provisional guardianship for the minor. (As there are only three judges they wait for the shift of the only one who grants international adoptions).
- b) These children increase the number of babies disseminated in dozens of "guardianship houses", that have become like deposits for children. They have a reserve of children and the lawyers control the fluctuation of the demand and supply, thus ensuring the "profitability" of these minors.
- c) In conditions that have been denounced on several occasions because of their inadequacy due to overcrowding and lack of higiene, these "guardianship

houses" keep babies in bad health, eaten away by scabies, infectious diseases and malnutrition. At least two of them died last year. (17)

- d) Frequently these same guardianship houses keep babies without identity documentation and without authorization from the Judiciary. Children have been stolen in the streets, kidnapped from their mothers' arms or removed by means of trickery and deceitfulness, and have been found in these houses with false identification.
- e) The Guardianship granted by Judge Telechea de Miller allows for a "reserve" of babies awaiting adoption, which are handed over to lawyers pursuant to commercial interests. The lawyer becomes the "owner" of the child-merchandise. More than custody, he acquires a great authority over these children's lives.
- f) Obviously, for pecuniary reasons, foreign families are given priority by the lawyers, whereby they determine the discrimination suffered by national families.

Business with Adoptive Parents

- a) The adoptive parent, or parents, are called to the country once the lawyer obtains a child for his client. They come to Paraguay for 4 or 5 weeks and receive a child on arrival. During this time they stay at the best hotels (18), specially prepared to receive adoptive families (these hotels provide nursing services, bilingual baby-sitters, cradles and baby carriages). Future adoptive parents are at their lawyer's mercy. They do not know the environment, the legal proceedings or the language. They are pushed for time to return to their country (they have left their jobs there). From the point of view of their affections they are going through a difficult period, unknown and long awaited for, living a trial period with a child that may become their own, subject to the actions of their lawyer/intermediary. The dependence grows daily and does not end till a few hours before embarking on the plane: situation which is well taken advantage of by the lawyers who are making business. (Annex 19: Adopting Andrés, narrated by an American adoptive mother).

3. THE LEGAL BASE

Paraguay still has no legislation to rule international adoptions. Thus, in terms of a judicial proceeding, the same is inexistant in Paraguay.

International Convention

This does not mean that there is no legislation on international adoption in Paraguay, since the State is among the countries that have signed the International Convention for Rights of Children, and therefore is one of the countries that accepts it.

Legislation 903/81

In terms of internal law, legislation 903 of 1981 "Code for Minors" acknowledges, in its article 48, that "adoption made in other States shall be governed by the Conventions and agreements held by the republic, which must be adjusted always to the norms of this Code". In this article, Paraguay acknowledges the relevance of Conventions and Agreements on international adoption, but strangely restricts them to adoptions made elsewhere and overlooks the situation of the Paraguayan children involved.

Legislation 109/92

Barely a few months ago a very brief decree was promulgated on adoption (Legislation 109/92) (20), which sets an order of preference for full adoption, declaring in its 2nd article that "nationals and foreigners with permanent residence in the Republic, interested in adopting, will enjoy preference for full adoption". Nonetheless, the great majority of international adoptions do not utilize full adoption but simple adoption.

All these judicial provisions are recognized rights only, but do not establish the procedure nor the administrative mechanisms that must be fulfilled in the international adoption process. Practice in these adoptions is handled by ambiguous and insufficient decrees and court resolutions; these provisions are administrated solely by the Judiciary.

Proposed legislations on adoption procedures that have been prepared have not been able to follow the regular procedure for approval by the National Congress. One of them, prepared by three Paraguayan specialists on the subject, with UNICEF sponsorship and the participation of an expert from IIC (Interamerican Institute for Children), with important contributions on the subject of international adoption procedures, has been paralyzed by the Ministry of Labour and Justice since 1992. Presently, a new draft that incorporates

several points of the previous one and of The Hague Convention (1993), was started off by Non Governmental Organizations and is under discussion in the Senate. However, the same was paralyzed by the first study Commission since September, 1993.

