

**Monthly Review N° 2/2010
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EDITORIAL

2009: quicker, faster, further, stronger! 

It is our February editorial (instead of January) that looks back on 2009 to present our activities and recall the events that shaped intercountry adoption last year given that current realities have somewhat disrupted our habits.

2009 came to a close at full speed for the ISS/IRC team, whose interventions were much solicited throughout the year. As a result of the diversity of our global commitments, we have the opportunity to assess our activities and are able to paint a picture of the prevailing trends in the contemporary intercountry adoption scene.

2009 was punctuated by a great number of projects and activities: 13 conferences (Buenos Aires, The Hague, Florence, Oslo, Reykjavik, Mannheim, Cape Town, Zaragoza, Strasbourg, Montreal, Barcelona, Ouagadougou, Paris), and three training courses (for UNICEF, in Kyrgyzstan and Madagascar), a mission to evaluate the adoption system in Vietnam, without overlooking the “Guidelines project for Alternative Care of Children” which was brought

to an end by the UN General Assembly’s reception of them last November.

As far as the basic work of ISS/IRC, 207 requests for information varying in nature were treated during the year (an increase of 40% compared with 2008), 22 country reports were produced or updated and 10 monthly bulletins were published. The new General Secretariat Internet website was also (finally) completed, which was no small feat.

A popular and functional programme

After 12 years of activity, the ISS/IRC programme has found its place in the world of adoption and NGOs thanks to the faithful and precious support of the Central Authorities of the receiving countries which finance us (and whom we thank here once more). It has been possible

to acquire an expertise over the years, enabling professionals around the world to have access to first hand information. The growth of our mandates also shows that the countries of origin are continually requesting support whether it is for information, legislative expertise or to exchange information. There too, the financial commitments of the larger international organisations such as UNICEF or that of receiving countries, remains vital for assuring the accomplishment of these projects. In view of the engagements that are already emerging for 2010, we are confident in the development of these activities.

Inter-country adoptions: trends in 2009

The statistics for 2008 collected in 2009 showed once more a global reduction of the number of inter-country adoptions around the world and the latest figures for the United States (1 October 2008 to 30 September 2009) further support the trend with a reduction of 27% compared with the previous period. If that is confirmed at the global level, we must face the fear of increasing pressure on the countries of origin with the well known consequences. We should further bear in mind that in absolute numbers more than half of the children from inter-country adoptions originate from non-Hague countries.

It is worth noting two other striking trends if we read the monthly bulletins of ISS/IRC 2009 again. Firstly, there is an increase in the number of new adoption laws and/or child protection laws (one or two per month, about 15 per year) as well as an augmentation in the number of countries of origins making decisions aiming to better regulate the procedures of adoption. Such trends are heartening and illustrate well the fact that the protection of children (including adoption) has become a real political and legislative topic which is being translated into action.

The other element that arises from our bulletins, is the impressive number of studies, publications and reports published throughout the year, which not only deal with different aspects of adoption, but also other steps for providing alternative care for children, which illustrate a renewed interest of researchers and professionals in the fields of these delicate subjects.

It is also worth noting that in 2009 the African continent hosted two large scale international conferences, namely the first inter-country conference on providing family care for children held in Nairobi in September and the Forum on Adoption that took place in Ouagadougou in December, which brought together more than 200 participants from 16 countries. No one doubts that these types of events will contribute to giving those active in this continent a place which they merit.

And for 2010?

The Special Commission which will meet in the Hague in June and this will be a major event this year. Several crucial topics will be discussed, some are already undertaking preparatory studies such accreditation questions of the agencies. For its part ISS/IRC is preparing a study of bad practices that are not covered by the Convention.

The question of co-operation in adoption will also be subject of debates. It has become important to better specify the precise nature of this term given all the kinds of initiatives, it covers today. We will come back to this question in a future bulletin.

Challenges will therefore not be missing in 2010. The entire ISS/IRC team hopes you will you approach this New Year with confidence and courage.

ISS/IRC team
February 2010

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.

- **Australia, France and South Africa:** These countries have updated details of its Central Authority.

Benefits of the Certificate of Conformity: A Key Mechanism of THC-93

Following her paper presented to European Central Authorities in Oslo in 2009, Dr Sarah Gerling, Legal Executive Assistant at the German Federal Central Office (GFCO) for International Adoption agreed to prepare an article on the Certificate of Conformity and the experiences of the GFCO under the THC-93 .

