

**Monthly Review N° 9/2010  
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**EDITORIAL**

**Mothers of origin, those forgotten by intercountry adoption**

*This bulletin offers mothers of origin a special position, by highlighting their difficult experiences and opening up ways of thinking ahead by providing them high quality support.*

If research on adopted children and the creation of the bond with the adoptive family are numerous, such is not the case for biological mothers of children. They are, however, the leading ladies in the process of adoption, since they are where it all begins. The recent publication of research on Ukrainian mothers has given us the chance to return to this critical and too often ignored question (see Ukrainian research on page 6).

**Why such lack of approval and even ostracism?**

A first response might be sought after in the perception of intercountry adoption itself: too simple a vision that only wants to see help for children in distress and which hides its origins in order to consciously or not, to reassure those adopting that the steps they

have taken are correct. Certain recent enquiries have, in any case, largely contributed to changing this idealistic picture. Whether it involves the Terre des Hommes' report on Nepal, ABC News report on in Ethiopia and the case of Ruc children in Vietnam (Review 11-12/2008) when mothers are allowed to speak, their words convey only shame, unhappiness and tears.

Although these days, the legislative advances in this matter are worth noting since the Hague Convention of 1993, as well as numerous domestic legislation recognising the rights and the interests of these women – but now we can also ask about what happens in practice? Can one claim that a real choice is offered to these mothers to keep their child? What is at stake is the child's future

and the meaning itself of any adoption, based on the mother's final decision, taken while she was well informed, with full understanding and free from pressure.

### Easy preys...

Mothers of origin are at the heart of social and financial pressure. They are often easy preys of certain go-betweens, organised crime or adoption agencies. As for the latter, their role sometimes turns out to be (at least) ambiguous, especially when they are at the same time welcoming mothers of origin and placing their children for adoption. An obvious conflict of interest occurs particularly at the financial level: as the mothers feel themselves indebted to the institution which has made funds available to them which they are not able to reimburse; their consent could be obtained by deceit if they are illiterate, etc. These situations are unfortunately not unusual and result in life-long abusive and traumatic separations.

### The responsibility of society and professionals

According to the countries where they live, mothers of origin must also suffer moral disapproval: coming from unfavourable socio-economic environments, they are subjected to strong cultural, family, and religious pressures (for example by rejecting pregnancies that are out of wedlock). The way that society and professionals look at them is, consciously or not, largely accusatory and judgmental. How does one speak freely in such conditions? The responsibility weighs heavily on professionals who accompany these women and is therefore essential. A large part of their decision rests upon the professionalism, multidisciplinarity and human quality of the staff who surround them. The question arises as to the capacity of the latter to encourage these mothers to express their feelings freely in relation to the circumstances of their pregnancy as well as the fears that surround them and her possible rejection of the child. To encourage mothers to open their hearts can help them become the mother of a child

whose existence she becomes aware of both at the physical and psychic levels and to resume their responsibility for his life plan whatever it may be. With that in mind a method of intervention based on specific criteria (for example the length of time they will be given assistance before, during and after the final decision; individual accompaniment, the implementation of basic and social rights such as access to housing, employment, nursery schools etc.) will allow them to respond to the mothers' needs at each stage of the programme of assistance by emphasising their own experiences and by taking into account how these evolve as the baby gradually becomes more real. Such is the challenge of the practice.

### Towards a real place for mothers of origin in the decision making process?

The attentive observation of intercountry adoption shows how countries are becoming ever more aware of preventing abandonment by supporting mothers of origin as closely as possible to their needs and their reality, a principle clearly set out in the UN Guidelines on Alternative Care of Children (Section IV). Support programmes have been set up for example in Chile (where they create nurseries in schools and thereby encourage adolescent mothers not to give up their studies) and in Romania (see Review 5/2008). There are fewer support programmes provided from the outset of the mother's pregnancy.