Given this situation, a kind of arrangement is reached on the basis of a "sui-generis" combination of the internal adoption in the country of origin (Paraguay) and the one of the adoptive country or countries. Paraguay loses jurisdiction when the national border has been crossed. Once the child arrives to the adoptive country or countries, new adoption proceedings commence, turning it into another national adoption, pursuant to the receiving country's legislation (United States for example). This second adoption is carried out after having undergone the deficiencies related to consent and identity of the first adoption -in this country of origin- as referred to in the section about adoption modality.

This de facto international adoption is not supported by any bilateral Convention, nor does it bind countries respectively. In fact, there is no formal relationship that binds the States to each other. Therefore, follow-up of cases lacks formality and guarantees for child protection, and it is restricted to a simple (local) oath subject to a pecuniary fine. The same lacks effectiveness when the child is already beyond jurisdiction.

Worst of all is that internal adoption is not appropriately regulated either. Although an Adoption Office works within the Judiciary, it is not governed by a complete procedure, and therefore aspects related to biological parents consent and child identity protection are left uncared for and unprotected.

As it is the Judge of Guardianship that decides upon adoption, controlled by the Court of Appeal for Minors, and as the Office for Adoptions is located in the Judiciary, it is the latter that becomes adoption judge and party, promotor, controller and executor.

And as there is no Central Authority for Adoption, for the Executive, the intermediary lawyer becomes the "sole public negotiator" for international adoptions representing at the same time a) the biological parent or parents or tutors, b) the child whom he has custody for, and c) the future adoptive parents, which allows him a free play between donors and adoption acquirers, with the possibility to use, abuse and make profit with the privilege.

Since there is no explicit and transparent legal coverage for negotiation, imperfections, negligence, flaws, misinterpretations and all other kinds of delinquent activities related to adoption remain unpunished.

Ratification, on the part of Paraguay, of the United Nations Convention for the Rights of Children explicitly incorporates the institution of international adoption as such in Paraguay. However, absence of mechanisms for adequate procedure legislation has not only weakened the spirit of the Convention but also the practice of the aforesaid conditions infringes on other fundamental provisions and principles of the United Nations Convention, such as articles 2, 3, 7, 9, 11, 16, 18, 19, 20, 26, 27, 35 and 36.

Conclusion:

Paraguay, with the ratification of the International Convention on the Rights of Children, recognizes international adoption and the general principles for its implementation.

- However, there is no legislation for international adoption procedure. Therefore, existing channels and mechanisms are arbitrary.
- The lack of control as well as impunity make concealed and non-concealed traffic possible, thus weakening the status of adoption.

4. SAFEGUARDING LIFE: ADOPTION OR TRAFFIC?

Given the situation described, legitimate concerns often arise as a result of exchange of information as to what is happening within the country under the name of international adoption and the news received from abroad about traffic of children, child prostitution and traffic of organs.

Absence of controls and commitments to follow-up beyond the Paraguayan border, encourage suspicions about the possibility of some of these children ending up as objects for child prostitution or traffic of organs. These are situations that are known to happen in countries to the North where these children are taken (21)

5. GOVERNMENT, NATIONAL SOCIETY AND PUBLIC OPINION

Given this circumstance, the Paraguayan Government's resistance to put its legislation and procedure for adoption processes in order is surprising. On the other hand, in response to enquiries related to traffic of children for

organ transplants, Secretary of the Interior, Carlos Podestá said that "the Government investigates adoption of minors" (22)

Paraguayan society has expressed itself through all possible means. Mass media have reflected rejection to the practices denounced in this report and several radio and television programs have contributed to disclose the problem: at least 208 articles have been published about the subject just in 1993. (23)

The Catholic Church has expressed itself on several occasions requesting the elimination of "traffic of children" as well as the control of international adoptions. (24)

6. WHAT DOES THIS REPORT EXPECT?

To draw attention of persons and humanitarian and intergovernmental entities for the defense of the right to life of the children of Paraguay.