Procedure and Form of the Certificate of Conformity

According to the Guide to Good Practice (point 7.2.12) of the Hague Conference “the Article 23 Certificate of Conformity with Convention requirements must be issued by a competent Authority after the adoption is finalised. It should be issued promptly, and the adoptive parents should receive the original certificate, and a copy should be sent to the Central Authorities of both countries. The Authority competent to issue the certificate must be notified to the Permanent Bureau, in accordance with Article 23 paragraph 2.”

A model form for the Certificate of Conformity recommended by the Hague Conference on Private International Law can be found in annexe 7 of the Guide to Good Practice. This model form is only partly used by the issuing authorities in States of origin although all its requirements are indispensable. For example, article 23(1) THC-93 provides that the Certificate of Conformity shall specify when and by whom the agreements were given as per article 17(c) THC-93, an issue that is dealt with by point 5 of the recommended model form.

The idea behind the described approach is to establish a transparent mechanism with less administrative work for processing adoptions in the receiving State. Unfortunately, the German Central Authority has rarely experienced that this procedure has been properly implemented by the participating Central Authorities.

Legal Framework of the Certificate of Conformity – intended purpose

The purpose of the Certificate of Conformity is mainly to facilitate and accelerate the recognition process of foreign adoption decisions. In this respect, the Guide to Good Practice states at point 7.4.11: “The Certificate of Conformity is an important document which provides proof that the adoption is entitled to automatic recognition in all other contracting States.”

One outstanding advantage of the Certificate of Conformity concerns the immigration procedure of the child in the receiving State. The

respective diplomatic mission should be familiar with the document and should generally not need to question the validity of the foreign adoption decision in the contracting receiving State the child is travelling to.

Furthermore, the adoptive child benefits from being automatically considered as legal child of the adoptive parents in the receiving State. For example, by submitting the Certificate of Conformity, the child’s school, insurances or other institutions in the receiving State can rely on the recognition of the foreign adoption decision. Eventually, depending on the adoption law of the State of origin and the citizenship law of the receiving State, the Certificate of Conformity allows the child to obtain the nationality of the adopting parents. Unfortunately in practice, there are many reasons for non compliance and the lack of certificate of conformity.

Reasons for Non-compliance or Lack of the Certificate of Conformity

On the one hand, the non-compliance with Article 23 THC-93 is based on formal reasons (Article 23 (1)) THC-93). For example, the Certificate of Conformity does not contain the participating Central Authorities and/or the date of their consent according to Article 17(c) THC-93 is missing.

On the other hand, the Certificate does not lead to an automatic recognition due to content-related defects. The Certificate is issued although either one or even no Central Authority has taken part in the adoption procedure or the Convention is not applicable to the case according to Article 2(1) THC-93.

Apart from the problem of defective Certificates of Conformity the German Federal Central Authority is regularly in contact with adoptive parents who are not in the position to deliver a Certificate of Conformity because of the following reasons:

- The competent authority (office or court) making the adoption decision is not aware of the Convention’s applicability according to Article 2(1) THC-93. There is a problem with

insufficient knowledge of the Convention's provisions.

- The competent authority (office or court) making the adoption decision has the opinion that the Convention is not applicable to the adoption procedure. For example, some Central Authorities and courts argue that the step-child or relative adoptions or adoptions by their nationals living in the receiving State are not in the Convention's scope of applicability (contrary to the Guide, point 8.6.4).
- The State has not (yet) designated a competent Authority according to Article 23(2) THC-93.

Consequence of Non-compliance or Lack of the Certificate of the Conformity in the German Legal System

The observance of these formal and legal requirements is relevant for the effective application of the Certificate of Conformity as the following example shows. On the basis of German national law, the Federal Central Office for International Adoption shall confirm on request the authenticity and correctness of the Certificate of Conformity. If names of the responsible Central Authorities or accredited bodies as well as the dates of their consents are properly indicated, the adoption procedure can be easily reconstructed and the requested confirmation can be provided promptly. In case the Certificate of Conformity is not issued in compliance with the legal requirements, an intense and troublesome research is required in order to verify that the adoption procedure has been carried out in compliance with the Convention.

The German Federal Central Authority is consistently facing practical problems in terms of the Certificate of Conformity: Even though some of the contracting States' Central Authorities regularly issue proper Certificates of Conformity after the adoption has been pronounced in their State, the German Central Authority has repeatedly received Certificates of Conformity which do not comply with the legal requirements. As the time of issuance is concerned, not all contracting States issue the Certificate of Conformity automatically, i.e., some States issue the Certificate of Conformity only on request, some only after insisting on the issuance. Furthermore, other contracting States of origin have never submitted a Certificate of Conformity so far.

