

**Monthly Review N° 1/2010  
January 2010**

**TABLE OF CONTENTS**

**Editorial**

p.1 [Earthquake in Haiti: Adoption is not a priority](#)

**Actors in matters of adoption**

p.2 [Iceland and Madagascar](#)

**News from ISS/IRC**

p.4 [From now, our new website is available in French, English and Spanish](#)

**In Brief**

p.3 [Burkina Faso](#)

**Practice**

p.5 [Guatemala: The beginning of a cooperation programme relating to child protection and intercountry adoption](#)

**Interdisciplinary Resources**

p.5 [A comparative study of the impact of Aids on children in Africa.](#)

**Reader's Forum**

p.7 [Child protection systems focusing on adoptions in the South Pacific Islands: Part 2](#)

**Forthcoming conferences, seminars, symposia and courses**

p.8 [France and United Kingdom](#)

**EDITORIAL**

**Earthquake in Haiti: Adoption is not a priority **

*The response to dozens of adoption dossiers that were in the process of being finalised before the earthquake must be differentiated based on how advanced the procedure is. In every case at the moment, the finalisation of adoption is not a priority.*

**A**s in every dramatic event that affects a country, the question arises again in the Haitian context about the intercountry adoption of children.

In this regard, ISS/IRC first recalls that, in general, international adoption should not take place in a situation of war or natural disaster, given that these events make it impossible to verify the personal and family situation of children. Any operation to adopt or to evacuate children that are victims of the earthquake to another country must be absolutely avoided, as was the case during the 2004 tsunami.

However, the intercountry adoption situation in Haiti highlights a new problem: what response should be given to the multiple adoption dossiers that were in the process of being finalised before the earthquake? As of today, some receiving countries have announced their intention to 'freeze' all pending adoptions due to the present incapacity of the Haitian authorities to follow the required procedures. Yet other receiving countries have already planned to launch evacuation missions for children as quick as possible and in this situation, ISS/IRC would like to reiterate the following points.

Given the actual state of the country, the transportation of relief supplies of basic necessities is extremely difficult due to the congestion of different channels of communication and transportation (in particular, the airport at Port au Prince). Mobilising forces in this emergency context should therefore focus on meeting the needs of the greater majority. All initiatives that involve an additional burden to the existing relief efforts should take place later, to give priority to current operations focusing on meeting basic needs.

Regarding the adoption of children, a difference must obviously be made between those who have been declared adoptable and those for whom an adoption order (judgment) has been delivered. For children where matching has occurred and there is an adoption order (judgment), the transfer of these children to their adoptive families could be considered under the following conditions:

- 1) identification of the child and his/her location is secured by the necessary safeguards, particularly through copies of his/her dossier lodged in the receiving country and measures are in place to ensure that personal data is stored appropriately;
- 2) the psycho-social adoptability of the child (ie ability to be adopted) is re-evaluated, considering the trauma s/he might have suffered (emotional shock, physical injuries, etc.);
- 3) it is established that the child's dossier is complete and that the adoption order (judgment) has been delivered;
- 4) the diplomatic representatives of the concerned receiving countries are able to verify the actual identities, adoption dossiers and alternative care conditions of the children;
- 5) the Haitian authorities are duly informed and involved in the finalisation of the adoptions in question.

For children who do not meet these conditions, no action should be undertaken at this point to accelerate the adoption procedure. It is important to remember that for some time, intercountry adoption in Haiti has been subject to serious concerns owing to the lack of guarantees and transparency. Where the

necessary safeguards are not available, intercountry adoption should be suspended until the reinstallation of the administrative and judicial systems in Haiti.

The ISS/IRC, stresses that the abovementioned conditions require time to be fulfilled and they can not be undertaken in an urgent manner. Moreover, the children affected by the earthquake are currently experiencing extreme stress so that a sudden shift to a new country and a new family can have a psychological impact that is impossible to measure. According to the Guidelines developed by the United Nations High Commissioner for Refugees (UNHCR), the evacuation of such children or their temporary placement in families abroad is also traumatic. It is considered as an added disruption to the injury already suffered by the child. In the emergency phase, the efforts of the authorities of affected countries, international organisations and NGOs should focus on providing basic protection to the child (eg: accommodation, food, medical, emotional and psychological attention, education) that is as close as possible to his/her daily living conditions and any regrouping should be with other familiar children or adults.