Requests the recommendation to the Paraguayan government to:

1. The establishment of regulations for international adoption by means of a legislation that sets the administrative and judicial procedure, as well as the attributions of a central adoption authority.
2. Adhere to The Hague Convention (1993) on child protection and cooperation in international adoption matters.
3. To make the holding of bilateral Conventions between the country of origin, in this case Paraguay, and the country making the adoption, a condition for international adoption.
4. Implement a clear and unambiguous priority for national adoptive parents.
5. Implement controls to avoid traffic of children carried out by means other than the authorized international adoption channels.
6. In short, that the Paraguayan Government give priority to the higher interests of Paraguayan children above the interests of adults that defend supposed rights to own them or for lucrative means.

Notes and Annexes

- 1) There are other channels to exit children from the country which are clandestine and illegal: hundreds of Paraguayan children cross the borders with Brazil as victims of this traffic and buying/selling of children possibly connected to traffic of organs. According to recent findings, from there they are sent to other countries such as Israel, Italy and the United States. **Annex 1a:** "Traffickers of babies take the children via Brazil" Noticias 12Aug93 p. 41. **Annex 1b:** Traffic of organs of Brazilian children in Italy shall be investigated" ABC 16Sept93 p. 32. **Annex 1c:** Denunciation of kidnapping and murder of children to sell their organs" ABC 21Nov93 p.23.
- 2) Declarations made by Judge Nelson Mora: **Annex 2a:** "Our country has become a trading center for the sale of children". El Diario Noticias 28Jul93, p. 50/51 and **Annex 2b:** "Request to revise adoption rulings" Noticias 31Jul93, p. 40/41
- 3) Declarations made by Attorney General Escobar Faella: "That is why our legislation, although it does not prohibit international adoptions with which generally traffic of children is carried out, it demands priority to be granted in the procedures for the great amount of childless Paraguayan marriages." **Annex 3:** U. Hora 27Apr93, p.26
- 4) Granted adoptions: **Annex 4a:** Official doc. presented by the Judge of Guardianship, Sonia Telechea to "El Diario Noticias" published on 30Jul93, p. 48/49. Official sources refused to provide data on adoptions since the press started to publish this news in mid 93. **Annex 4b:** Data obtained by the press: Noticias 30Jul93, p. 4; ABC25Jul93, p. 66; U. Hora22Apr93, p. 25; U. Hora 22Apr93, p. 25. Lastly Revista Menores Dec. 93, p. 13 of the CEDHU (see Annex 9)
- 5) Idem Annex 4b
- 6) **Annex 6a:** List of 51 couples for national adoption in the "Dirección General de Menores" (General Division for Minors). Press report: Noticias3Aug93, p. 40/41. **Annex 6b:** "Questions for Judge Sonia Telechea de Miller". Testimonies: El Diario Noticias 28Jul93, p. 50.

- 7) **Annex 7:** Letter from adoption lawyer offering her services for USD 8.000 in 1990. Plus maintenance costs for the baby. Presently prices have gone up to even USD 20.000 and sometimes more. Ultima Hora 24Apr93, p. 25.
- 8) It is surprising that several subscriber countries to The Hague Convention, bound to respect standards for protection of children subject to international adoption paradoxically make adoptions through non-subscriber countries, overlooking the same standards set by The Hague Convention.
- 9) **Annex 9:** Table/summary of adoptions according to destination. Revista Menores, Dec. 93, p. 13, CEDHU publication, Center of Humanitarian Studies.
- Annex 10:** Press information. **Annex 12:** "Adoptions to foreigners are dealt with only in one court" ABC25Jul93, p. 66 and Noticias 17Jul93, p. 38.
- Annex 11:** Court Resolutions 101/93; 133/88 of the Supreme Court.
- Press information. **Annex 12:** "International adoption is practically the only objective" declarations made by Judge Miriam Peña de Ortiz, p. 96. the Court of Appeal for Minors: Noticias 29Jul93, p. 46.
- Annex 13,** (Unofficial) denunciation made by Gustavo Patiño, former secretary of the Judge Telechea de Miller's court to the Congress Investigation Committee: U. Hora 12Jul93, p.11.
- Annex 14:** Specific case: "The Congress' Bicameral Commission on illegalities shall investigate kidnapping of minors": U. Hora 09Jun93, p. 25. It is an example of several simultaneous crimes: robbery of children, falsification of Birth Certificates, acknowledgement of somebody else's child, sale of children on the part of the intermediary, purchasing on the part of the lawyer, placement in overcrowded guardianship houses, refusal to leave the building, death of a child.
- "A child is taken from his mother by means of deception" U. Hora 26Apr93, p. 28.
- "Evidence involves an adoption lawyer" U. Hora 21Jun93, p. 13.
- "False mother said she recognized another woman's boy" Noticias 24Sept93, p. 51.
- "I was only selling sweets and a lawyer got me into a mess". U. Hora 24Sept93, p. 69.