From the German point of view, Article 23 THC-93 as international law has priority over any national provision ruling the recognition of foreign adoption decisions. The undesirable consequence of the lack or non-compliance of Certificates of Conformity in Germany is, therefore, that the foreign adoption decision can not be recognised according to Article 23(1) THC-93.

The question whether the adoption decision, which cannot be recognised according to article 23 THC-93 due to breach with the Convention may, as consequence or nevertheless, be recognised under German national law is highly controversial. As a general rule, whether the adoption can be recognised will be based on whether article 23 is complied with. According to the German Regional Court (Landgericht Berlin) this is the only assessment. Some other courts however, continue the examination and evaluate in a second step if the adoption can, nevertheless, be recognised under German national law.

Therefore in a recent decision of a German Regional Court in Berlin, the recognition of the adoption is generally excluded if THC-93 is applicable and the adoption was nevertheless pronounced without complying with the legal requirements of the Convention. However, other German courts have confirmed the recognition on the basis of German national law in comparable cases.

Even if the court proceeding is concluded with the confirmation of an adoption recognition, the adopting family has to undergo a stressful procedure since the child's civil status remains unclear until the final court decision (i.e., no visa, no passport etc.).

Importance of Certificate of Conformity

It can be stated that the aims of THC-93 can only be achieved and enforced if all contracting States comply with the Guide's recommendation to issue the Certificate of Conformity promptly and automatically after the adoption decision and to send a respective copy to the Central Authority of the receiving State. This approach is even more efficient if the authority responsible for the Certificates of Conformity according to Article 23 is designated on the website of the Hague Conference.

Given the advantages of the Certificate of Conformity and the avoidable problems in case of neglecting its issuance, it is highly recommendable to grant Certificates of Conformity in compliance with the Convention in

order to secure a transparent and smooth intercountry adoption procedure in the best interest of the child.

Note: The Federal Central Office for International Adoption (*Bundeszentralstelle für Auslandsadoption*),

division of the German Federal Office of Justice, is the German Federal Central Authority under the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

PRACTICE

Children's notion of time

For an adult, waiting is something unavoidably linked to the notion of time. Adults sometimes have difficulty putting themselves in children's shoes. However it is indispensable to understand what "the notion of time" means for a child.

Young children do not have the same notion of time as adults. For them it is always tomorrow that the foreseen event will occur. Is it still necessary to have this notion of "tomorrow"! A hungry baby is hungry "right now". Think too about car journeys with young children; no sooner installed and their belt on, you hear a little voice behind you saying: *Are we there yet? Or it is a long way!*

When they are about 3 years old a child understands "yesterday, soon, and tomorrow."

When they are 5, they understand that an hour is longer than a minute. They become aware of their age and realise that they are no longer "babies" and they will never go back to being one again.

To talk about their future means nothing to a child who is 7, 8 or even 9 years of age. I think of the example of parents who worry about their child working hard in school, they tell the child that that they are working "for themselves", for their future, for their "career."

On the other hand, about that age, they begin to understand the idea of the irreversibility of time.

From 8 to 10 time becomes an "objective" idea, where the child begins to differentiate between the events of the past (general history of the world) and their own life story (personal history).

With school, time becomes a feature of learning to be sociable.

The notion of time has for children something to do with separation. A child, who is waiting for his mother, wiles away the time by imagining, dreaming, sucking his thumb or his dummy. If the wait is too long, he suffers. This is the case when we see children turning away or starting to cry, when their mother comes to the crèche or to the nanny's, as if they realise her

absence or bear a grudge against her for not bring there.

Psychoanalyst Sandrine Calmettes–Jean states that the small child lives by his mother's time. He depends upon her rhythm and has to learn little by little to synchronise his own rhythm with that of the adults he counts upon. Little by little, when the time comes, he will sever and break away from this restrictive link in order to integrate himself. He will incorporate time as a more social concept, which often occurs with school timetables.

Expectations and confidence

What do children expect from the adults they have been told want to become their parents? What precisely are they expecting? How do they live through and think about their expectations?

Also, when in some countries, children are encouraged to meet their future parents once and then watch them "disappear" before returning several months later, what sense can a child make of this waiting period or how is this period lived through or thought about?

We are therefore involved in a notion of time that is different.

- In the first case it is waiting for the unknown. Who are these adults? What do they want with them? What is going to happen to them? The waiting and the anxiety (where can they be?) because there is no real display of what is going to happen,
- In the other case, the children know they are waiting for the benevolent people who came to see them once and who are supposed to return.