Finally, ISS/IRC reminds receiving countries in charge of intercountry adoptions to consult each other as well as UN agencies and NGOs in order to develop a unified approach to this problem in order to avoid conflicting decisions and poor initiatives.

Well aware of the difficulties and suffering that the earthquake has caused, ISS/IRC presents its deepest sympathy to the Haitian community and acknowledges, the difficult situation of parents involved in an ongoing adoption. Nevertheless, we invite various actors involved in intercountry adoption to exercise restraint and reflection in managing the current crisis and avoid giving emotional responses to a sensitive issue such as the adoption of these children.

ISS / IRC  
January 18, 2009

For more information, see UNICEF [http://www.unicef.org/media/media\\_52424.html](http://www.unicef.org/media/media_52424.html) , Committee on the Rights of the Child, <http://reliefweb.int/rw/rwb.nsf/db900SID/AZHU-7ZTMYW?OpenDocument>, Hague Conference <http://www.hcch.net> and the UN Guidelines for the Alternative Care of Children (Part IX).

## ACTORS IN MATTERS OF ADOPTION

Source: Permanent Bureau of the Hague Conference: [http://hcch.e-vision.nl/index\\_en.php?act=conventions.authorities&cid=69](http://hcch.e-vision.nl/index_en.php?act=conventions.authorities&cid=69).

- **Iceland:** This country has updated the contact details of its accredited bodies.
- **Madagascar:** This country has updated address details of its Central Authority.

---

## NEWS FROM ISS/IRC

### **Our new website is now available in French, English and Spanish**

*The site presents the organisation and its activities making available to professionals in child protection numerous documents and resources as well as a bibliographical database.*

**T**he upgrade of our internet site is now completed. The English section has been available for a few months and now the computer interface at [www.iss-ssi.org](http://www.iss-ssi.org) is equally accessible in French and Spanish. In addition to the youthful touch of the site's design, the big challenge has been to present the entirety of the programmes and activities of our organisation, in a manner that is clear and well structured as well the hundreds of documents and resources that can be accessed in such a way that you can find them more easily. We hope that the options we have chosen suit each one of you, and that our site may be or become a real support in your work.

#### **“What we do? the central section of the internet site**

The site has eight rubrics which unfold their particular topics as the mood of the browser takes you. Along with the traditional sections “Who are we?”, “Where do we work?”, “How can we support the ISS?”, “FAQ”, “Useful contacts” and “News” which display the organisation and its members, the section on “What we do?” is the essence of the site. Conceived as a real tool for professionals, it illustrates the different activities of the ISS and makes its main services available; starting with casework where the beneficiaries, services and working principles of this pioneering and historic service of the organisation are detailed as well as outlines how to submit a request to a member of the ISS network.

The section devoted to the ISS/IRC occupies the other leading place of this “What we do?” section. In addition to introducing our beneficiaries, our services and our projects, a

lot of room is left for the documentation that we produce and/or provide free of charge to internet users. Several series of documents are on display; thematic training fact sheets on children deprived of family care; the editorials of all our monthly bulletins since 2004, numerous links to international and regional texts applicable for the protection on children deprived of their family and a selection of other books we have published; or to which we have contributed. Other documents freely accessible include a series of examples of good practice as well as a choice of ethical documents relating to children deprived of their family and in need of protection including our ethical guide. The last part of the IRC section is reserved for the Central Authorities of receiving countries that finance the programme and the Central Authorities of countries of origin.

The section on “What we do?” offers among other things a bibliographical database which enables internet users to undertake research on the protection of deprived children, with a page devoted to unaccompanied and separated children recommending various resources, and another page on the Guidelines on the Alternative Care of Children that ISS has co-drafted and which was welcomed by the UN General Assembly last November. Several introductory tools to promote and implement the Guidelines are also available.

We earnestly hope that the use of our new website site will be easier, thanks to this reorganisation and “facelift” and that each of you will find the support and resources useful for you. We remain of course at your disposal if and when needed at the following address [irc-cir@iss-ssi.org](mailto:irc-cir@iss-ssi.org).