"Illegal burial" "The Judge and Attorney General did not participate" ABC 24Jun93, p.25.

"Minor stolen by 'traffickers' was returned to his parents" U. Hora14Jun93, p. 26.

"Woman gives children who are not hers for adoption" Noticias 21Jul93, p. 46/47.

"Legislation and justice encourage traffic of babies" Revista Menores, CEDHU Dec. 93.

Annex 15: Several examples of the buying and selling of children: "A couple sold their baby to a lawyer for 2 million guaraníes!" ABC21Aug93; "A minor accused of wanting to buy a baby was detained" Noticias 21Dec93, p. 41; "If you don't give me the girl I'll steal her from you" HOY18Dec93; "Attempt to steal a child in a bag" Noticias 15Dec93, p. 49; "The number of cases of kidnapped children is surprising" U. Hora 150593 p. 25; "After a long odyssey, young José will return to his mother" ABC 18Jul93, p. 67.

Annex 16: a) "The Hermosillas were real providers of children": ABC23Jul93, p. 82. B) "Mothers gave their children before birth" U. Hora02Jun93, p. 23; c) "Supposed case of financed surrogate wombs is investigated" U. Hora18Jun93, p. 24.

- 17) **Annex 17:** "Those guilty of the death of the Hermosilla babies are looked for" ABC14Sept93, p. 29; "The Judge of Minors and the DGPM are blamed" ABC24Jun93, p. 254/25.
- 18) **Hotels:** Gran Hotel del Paraguay, Hotel Cecilia, Hotel Excelsior and Hotel Lapacho.
- 19) **Annex 19:** "Adopting Andrés" narrated by Donna Campanella, ABC 25Jul93, p. 67.
- 20) **Annex 20:** National Congress. Chamber of Deputies. Legislation 109/92. Establishes an order of preference for full adoption.
- 21) **Annex 21:** "Sale of organs of Hondurean children is denounced", ABC18Apr93, p. 32; "Europarlament denounces: Italy and USA centers of traffic of human organs from poor countries" Il Manifesto 15Sept93; "Trafico di bambini in Guatemala venivano usati per i trapianti": La Repubblica 6Mar87.

Annex 22: "Government investigates..." "Unfortunately the law allows a mechanism for international adoption". Carlos Podestá in ABC10Dec93, p. 4.

Annex 23: Data collected by the 'Centro de Documentación y Estudios' (CDE). Revista Informativo Mujer, year 1993.

Annex 24: "Bishop makes serious accusation on traffic of babies" ABC"%Dec93; "Life of human beings is marketed" U. Horal5Jun93, p. 24.

Acknowledgement

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REPORT SUPPLEMENT

International Adoption/Traffic of children / Feb : 94

Asunción - August 1994

Fora Francis Otero

1. BUSINESS CONTINUES

Six months after the drafting of this report, the business of children handed over for international adoption continues. The same problems discussed in the previous report persist to date in adoption proceedings.

Excessive demand for children for adoption comes from abroad, mainly the United States of America. The amount of unnecessary separations of children from their mothers increases, stimulated by the aforementioned demand. These separations take place due to offers of money and merchandise as well as robbery, kidnapping and deceiving mothers about the nature of the adoption.