Claiming to offer mothers of origin a real choice of keeping their child proves to be a delicate and complex task to which countries should continue to persevere. If this is the situation for mothers of origin, should we not also talk about fathers of origin, who are often quite absent from the discussion about intercountry adoption. What space could be kept for them in the process of decision making? A question that might inspire new research ...

ISS/IRC team  
September 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](http://hcch.e-vision.nl/index_en.php?act=conventions.authorities&cid=69).

- **Ireland:** This country has ratified THC-93 and designated its authorities
- **Romania :** This country has updated contact details Central Authority

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## BRIEF

### **Nepal: USA last country to suspend intercountry adoptions due to multiple suspicions**

The US Department of State has recently published a joint statement on intercountry adoptions in Nepal, stating that “the interactions with the Government of Nepal and its efforts to review and investigate numerous abandonment cases, including field visits to orphanages and police departments, have demonstrated that documents presented to describe and “prove” the abandonment of children in Nepal are unreliable. Civil documents, such as the children’s birth certificates often include data that has been changed or fabricated. Investigations of children reported to be found abandoned are routinely hindered by the unavailability of officials named in reports of abandonment. Police and orphanage officials often refuse to cooperate with consular officers’ efforts to confirm information by comparing it with official police and orphanage records...Without reliable documentation, it is not possible for the United States government to process an orphan petition to completion.

Source: <http://www.state.gov/r/pa/prs/ps/2010/08/145767.htm>

### **RWANDA: Temporary suspension of intercountry adoptions in view of implementing THC-93**

The Ministry of Gender and Family Promotion has temporarily suspended intercountry adoptions from 31 August after recently signing the THC-93. The Government has specifically stated that no new adoption applications will be accepted from this date and pipeline cases will be processed as per normal.

Source: [http://www.migeprof.gov.rw/index.php?option=com\\_content&task=view&id=183&Itemid=131](http://www.migeprof.gov.rw/index.php?option=com_content&task=view&id=183&Itemid=131)

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## LEGISLATION

### **ECHR: Two recent rulings address the status of a foster family and the age of the prospective adopter**

*The European Court of Human Rights offers an interesting perspective on the issue of the maximum age to adopt and on the legitimacy of a foster family’s claim to a right to adopt.*

**T**he European Court of Human Rights (ECHR) recently published two interesting rulings in the context of adoption. In the judgment *Moretti and Benedetti v Italy* of 27 April 2010, it condemned Italy for the violation of article 8 (protection of private and family life) on the grounds that the Italian authorities had not examined the adoption request submitted by the applicants, who were at the time, the child’s foster family.

In the second judgment, *Schwizgebel v Switzerland* of 10 June 2010, the ECHR considered that Switzerland had not violated article 14 (discrimination) together with article 8, when they did not allow the applicant to adopt a second child, who was 47 years old and already a mother of an adopted child. It justified its decision by reiterating that there is no unanimously-accepted rule relating to the limits and age differences to adopt.

#### **Foster family and the right to adopt**

Among its arguments in the first judgment, the ECHR maintained that although the right to adopt is not guaranteed by the European Convention on Human Rights, States are not exempt from their positive obligation to allow the creation and development of family ties. After having also reiterated that the best interests of the child must be a ‘*primary consideration*’, the ECHR felt that the first instance courts’ non-respect of the law and procedural rules breached article 8.

According to the ISS/IRC, this judgment must be read with caution; indeed, even though the ECHR recalls that it does not guarantee the right to adopt as such, it is worth emphasising that a foster family, who wishes to adopt a fostered child, must always adhere to the adoption procedure. Indeed, these are two very distinct forms of care, so that a foster family must be subject to an

evaluation and preparation like any other prospective adopter. Finally, the child's consent must be validly obtained.