## **Burkina Faso: International Forum on Intercountry Adoptions**

During 7 to 9 December 2009, an international forum on intercountry adoptions was held in Ouagadougou with about 300 participants targeting mostly West African countries as well other border countries. ISS was asked to give the keynote speech on behalf of the Permanent Bureau on the objectives, limits and challenges of the THC-93. Among the main recommendations from the forum was the ratification and application of the THC-93 by African countries given only 11 of them are State parties. Other recommendations included an emphasis on ethical practices, working against corruption as well as focusing more on children with HIV/AIDS and those with special needs in the realms of intercountry adoptions.

---

## PRACTICE

### **GUATEMALA: The beginning of a cooperation programme relating to child protection and intercountry adoption**

*Guatemala recently published a letter addressed to the authorities of receiving countries wishing to support the country in the search for families for Guatemalan children who cannot be matched with domestic families.*

**A**t the end of 2009, Guatemala published on its website, a letter where it expressed its interest in initiating a pilot plan (1), through a cooperation programme between the Central Authority of Guatemala (Consejo Nacional de Adopciones referred to as CNA) and some Central Authorities as well as accredited bodies of receiving countries.

#### **A pilot plan, which defines the needs of adoptable Guatemalan children**

The letter refers to an introductory phase, implementing a pilot plan aimed at the expansion of the CNA's operational capacity in its search for foreign families for those Guatemalan children who have been declared adoptable, within the framework of the implementation of THC-93 and in particular, the principle of subsidiarity. The CNA therefore offers and makes information available on the dramatic background of adoptions in Guatemala, as well provides an update of the situation since the entry into force of the Adoption Law and THC-93 at the end of 2007.

In particular, the letter outlines the number and profile of those children who are currently adoptable in the country and their opportunities for intercountry adoption, which is a situation that has radically changed. The number of adoptable children in Guatemala will never again reach those numbers that were mentioned in the

past; in fact this number will be closer to a few hundred as opposed to several thousands. Domestic adoption has also considerably increased reflecting the changes that have taken place in other countries in the Latin American region. In this context, many of the children who can not be matched with a Guatemalan family and could benefit from an intercountry adoption will be older and of a school-age, sibling groups and children with some form of health problem.

#### **A pilot plan, which establishes a cooperation programme with some receiving countries**

The letter which has been published by the CNA also outlines the methods of cooperation with other Central Authorities and accredited bodies and which are expected to be implemented from the year 2010. At this point, it is worth reiterating that the CNA will undertake intercountry adoption solely at its own request, in accordance with the needs which might arise and will not accept adoption application files submitted by foreign applicants outside of this system.

The objective of this system is the adequate implementation of the principle of subsidiarity and the prevention of pressure on its resources. In this context, the CNA intends to implement a pilot cooperation programme with a very limited number of Central Authorities and their respective accredited bodies. The CNA will focus on two very specific issues: on the one



hand, on adoption, and on the other, on the wider issue of child protection. This initial letter invites interested Central Authorities to contact the CNA, in order to initiate the application process and selection of the partners in the framework of this pilot programme.

### **The pilot plan does not reopen intercountry adoption**

This pilot programme is still in its initial phase, as applications were accepted until the beginning of December. This does not mean that intercountry adoptions will start again and even less so given all the interested countries. This pilot programme enables a progressive new beginning in this regard and with the partners, which best respond to the needs of Guatemalan children.

In this context, it is essential to reiterate the importance of not exerting pressure on this country of origin, in order to give it the opportunity to initiate and implement a intercountry adoption programme, which complies with international principles and standards, truly reflecting and meeting the needs of those children who should benefit from an intercountry adoption in the country.

- (1) Consejo Nacional de Adopciones, *Invitación oficial a las Autoridades Centrales de países de recepción a presentar carta de interés para cooperar con la adopción internacional en Guatemala* [Official invitation to the Central Authorities of receiving countries to submit a letter of interest aimed at cooperating in intercountry adoption in Guatemala, <http://www.cna.gob.gt>].