The matter of confidence plays on their real life story of their waiting period. Are they going to come back or not? Are adults reliable or not?

Here the wait can be both anxious and full of hope.

In any case the length of these expectations can weigh heavily it seems on their future relations. Too much waiting means giving up all hope. Waiting for some one who never comes leads a child to turn away from the object expected. Either he never thinks of it again, or he stops himself thinking of it so as not to suffer from the absence.

Conditions and expectations

The environment in which the child lives has an influence on his perception of this waiting period. Do they talk to him about parents who are going to come? How does he talk about them? In France we know that babies in day-nurseries are prepared during their entire stay or in their foster family for their future adoption.

In the structure in which he lives, the child has learnt what time means, punctuated by appearances and disappearances of people who take care of him regularly, but also by the times of meals, activities like getting up and going to bed. These have helped him to structure himself provided that the routines are repeated and there are not too many changes that would destabilise him.

Moreover, often, time is so scarce that there is little left for the training of management staff. The latter are then sometimes left overwhelmed by having too many children. We then simply meet the basic needs of the child: eating, sleeping, etc.

This is why when these children arrive at their parents home, it is so important to offer them a stable and reliable surrounding, a routine for living habits to allow them to find their new whereabouts and to make them feel safe. There will always be time to change.

That is also why you must know that time is needed to forge the first links. What is woven between parent and child is tenuous and fragile. Becoming a family, becoming a parent, becoming the child of his parents, is much more than the first meeting. It involves sharing, giving attention and listening to one another and to ourselves. The children discover themselves as children, adults find themselves as parents. This can take time and requires patience ... a virtue which for parents is running out all the time.

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SPECIAL SERIES - GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN 

GLOBAL PERSPECTIVES: Care in emergency situations

Chapter 9 of the Guidelines is dedicated to elucidating a number of principles that should be applied to protect the interests of children in need of alternative care in emergency situations.

Wars as well as impromptu natural disasters such as a hurricane, earthquake or protracted circumstances such as a drought have one common element – they create an emergency situation. One inevitable consequence of such situations is the displacement of populations, with children being one of the most vulnerable groups in need of alternative care on a temporary basis and in some cases, permanent solutions.

Article 20 of the UNCRC places a clear obligation on State parties to 'provide special protection and assistance' when children are in need of care. Chapter 9 of the Guidelines elaborate on this obligation in more detail,

focusing on four main issues being the general application of the Guidelines, preventing separation, care arrangements and lastly tracing and family reintegration. These issues as well practical examples of how the latter can be implemented in practice are discussed below.

Application of the Guidelines: Paras 152-153

Chapter 9 makes it clear that the Guidelines in its entirety are applicable to children in emergency situations with the additional necessity of addressing particular issues relevant to this circumstance. An overriding principle for alternative care measures in emergency situations for children is the

promotion of family based options and the use of residential care facilities only as a temporary measure. The Guidelines further emphasise the need for ensuring that the professionals working with children in emergency situations are competent by providing them with resources and training. For example, individual professionals should have access to tools such as the Emergency Field Handbook: A Guide for UNICEF staff which is available in English, French and Spanish. This Handbook provides chronological checklists of what should be done from within the first 72 hours of the emergency, in the upcoming days and months as well as addresses issues of accountability and good governance.

Preventing separation: Paras 154-155

Another principle emphasised in the Guidelines is that any humanitarian aid directed at helping children should not be divisive by 'inadvertently encouraging family separation by providing services and benefits to children alone rather than to families.' This could include privileged options for children in specific areas of education, health and accommodation which are well intentioned but unfortunately result in the child being separated from their family. One way of keeping the family together is by providing solutions in their temporary residences. For

example, as part of their response to the civil war in Sierra Leone, PLAN International built upon spontaneous efforts in internally displaced people's camps to educate their children by initiating a program of educational assistance that was specifically developed for the displaced and traumatised children inside the camps.

Care arrangements: Paras 156-160

When arranging alternative care, the movement of children across international borders and within different regions of the same country should be limited for compelling health, medical or safety reasons. Such movements should be temporary. Professionals working with these children should develop clear plans for the return of the child. Unless such principles are respected, the children become vulnerable to all forms of exploitation and their reunification with their family becomes more difficult. The ISS/IRC welcome's UNICEF approach in emergency situations where registers at border areas are systematically set up to prevent their temporary movements across national boundaries.