### **Maximum age to adopt: source of discrimination?**

In the judgment involving Switzerland, the applicant claimed to be a victim of discrimination '*in comparison to women, who can nowadays have biological children at this age*'. However, the Court recalled that the State has no influence on a woman's possibility or not to have biological children. Furthermore, in the absence of a harmonised principle relating to the maximum age and age difference, the judges refused to qualify this decision as discriminatory.

With regards to the age issue, the ISS/IRC – which has already addressed this delicate issue in the past (Editorial of Monthly Review N° 4/2005) – wishes to go further than the ECHR's decision, by stating that each State should have legislation on the maximum age and maximum age difference to adopt. Given that adoption procedures are increasingly lengthier these provisions must be called for

as a guarantee, among others, for the respect of the children's interests.

### **What about the best interests of the child, who has already been adopted?**

In relation to the best interests of the child to be adopted, even though the Court reiterates, in its judgment in *Schwizgebel v Switzerland*, that domestic decisions are not only based on the latter, but also on that of the child, who has already been adopted. We regret that this argument has not been further developed and clarified. Arguably, the interest of the already-adopted child is a line of reflection, which might be useful to further examine when several children, who are not siblings are adopted.

Source: (only available in French)  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=moretti%20%7C%20benedetti&sessionid=59930336&skin=hudoc-fr> and  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=moretti%20%7C%20et%20%7C%20benedetti&sessionid=59930163&skin=hudoc-fr>

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## INTERDISCIPLINARY RESOURCES

### **Additional efforts are necessary to better integrate the issue of children's health into all stages of the adoption procedure**

*The ISS/IRC and the French Service de l'Adoption Internationale are publishing this study on the place of the child's health in the adoption process. A synthesis of the results is presented and suggestions have been formulated for the various stages of the procedure.*

**I**n the current context of intercountry adoption, which is witnessing an increase in the number of children with concerning medical problems, the *Service de l'Adoption Internationale* [International Adoption Service, SAI] of the French Ministry of Foreign and European Affairs and the ISS/IRC have jointly undertaken a study, which focuses on the place given to issues linked to the child's health in the adoption process<sup>1</sup>.

In order to have as comprehensive overview as possible, information based on practice has been compiled through a questionnaire as well as by examining several systems that have been implemented worldwide. As the topic is vast, the study has focused on the measures implemented by receiving countries, given that their

responsibility is particularly at stake in relation to this issue. The perspective of the countries of origin is also included thanks to contributions received from several of them.

### **Suggestions for each stage of the adoption**

The study is organised according to the typical outline of an adoption procedure. The first part addresses the issue of the children's health during the pre-adoption phase and essentially focuses on the manner in which the adoption applicants are informed and prepared when they initiate the procedure. The second part deals with the support to the applicants during the procedure, once they have been matched with a child and when they are in the country of origin. It also addresses the modalities and quality of the child's health check-up. The last part focuses



on the child's health care upon his arrival in the receiving country and afterwards.

Each part provides a synthesis of the results as well as the main conclusions, and offers suggestions designed to strengthen or improve the situation. At the end of the document, a factsheet summarises the suggestions formulated through the use of a good practice.

### **Pre-adoption: Fairly widespread preparation of and support to applicants**

The study's first results point out that the preparation and support of parents prior to the adoption are quite well integrated in receiving countries. Even though the organisation of such varies from one country to another, group and/or individual sessions and/or consultations addressing issues linked to the adopted children's health are offered in the majority of countries and are compulsory in many cases.

In addition, at the time of the matching proposal, there is often an evaluation of the child's medical file. Given that it is a crucial moment in the adoption process, the study highlights that it is imperative that it be managed and supported by professionals, in order to enable the parents to assess the extent of the situation as well as assess whether they will be able to care for this particular child with all the therapeutic constraints that will then be necessary. Strict ethics must, nonetheless, be respected in order to prevent this exercise from being perceived like some form of assistance in the selection of the 'best possible child'.