---

## INTERDISCIPLINARY RESOURCES

### **A comparative study of the impact of AIDS on children in Africa.**

*A study published in 2009 by the Ethiopian NGO (The African Child Policy Forum) paints a picture of the situation of orphans as a result of AIDS in various countries of Africa, and reveals the responses provided up till now and the challenges to be taken up.*

**T**he figures provided by the study (Orphanhood in Africa: old problems and new faces) are enough to remind us of the scope of the epidemic of HIV/AIDS in this part of the world. In 2007 approximately 2 million children were affected by the virus in sub-Saharan Africa, with a higher proportion of girls particularly exposed, by virtue of their economic and social status. One of the greatest tragedies of the epidemic is the high number of children who are made orphans in the wake of the loss of one or both of their parents. In 2005 there were about 12 million in sub-Saharan Africa. The study proposes an in-depth analysis of the impact of AIDS on these children and measures for taking them into care, to which they can have recourse. It particularly underlines the provisions implemented at the international and national levels to ensure better protection of children made orphans by AIDS, and encourages their multiplication.

#### **The impact of HIV/AIDS on children**

The study classifies the children affected by the epidemic into three categories: AIDS orphans who have been abandoned; the children themselves affected by the virus; and the children living with their infected parents. The living conditions of the latter are often very precarious as a result of the large sums spent by the home to care for the sick members. Amongst the major consequences of all these cases, is the limited access of children to food, care and education which can be nonexistent at times.

In addition, the study analyses the emotional and psychological impact brought on by the loss of parents for their children orphaned by AIDS. According to the results of research carried out in Uganda, the latter suffer a high rate of anxiety, depression, anger and a tendency to suicide. Furthermore, they are often the victims of isolation and stigmatisation as well as bearing a significant burden of work to ensure their survival.

## Taking children orphaned by AIDS into care

Beyond the emotional shock, children orphaned by AIDS have to learn to survive without their parents. In most cases, they are taken in by a member of the extended family and supported by the community (food, school material, medical care, etc). Research has shown that children would prefer to be cared for by their grandparents. In the homes of other family members, it sometimes turns out that they are victims of exploitation (children can be used as domestic labour for example).

Given the extent of the epidemic, taking these children into the care of the extended family is becoming more and more difficult. As a result, there is a huge growth in the number of child headed households, particularly in order to keep the sibling group together and to protect the property of their parents, especially in rural areas. The study envisages a great extension of this phenomenon, particularly in Ethiopia, Senegal, and Ivory Coast and stressing the urgency of protecting these children from all forms of abuse and exploitation (prostitution, the infringement of their rights of succession and ownership etc).

## Current responses and future challenges

At the special session on HIV/AIDS in 2001, the United Nations General Assembly recognised the need to provide special assistance to children affected by the virus and invited States to implement measures in that direction. Several African countries have therefore adopted national laws and plans of action in this field. In South Africa, the Law of 2006 on schooling envisages a system of parity that protects children affected by AIDS against all forms of exclusion. Other countries, like Malawi have introduced favourable laws, ensuring that Ministries and other governmental institutions are committed to allocate a part of their budget to activities linked to HIV/AIDS. In 2003, the Committee for the Rights of the Child for its part published a general comment on the children

affected by HIV/ AIDS in which it recognised child headed households as a new kind of family and appealed to the States to provide them with special assistance. Several provisions of the Guidelines on the Alternative Care of Children also foresee measures for special protection of the children affected by AIDS (see paragraphs 9 and, 85, 86 and 116) and child headed households (paragraph 36).

Other proposals included in the study are questions on access to antiretroviral treatment particularly in Namibia, Botswana and Rwanda, despite the fact that the children continue to be underrepresented in the available data. Unfortunately, with regard to preventing the transmission of the virus from mother-to-child, in 2007, more than 90% of pregnant women in nine African

countries still had no access to these services. Moreover, the study underlines the feeble progress in the area of awareness raising and education of the population. Thus in 2008 among the children of 15 to 24 years of age, only 11% in Chad, 13% in Congo (Brazzaville) and 14% in Niger knew how to protect themselves against the sexual transmission of a virus.

It is, therefore, important that the initiatives in favour of the children affected by the epidemic multiply across the continent. It is also appropriate to see to it that States supply the material and human resources that are needed to implement them.