In an interview, the Chairperson of the Court of Appeals for Minors pointed out that international adoption "limit itself to legitimizing the delivery of the child to the adoptive parent and that's it" and that "practically all adoptions are prepared (by lawyers) to be international adoptions" (annex 12). This is a way of acknowledging the passiveness or self-interest of the Court that allows several adoption lawyers, interested in the trade of human beings, to be in charge of two "key" aspects of fraudulent adoptions: a) the way in which children are come by; and b) the prior agreements between biological parents and adoptive ones.

It is interesting to note that the press does not mention any opposition whatsoever of the attorneys responsible for these proceedings regarding minors, specially since it is well known that attorneys must defend the community's interests.

A spot appraisal as to the amount of money spent in international adoptions indicates approximately twelve million dollars per year (20.000 dollars x 600 adoptions/year), enough to distribute to an entire chain of persons - whether officials or not - involved in these adoptions.

The Judiciary's complacency in the face of these denunciations simply makes it clear that it is playing a central role in the matter.

The Judiciary has not been renewed since the late dictatorship and has been undergoing difficult circumstances. Since the new Constitution drawn up in 1992 it has not been possible to conform the Council of the Judiciary, the body in charge of its renewal.

In brief, the following are still not ensured:

- that the child not be dealt with as a merchandise
- the child's identity
- the mother's (or biological parents) free consent
- enough counselling to the mother and appropriate information (25)
- that consent not be obtained by means of payment or compensation of any kind or with deceit or use of force
- that children receive adequate protection during the entire process
- agreements to legally protect these children in the countries of adoption
- that adoptions not provide undue financial benefits to anybody involved in the matter
- that domestic adoption be given priority over international adoption.

2. DENUNCIATIONS CONTINUE

The following are extracts of denunciations published in the capital's newspapers during the last two months (June and July 94):

2.1 YUTY: CHILDREN ARE SOLD

Series published by ABC newspaper as of 19 June, 94.(26)

"De Jesús Marcelina Esquivel, a 23 year old woman, acknowledged that she sold three of her children. At this moment she is pregnant and the child is already allegedly "reserved" for an American client. She pointed out that a sister of hers -named Angela- also handed over a little boy who is supposedly in Germany now."...Last time, the doctor (Marcelina is referring to the lawyer Chela Rodríguez) gave me 200.000 guaraníes to try and find children in Paraguari. I didn't find any because now there are no more children. Now they have asked me to try and find some in Caazapá" added Marcelina." (26a)

"Women returned in luxurious cars and with money" (27)

One of Yuty's neighbors says: "We knew because we saw that young pregnant women would leave in a luxurious car and would return without their child and with money." "...To give you an idea, in Holy week alone, they took more than ten children from families of Zarzacue who live in such poverty that they give up their children for any amount of cash" said the informer. (26b)

2.2 ADOPTION LAWYER ADMITS EXISTENCE OF TRAFFIC OF BABIES

Published by El Diario Noticias 14 Jun 94 (27)

"Adoption lawyer Ulisses Torres, corroborated the existence of ilegal traffic of babies upon revelation of several instances in which he had received offers to sell children. He said prices vary from 2 to 5 thousand dollars for each child, depending on its sex. For a girl the price is higher and for a boy it is relatively lower.

Another adoption lawyer explained that once they had the child, photographs with all relevant personal data and general state of health of the child were sent. He commented that American parents who came to the agencies to get a child, look at the photographs, study the clinical data and decide for one of the children, then the agencies communicate acceptance of the proposal to the proponent lawyers. He stated that once professional fees have been agreed upon, our country's standard paperwork begins.