### **Support to the applicants and children in the country of origin: weak element in many cases**

Medical support in the country of origin after matching is more random. At this stage, families are often left alone in relation to the medical aspects of the adoption, even when they are accompanied by an accredited adoption body. In this context, the study emphasises that independent adoptions include an additional risk, as the applicants may lack the resources to assess the proposal they are offered. Even though these remain authorised, the applicants should have access to a list of medical doctors, whom they may contact should they need to do so. This list could be available at the Central Authority or the Embassies. On the other hand, the accredited adoption bodies

should systematically identify one or several trustworthy local medical partners.

In order to restrict abuses as much as possible, it is also important for the issue of medical expenses and the coverage of their payment to be supervised. This issue is not transparent in many countries, as proven by the very diverse manners in which expenses, which are more or less linked to the health aspects of the adoption, are invoiced. However, it is essential for a quality framework to be able to assist the applicants (and the receiving countries) in determining what is justified and what is not. Ideally, the country of origin should establish a list of acceptable costs and set the official rates.

### **Post-adoption: The child's medical follow-up is globally weak and not very specialised**

Post-adoption medical follow-up, including upon the child's arrival, is also quite weak. Even though it exists in some form or another in most of the countries, it is nearly never compulsory, and still under-specialised in adoption matters. The study recommends a medical check-up be carried out promptly and systematically upon the child's arrival, in order to avoid any potential misunderstanding, respond to urgent problems and adapt the care, if necessary.


Afterwards, in order to respond to the characteristics of the adopted child, specialists should be involved in the care. Given that such an offer could turn out to be expensive, difficult and lengthy in its implementation, it is suggested that there be some reliance on the existing available resources in order to organise true multidisciplinary networks of professionals, who are specialised in adoption (psychologists, child psychiatrists, social workers, paediatricians and other health professionals). The latter could act as reference professionals, towards which any actor treating an adopted child – including general practitioners and paediatricians, who are not specialised in adoption – may turn to, should there be requirement of it.

Whilst the children's care and support to the adoption applicants have clearly improved over the past years, consistent efforts must still be made to further structure the 'health-adoption route', by focusing on the stage between the matching and the issuance of the visa, which is currently the least framed

from a medical perspective. All the countries still have efforts to make in this matter and inter-state cooperation, as understood in the THC-93, should be further called upon in order to achieve the necessary advances.

<sup>1</sup> *La place de la santé de l'enfant dans le processus de l'adoption* [The place of the child's health in the adoption process], SAI and ISS/IRC, September 2010. It may be downloaded in French, English and Spanish from the ISS website at: [www.iss-ssi.org/2009/index.php?id=42](http://www.iss-ssi.org/2009/index.php?id=42)

## **“Mothers like no other. Exclusion, marginality and child institutionalisation in Transcarpatia (Ukraine)” : new research about mothers of origin.**

*The following article was prepared by Mrs Mykytyn-Gazziero on the basis of her doctoral research on mothers of origin in Transcarpatia carried out from 2005 to 2010 under the guidance of Fenneke Reysoo (IHEID\*, Geneva) and was supported by the Third World Lauris Foundation and the Ernst and Lucy Schmidheiny Foundation.* 

**O**lha Mykytyn-Gazziero is a researcher in development studies, with five years of experience in humanitarian activity in Ukraine. She published her research in May 2010 (1), which was based on a study among biological Ukrainian mothers confronted with the complicated and painful decision of abandoning their child. She has decided to generously share with our readers of this Monthly Review, the context in which she has inscribed her research, and the reflections that emerge from it.

### **The Ukrainian context**

Since 1996, after Russia and Kazakhstan, Ukraine has become the third country of the ex-USSR, to be solicited for intercountry adoptions (2). Although the Ukrainian Government endorses an open policy in matters of intercountry adoption, it has not signed nor ratified THC-93. The Legislative system is progressively adapting itself, albeit slowly to intercountry demands(3). In 2008 the Ministry of Family of Ukraine estimated the number of children deprived of parental care amounted to 102 924 (most of whom have grown up in institutions, although the share of "real" orphans may be less than 10%).