The study is available at the following address: <http://www.africanchild.info/documents.asp?publisher=ACPF> and Sources: General Comment 3 (2003), [http://www2.ohchr.org/english/bodies/crc/docs/GC3\\_fr.doc](http://www2.ohchr.org/english/bodies/crc/docs/GC3_fr.doc); Declaration of Commitment for HIV/AIDS, Résolution S-26/2, <http://www.un.org/french/ga/sida/conference/aress262f.pdf>. See also: World Health Organisation, [http://www.who.int/topics/hiv\\_aids/en/](http://www.who.int/topics/hiv_aids/en/) and UNICEF, <http://www.unicef.org/french/aids/index.php>

### The testimony of Tesfanesh, Ethiopia.

#### (Extract from the study)

Tesfanesh, a young girl of 18 lives in Addis Ababa, with her 15-year-old sister. After the death of her mother in 2004, Tesfanesh became the head of the family. Very shortly thereafter she was sexually abused by her grandfather, who lived with them and then moved into a new house, alone with her sister. Tesfanesh works as a domestic staff member in a private company, and earns just enough to feed her sister and herself. She expresses the lack of support from her close relatives and neighbours, "perhaps because they are poor themselves or because they know that our mother died from AIDS", so she explains. Now that Tesfanesh is still struggling to overcome the trauma of her mother's death and the sexual violence, she was a victim of, she has to bear the heavy responsibility of the house, that she is in charge of due to life's circumstances. She has lost the joy of living and her own self-esteem is at rock bottom. This poignant testimony shows the important role of programmes already developed by certain NGOs to protect and support these children and their families.

## Child protection systems, focusing on adoptions in the South Pacific Islands: Part 2

*This article is the 2<sup>nd</sup> part of an interview undertaken with Ms Sue Farran (see last monthly review) which explores her views on adoptions, specifically those that are customary in the South Pacific Islands.*

**Name, surname:** Sue Farran.

**Place of residence and work:** Dundee, Scotland

**Professional position:** Lecturer at Dundee Law School

### 1. What are some of the positive features of the adoption legislative framework?

There is a widespread requirement of consent on the part of the natural mother and sometimes of the wider kin group – for example the mother's family. The requirement of the consent of the natural father is not always required and may be waived by a court. In some countries the consent of the child – if old enough, is also required. There are also age restrictions placed on the adoptive parents, or a required age gap between adoptive child and adoptive parent, and in all countries adoption of female children by a single male is prohibited, except in exceptional circumstances. It is also likely that most courts in the region would hesitate before approving adoption by a same sex couple, and in the Marshall Islands this is expressly prohibited. In a number of countries the adoptive parents have to fulfil residence requirements although in Solomon Islands in the case of foreigners these are modified and may be met by one only of the prospective parents. In Fiji these residence requirements have proved effective in preventing some foreign adoptions but in Tonga they have sometimes been waived.

In Marshall Islands and Samoa efforts have been made to regulate adoption agencies but with the prevalence of online agencies the law may be ineffective. In a number of countries it is illegal to entice mothers to give up their babies for adoption through the offering of monetary incentives or to advertise adoption services.

### 2. Can you describe customary adoptions in the South Pacific Islands?

These are very varied as custom is not homogenous throughout the region and indeed may vary from one part of a country to another. For example, in Vanuatu there are cases describing customary adoption which suggest that different ceremonies are required to amount

to an adoption. Often the adoption may start very informally, and only become finalised after a long period of time. Indeed in the Cook Islands this process of adoption is formally acknowledged. Adoption may be evidenced by naming, by the exchange of gifts, by a child assuming various obligations towards the adoptive parent or family – such as caring for the adoptive parent in old age or undertaking funeral obligations, or by the adoptive family conferring certain rights on the adoptive child, for example, the right to use certain land or resources. Sometimes the adoption will be officially approved by a chief or family elders, or it may simply be taken as fact by the community. In some countries where bride-price is used, as in Solomon Islands, Papua New Guinea and Vanuatu, unless bride price is given for the mother of a child then the child may be regarded as belonging to the mother's family rather than the father's family even if the mother and child go to live in the father's village or with his family.