2.3 LITTLE ANTONIA

Published in the ABC newspaper on July 8, 94. (28)

Little Antonia's mother, who was born a few days before, said, in her declaration to Judge Mercedes Amidey after being caught by the Police at the Bus Terminal, that she worked as a maid for the family of adoption lawyer Jorge Amarilla, but that she left the house when she was one month pregnant. "I returned to Concepción but when I was 8 months pregnant Mr. Amarilla, the lawyer, visited me and asked me to bring newborn baby, which I did. I did not actually sell my baby, I just gave the baby girl to him and he gave me 100.000 guaraníes," said the woman. (28a)

"When performing a detailed control of (little Antonia's mother's) belongings, Judge Mercedes Amidey...found a radio with tape-recorder...a bag with 10 shirts, a scarf, a pair of sneakers, two pairs of gloves, two pairs of slippers, a jogging suit and another doubledeck recorder and loud speaker... and about 35.600 guaraníes..." (28b)

15 BABIES FOUND IN A "GREENHOUSE"

Published by El Diario Noticias 14 Jul 94 (29)

"15 children were found living subhuman conditions in a nursery in Barrio Obrero during a judicial entry and search of the premises yesterday. Five children suffered diarrhea; others malnutrition and respiratory problems. Four little baby girls were between 22 and 40 days of age. Eight of the babies' guardianships had been granted by Victor Llano, the new Judge for Guardianship, and three by Sonia Telechea de Miller. The owner of the nursery is Angelina Aquino de Mendoza, the daughter of Ramón Aquino, the former fearsome bully of the Chacarita (one of the marginal districts) during the dictatorship. Judge Amidey ordered the closing of the nursery.

LOMA PYTA: BABIES IN HANDS OF THE ACCUSED

Published by HOY newspaper 27 Jun 94. (30)

"A nursery was placed under court control in May. The dossier gives rise to doubts and surprising details. For example, the owner of the abode is being

prosecuted for traffic and possession of cristalized cocaine. Adoption lawyer Graciela Melgarejo is also being prosecuted for kidnapping of babies! The nursery is not authorized and yet Judge Sonia Télechea granted the owner "guardianship". It is even doubtful that the mothers who turned up are the actual biological ones..." (More information in corresponding annex 30).

3. MEASURES TAKEN BY THE SUPREME COURT

Between March 94 and this report's publication (September 94) the Supreme Court (SC) implemented two measures in the sphere of International Adoption:

1. Increase in the number of Judges for Guardianship of Minors

On 29 April 94, by means of a Resolution (31), the SC appointed a

Judge for Juvenile Misconduct (recently named as such by a Decree of the Executive) as Judge for Guardianship of Minors.(32) However, the Code for Judicial Organization does not grant the SC power to create a new Court. Nor can it give preference to a Resolution over a Decree. The SC states that it took this step "...because the high number of dossiers to be handled by the Judge for Guardianship of Minors greatly exceeds those to be handled by the Juvenile Courts for the area of Misconduct within this jurisdiction..."

The Court's Resolution divided the number of Courts for Minors in the following way: **two Courts for Juvenile Misconduct and four Guardianship Courts.** However, the following existing needs in the sphere of juvenile misconduct are unquestionable:

- a) Juvenile Courts for teenagers over 14 years of age, who are presently submitted to the jurisdiction of criminal judges, must be created. Prosecutors and attorneys of poor convicts are required for the same.
 - b) Open or expand the possibility of developing measures within courts that will educate and accompany minors in conflict with the law instead of imprisonment in institutions already full up with minors.
- The list of need is endless... but the Court decides in favor of international adoption and ignores the long overdue correctional aspects required by minors.

Nonetheless, the SC gave priority to a need that in fact comes from beyond our borders, that is to say the excessive demand for international adoptions. In lieu of taking actions to reduce this demand, the amount of Judges for Guardianship of Minors has actually increased.

As suggested in the previous paragraph, the new Judge for Guardianship of Minors immediately proceeded to perform international adoptions with an accelerated method itself questioned by one of the Judges for Guardianship.(33) In this way conflicts arose between Judges for Guardianship regarding guardianship of babies. There are four Judges for Guardianship of Minors, two of which give preference to domestic adoption, as proclaimed by the International Convention for Children's Rights and the other two give preference to international adoption, violating the aforementioned Convention.