Paragraphs addressing Care in Emergency Situations:

- Professionals working with unaccompanied or separated children should be equipped (par 153a)
- Residential care should be as a temporary measure until family based options can be developed (par153c)
- New residential facilities should not be established as a permanent and long term solution (par 153d)
- Every effort should be made to ensure that children are not separated from their parents or primary caregivers unless it is in their best interests (par 154)
- To prevent separation all households should have access to their basic needs and by limiting the development of residential care (par 155)
- Care within communities to be promoted (par156)
- Monitoring of and support to carers should be envisaged as a gate keeping mechanism for abuse and exploitation of children (par 158)
- Children should only be moved to another country except temporarily for compelling health, medical or safety reasons. A clear plan for the child's return should be developed (par 159)
- Definitive solutions should be developed such as *kafalah* or adoption where family reintegration is impossible (par 160)
- Identification, registration and documentation are priorities and should be carried out as quickly as possible (par 161)
- Confidential nature of information should be respected with appropriate storage systems (par 163)
- The validity of relationships and the confirmation of the willingness of the child and family members to be reunited must be verified for every child (par 165)
- No action such as adoption, change of name or movement should be undertaken until all tracing efforts have been exhausted (par 165)

Tracing & family reintegration: Paras 161-166

The Guidelines further emphasise the need to identify and register children as a priority and if necessary find temporary placements for children who are unaccompanied and separated since the majority of these children can be reintegrated into their families. Furthermore no action such as adoption, change of name or movement should be undertaken until all tracing efforts have been exhausted. Both principles have been regularly advocated by the ISS/IRC (See Reviews 10/08 and 1/05). Encouragingly Save the Children is an organisation that has experience in making tracing and family

reintegration a priority. As one example, their efforts in Myanmar since cyclone Nargis in May 2008 continue to bear fruit. The International NGO established over 100 child-protection committees in affected villages to help keep children safe and registered 953 separated,

unaccompanied and missing children for family tracing, 92 of whom reunited with their families

Tools available to support children in emergency situations and implementation of above principles

Resources can be found on the websites of UNHCR, UNICEF and other international aid organisations but these should always be tailored to cater for the specific needs of children in particular countries/situations. When using such tools and applying the principles mentioned in the Guidelines, it is important to remember that the best interests of the child should be the primary consideration. As mentioned in the Bulletin 10/2008, the UNHCR's publication on Guidelines on Determining the Best Interests of the Child as applied to emergency situations is an excellent tool for ensuring this umbrella principle is practically implemented. The ISS/IRC encourages the use of the Guidelines to

fully protect the rights of the children in these precarious situations.

Sources: Emergency Field Handbook: A guide for UNICEF staff
http://www.unicef.org/publications/index_28057.html,
 UNHCR Guidelines on Determining Best Interests
<http://www.unhcr.org/refworld/docid/48480c342.html>,
 UNHCR resources <http://www.unhcr.org/publ.html>,
 UNICEF resources
<http://www.unicef.org/emerg/files/responsetodisplacedchildren.pdf>,
http://www.unicef.org/emerg/index_resources.html,
 PLAN, After the Cameras have Gone
<http://www.plan-international.org/resources/publications/disasters/afterthecameras/>
 Save the Children
<http://www.savethechildren.org/emergencies/asia/myanmar/Myanmar-Cyclone-1-Year-Report-05-2009.pdf>

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Brazil:** *XXIII Congreso de la ABMP y II Congreso Latinoamericano de Magistrados, Fiscales y Defensores Públicos de la Infancia y de la Juventud (XXIII ABMP Latin American Congress of Magistrates, Prosecutors, Child and Youth Public Defenders*, Brasilia, 5-7 May 2010. For more information: <http://www.eventoall.com.br/abmp/>
- **France:** **a)** *Attachment et psychanalyse (Attachment and psychoanalysis)*, COPES, Paris, 8-9 June 2010. **b)** *L'accueil de l'enfant en adoption – Soutien a la parentalité (Welcoming a child in adoption – parenting support)*, COPES, Paris, 19-21 May. For more information: www.lecopes.org.
- **United Kingdom :** **a)** *Using the attachment style interview in Adoption and Fostering, Children and Families*, London, 27- 29 April and 10 June 2010. For more information www.childandfamilytraining.org.uk **b)** *Somebody else's child*, BAAF, London, 15 March 2010 and Manchester 26 March 2010. For more information www.baaf.org.uk
- **United States:** *Adoption and Addiction- Silent Partners*, Beth Israel Medical Center, New York, 14 May 2010. Contact: smcquirk@chpnet.org

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. See Activities.

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