### **A new kind of research**

In spite of growing attention to the abandonment and placement of children in institutions in Ukraine, few studies have focused on the experience and the circumstances that lead mothers to relinquish their children in the charge of the State. In the rare studies that exist, the mothers are represented by means of institutional talk where their behaviour is described as

“motherhood outside the norms” (deviant motherhood). At the international level, we note that the system of public assistance, established in the countries of former USSR, encourages the separation of mother and child (4).

Taking these considerations into account, my research is innovative and new as it puts in perspective the problem of the mothers' point of view rather than that of institutions.

### **Who are the mothers confronted with the abandonment of their child?**

By means of qualitative research it has been possible to gather and analyse the testimonies of mothers involved in close contact with the local social context. It made it possible to grasp the complexity and the multidimensional character of their decision-making up stream leading to the abandonment of the child. Although each case was different, the thread that cuts through the decision making process is the absence of real choice conditioned by the accumulation of social and family difficulties.

My research has explored two tracks of thought: on one hand it has given the floor to mothers by listening to their motives, strategies, and their posture; on the other hand it adds to the analysis of the structural mechanisms which are beyond their sphere of influence. Confronted by the birth of their child, certain mothers see their social situation rapidly worsening, and they find themselves without support or remedy. Apart from some mothers who, in fact, slide towards exclusion, there are those who find themselves already in the margins that have been created by a bureaucratic system, inherited from the Soviet period and a neo-

liberal economic system. None of the mothers interviewed have been able to profit from the State's social aid in spite of a current social policy of benefits for childbirth.

Most of the mothers have come to terms with their pregnancy, and the birth of their child in what is often a hostile family and social environment before appealing to the institutions. At the end of a process of coming and going, which can drag on for several months, the child falls once and for all under the guardianship of the State. In practice, even a temporary placement of the child in an institution is created in such a way that it does not in the long run allow physical or legal ties between the mother and the child to be maintained.

This research carried out in Ukraine highlights the possibility of building steps to really apply the principles of The Hague Convention: from the prevention of child abandonment to the adequate social accompaniment for mothers in difficulty.

\* The Institute of higher international studies and development in Geneva.

<http://graduateinstitute.ch/>.

(1) Research can be freely accessed at the library of the IHEID and consultable in the network of university libraries.

(2) Inter-country adoptions in Ukraine (marriages out of wedlock): in 2006 - 1092 children, in 2007-1670 children (the Ministry of the family, <http://www.ditu.gov.ua/en/>).

(3) Cantwell N., Lammerant I., Martinez-Mora L. (2005) Assessment of the adoption system in Ukraine, Geneva ISS-IRC.

(4), UNICEF (2006), Understanding Child Poverty in SEE/CIS. Social Monitor 2006, Florence, UNICEF/Innocenti Research Centre.

On this same theme, see: "Once a mother. Relinquishment and adoption from the perspective of unmarried women in South India", research published in 2007 by Dr. Pien Bos, Radboud University Nijmegen, the Netherlands, [http://www.ru.nl/cidin/about\\_cidin/staff/virtua\\_map-all/bos/](http://www.ru.nl/cidin/about_cidin/staff/virtua_map-all/bos/); "Depression problems and coping mechanisms of parents who relinquished their children for intercountry adoption", theses published in 2009 by Wondwossen Teshome, University of Addis Ababa, Ethiopia (Electronic version available at ISS/IRC).