2. New ruling

The Supreme court of Justice issued a new ruling (34) that is basically an attempt to regulate aspects related to:

- proof of the child's identity;
- opening possibilities to domestic adoption;
- gathering of periodic reports about adopted children who have left the country.

Nonetheless, Ruling 121 does not cover all the objectives. The measures that it implements are not enough to guarantee fulfilment of that stated as its objectives. It does not even discuss the problem in its entirety. It does not assume **total responsibility in legal proceedings**. It still grants third parties, intermediaries, lawyers or foreign adoption agencies, responsibility for the most delicate aspects related to the protection of children subject to international adoption, within and beyond the country's borders, i.e. the way in which the children are come by, consent of biological parents and follow-up to the adoption.

Some of the new measures are not being complied with three months after its promulgation, for example the one stipulated in Article 4 that reads: "Judges must arrange the publication of a notification of judicial summons in two newspapers of the Republic for a term of three days, at the beginning of the proceedings for international adoption in order to make possible petitioners or interested parties resident in the country aware of the proceedings..."

3. CENTRAL ADOPTION AUTHORITY AND BILATERAL AGREEMENTS.

A real urgency.

Central Adoption Authority: The creation of a Central Adoption Authority with participation and supervision of pertinent organizations or persons from governmental and non-governmental jurisdictions must be considered.

The following are some of the advantages of adoption proceedings carried out by a specialized center, in contrast with adoptions performed illegally:

- a) after a selection process, the girl or boy will be received by the family best suited to its interests.
- b) families from different social strata and different characteristics may freely attend to request an adoption, without the predominance of the money factor.
- c) unbiased guidance for biological parents, encouraging preservation of filial unity and information on legal and personal adoption aspects, in contrast with undue pressures currently received by them to hand over their children.
- d) the needs for adoption of "healthy" unweaned babies will be met as well as the needs of those who are difficult to place, such as older children, mentally or physically handicapped children, groups of brothers and sisters, etc.
- e) adoption parents will receive a complete diagnosis of the child. Full knowledge of the child's condition will protect adoptive parents

- interests as well as those of the child.
- f) the challenges of the aforementioned institution will be to avoid bureaucratism, comply with the norms set for it and avoid excessively long proceedings.

Bilateral agreements between countries of origin and receiving countries.

Protection received by adopted children once they are beyond our borders can only be ensured by means of responsibility of parents in receiving countries. Currently the aforementioned responsibility is assumed by adoptive parents or adoption agencies, but not by the State, so they have no legal enforcement. It is not uncommon to hear of adopted children who are abandoned by their adoptive parents in institutions, and unfortunately these cases increase day by day. There are also cases of adopted children who disappear with no information as to their whereabouts. An expression of good will, signed in the presence of our judges in order to protect these children, is not enough.

5. SENATORS ASK COURT FOR REPORT ON INTERNATIONAL ADOPTIONS

Regarding International Adoptions, the Supreme Court must submit a report to the Senate, in compliance with a petition made by legislators on 16 June 1994, upon request of Senator Elba Recalde. A part of the report was submitted to the Senate by Ms. Miriam Peña de Ortiz, Chairperson of the Court of Appeals for Minors. There is no information on the aforementioned report or the results of the Senate's investigation.

Notes

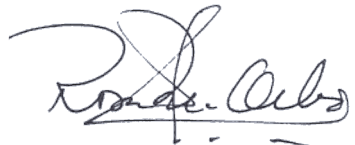
- (25) An experience undergone by the Court for Minors of Porto Alegre by Brazilian Judge Mr. Marcel Hoppe (appointed by Unicef/Brazil as "Judge for Minors of Year 93") depicts how the work of counseling mothers who are going to abandon their children or who are prepared to hand them over to adoption, results in 50% of these children staying with their mothers or some close relative.

(26a) ABC 19Jun94 (26b) ABC 19Jun94

(27) El Diario NOTICIAS 24Jun94 p. 52

(28a) ABC 8Jul94, (28b) Noticias 9Jul94

- (35) El Diario NOTICIAS 22Jun94 p. 54


Rosa Maria Ortiz