### 3. What features are different with customary adoptions as opposed to the notion of adoption by western cultures?

Well adult adoption is not unknown and indeed some countries such as Papua New Guinea give formal recognition to this possibility. I have mentioned the long-drawn out process of adoption that can occur, whereby an infant may at first be in the care and guardianship of relatives and gradually as the child grows older be accepted as a member of the family through participation in various aspects of life. This can mean that it is unclear whether a child is adopted or not and therefore raise doubts as to who has the obligation to provide maintenance. It is also possible to undo adoption so that a child who has been adopted, even as an adult, may seek a court order revoking the adoption. I have come across examples of this being done in Papua New Guinea, Fiji, Samoa and Niue. Also because adoption can affect succession rights, other relatives may need to consent to the adoption besides the adoptive parents. For

example, in Kiribati the courts have held that members of the family whose inheritance portion was likely to be affected by the claim of an adopted child should have been involved in that decision.

#### 4. Can a foreigner undertake a customary adoption?

The general view seems to be no. Certainly in Nauru only Nauruans can adopt Nauruan children although there is some suggestion that this was different in the past if a foreigner became integrated into Nauru society, and in Papua New Guinea it has been held very unlikely that a non-indigenous person could adopt an indigenous child although he or she might be appointed guardian. In Vanuatu however, the courts have allowed the customary adoption of a child who was not indigenous. Certainly there is a lack of clarity regarding the extent to which, if at all, foreigners may be governed by customary law.

#### 5. What challenges/benefits exist as a result of customary adoptions?

Where customary adoptions take place within the country then one advantage is the transparency and publicity that accompanies these events in close-knit communities. It is also usually the case that the customary adoption will take place among kin rather than strangers and often within the same language

and cultural group. Some of the problems which relate to customary adoption are their fluidity and uncertainty. A mother having to cope with a large family may place a child with relatives under a very informal arrangement without any clear intention as to the child's status. That child may be loved and well cared for by the 'adoptive' family. However, that child may also be used as cheap labour, subject to neglect and abuse – including corporal punishment and sexual abuse, and may him or herself be unsure as to their individual status.

More problematic is where these informal adoptions remove the child from the immediate family and locate the child abroad among extended family members. This may be for a relatively short period of time, for example, for health-care or education, but can be of uncertain duration and fall between the two stools of inter-country adoption and domestic adoption.

The main problem with customary adoption where customary formalities are not observed or these are performed over an extended period of time is the uncertain status of the child.

To conclude I would like to emphasise that while the law on adoption is in many respects unsatisfactory in the region and that Pacific Islands have some distance to go before the CRC is given meaningful effect, the majority of children are loved and well-cared for in the islands of the Pacific mentioned in this article.

#### FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **France:** **a)** *Sensibilisation à la question de l'adoption (Awareness raising about adoption questions)*, COPES, Paris, 11-12 March 2010. **b)** *Adoption de très jeunes enfants (adoption of very young children)*, COPES, Paris, 8-10 and 29-31 March. For more information: [www.lecopes.org](http://www.lecopes.org).
- **United Kingdom:** Effective Communication with Children in the Process of Life Story Work, Birmingham 16 and 17 March 2010. For information: [www.baaf.org.uk](http://www.baaf.org.uk)

*As a reminder, this Monthly Review is distributed to a selected network of Authorities and professionals. It is not aimed at being posted on an internet website without the authorisation of ISS/IRC.*

*Table of contents of the Bulletins 1997 - 2009:*

[www.iss-ssi.org/Resource\\_Centre/Resource\\_Center\\_EN/About\\_ISS-IRC/about\\_iss-irc.html](http://www.iss-ssi.org/Resource_Centre/Resource_Center_EN/About_ISS-IRC/about_iss-irc.html). See Activities.

The ISS/IRC would like to express its gratitude to the governments (including certain Federal States) of the following countries for their financial support in the realisation of this Monthly Review: Andorra, Australia, Belgium, Canada, Cyprus, Denmark, France, Germany, Iceland, Ireland, Italy, Luxembourg, Monaco, New Zealand, the Netherlands, Norway, South Africa, Spain, Sweden and Switzerland.