## New Latin-American report on the situation of children without parental care or at risk of being deprived of it

*The Red Latinoamericana de Acogimiento Familiar (Latin-American Foster Care Network, RELAF) has launched a publication, jointly with SOS Children's Villages (Latin-America) with a view to raising the visibility of the reality of thousands of Latin-American children, who live without the care of their parents.*

In July 2010, a new Latin-American report was published entitled "*The situation of children without parental care or at risk of being deprived of it in Latin America: contexts, causes and responses*". The report is based on information compiled from domestic reports from 13 Latin-American countries, which were methodically analysed by a team of specialists. Parallel to this report, a dissemination paper was also drafted in order to facilitate the reading of the information and make it accessible to all concerned actors. This initiative is part of a series of regional actions aimed at promoting compliance with the right of every child to a family life, in particular via the implementation of the United Nations Guidelines for the Alternative Care of Children.

### Regional quantitative & qualitative analysis of the situation of children without parental care

Based on the data gathered from the field, the report offers a social and demographic panorama of the countries reviewed and provides an analysis of the various causes, which lead to the separation of children from their family such as, poverty, migration, malnutrition, level of education, armed conflicts. In relation to each of these causes, it points out the rights of children that are being violated (right to non-discrimination, right to education, right to protection, among others) and offers an estimate of the groups of children affected after having outlined their profile. Furthermore, among the main characteristics of the families, which these children come from include, *inter alia*, single-parent families, families in which situations of

violence are developing, those that live in disadvantaged areas, migrant families and those from indigenous populations. Additionally, the report identifies the group of actors responsible for securing the rights of children and adolescents in Latin-America, ranging from the families to the highest international bodies. It defines the role of each of them by emphasising that the States are those mainly responsible for monitoring and securing effective compliance with the rights of all children and among them, the right to growing up in a family environment.

### A call for action

Whilst the report recognises the important legislative progress that has been made in the region with regards to the recognition of children as subjects of rights, as well as in relation to the value granted to the family of origin, the report highlights that these have not yet, sufficiently, become a reality in practice. The report suggests, in its conclusions, identifies the main shortcomings analysed throughout the study in order to create new lines of research and action. For example, the lack of qualitative as well as quantitative information on children without parental care and the need to invest in protective factors, which generate the permanency of children in their places of origin, such as the practices of community care for children as undertaken by indigenous

populations. The report calls governments in the region to address the problems which cause the separation of children from their families, through public policies that solve the inequalities that characterise the region. In particular, the report appeals for the establishment of social programmes that focus on strengthening the family group, as well as the creation of family-type care alternatives for the large numbers of institutionalised children. By stating the high number of orphaned children who are institutionalised, the report advocates for the placement of younger children with adoptive families and development of small-group units with support for adolescents.

The ISS/IRC welcomes this regional report, which is a valuable tool for the promotion and defence of the rights of children without parental care or at risk of being deprived of it. It hopes that this will be an opportunity for new research to be undertaken on the highlighted shortcomings and for the countries to implement their legislative pledges in practice.

<sup>1</sup> *Situación de la niñez sin cuidado parental o en riesgo de perderlo en América. Contextos, causas y respuestas.* The report is available in Spanish, the dissemination paper in Spanish, English, and soon in Portuguese. See: <http://www.relaf.org>.

### FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **France:** Les adoptions tardives: aspects actuels, psychologiques, juridiques et cliniques, (Late adoptions, psychological, legal and clinical aspects) COPES, Paris, 22 to 26 November. For more information: <http://www.lecopes.org/index.php?p=sm10-46>
- **Switzerland :** Master of advanced studies in Children's rights, IUKB, deadline for applications: 31 October, For more information: [www.iukb.ch/mcr](http://www.iukb.ch/mcr)
- **United Kingdom:** The heart of the matter: Foster carers and adoptive parents making the difference, BAAF, London, 29 November 2010. For more information [www.baaf.org](http://www.baaf.org)
- **USA:** The 6th Biennial Adoption Conference: *Open arms, open minds: the ethics of adoption in the 21st century*, St. John's University in collaboration with Montclair State University, New York, 14 to 16 October. For more information <http://adoptioninitiative.org/wordpress/>

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[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.

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