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EDITORIAL 

Figuring out the child's future when s/he is sold for adoption

This editorial examines the complicated issue of determining the child's future placement when an independent body finds that s/he has been bought by his/her adoptive parents, who on the one hand can offer a stable and loving family but on the other hand have committed a crime against the child.

When children are sold for exploitative purposes (the definition of trafficking) such as prostitution or domestic slavery, child victims are automatically removed from the care of the purchasers as perpetrators of the crime. When children are sold for the purpose of providing them with a loving and caring adoptive family, the response is not so equivocal.

The degree of culpability can vary widely. Some prospective adoptive parents (PAPs) can unwittingly adopt children who have fraudulently been declared 'adoptable' whereas others have full knowledge that they are paying for a child. In general an independent body will have to make a finding about the degree of PAPs responsibility. Based on this finding and other factors discussed below, a decision will have to be made about the child's future. In this

context an examination of international standards and multifaceted deliberations are necessary to determine the best interests of the child.

Legislative considerations

If the authorities make a finding that a child was bought by adoptive parents (ie: payment over and above regular expenses which are permissible), then this would not only be against the principles embedded in THC-93 but also the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC). Article 2(a) OPSC defines the sale of children as 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration'.

To counter such acts countries such as Belarus, Burkina Faso, Ecuador, Fiji, Georgia, Ireland, Kenya, Poland etc have introduced legislation. However, the UN Committee on the Rights of the Child has raised concerns that the sale of children in adoption practices as required by article 4 OPSC has not been adequately addressed in the national laws of countries such as Bulgaria, China, USA, Korea and Ukraine etc. ISS/IRC believes that it is essential that countries not only have laws prohibiting the sale of children for the purpose of adoption but also that the latter are well implemented to ensure the maximum protection of children. Appropriate sanctions for such behaviour should also exist.

Whilst defining the sale of children as a crime, international law does not however expressly treat the issue of the child's future, during and after the finalisation of the criminal proceedings. International law simply states that whatever alternative care is identified for the child, his/her best interests must be the paramount consideration. In this context ISS/IRC stresses the importance of dealing with each child as an individual and the use of a multi-disciplinary team to make an assessment about suitable alternatives having regard to the impact on the child of being a victim of a crime and maybe having a compensation claim in the future.

Suitable alternatives

It is vital that an evaluation is made about the likely impact of altering the child's placement from the adoptive parents. The necessity of change will depend on the length of time that the child has been with the parents, the strength of ties that have been forged, time needed to find another placement etc.

Rules should not be in place to say that once a child has been with a family for a certain period, say 2 to 3 years, the child should automatically remain with the family. Such rules can be used by adoptive parents to bring cases as a 'fait accompli' to authorities who have no other option but to rubber stamp the adoption, even when the standard regulations have not been followed.

For intercountry adoptions, a decision may also have to be made about whether the child should be returned to his/her country of origin or matched with another family. The country of origin should ideally be consulted at this point.

Of course the outcome of criminal proceedings on the prospective adoptive

parents' future capacity to care for the child must also be taken into account. In a recent case where a Spanish couple was imprisoned for 1 ½ years for paying a Romanian family 1 500 euros for a child, the possibilities for the parents continued care for the child are clearly impossible. However in other situations, such as the Bulgarian baby case in France, the parents were sanctioned and permitted to continue to care for the children as authorities decided that strong ties had been built and it was in the best interests of the child to remain with the adoptive parents.

Child as a victim

A multi-disciplinary team will further have to gauge the consequences for the child growing up as a victim of being sold. This should take into account the child's resilience in response to this truth. Victims of this crime sometimes mention physical symptoms such as sleeping or eating disorders whilst others cite mental conditions such as fear and anxiety, depression, mood changes, guilt and shame and cultural shock from finding themselves in a strange country etc. Organisations such as La Voix des Adoptés have been set up to provide adoptees with the opportunity to discuss such experiences and more (see Review 5/09).

The team will have to assess the future capacity of the parents to nurture a child who may exhibit such symptoms, with the knowledge that they may have contributed to the child's suffering.

It is essential that the team also consider the child's development process. At some point in the future, it is probable that the child will question his/her parents about the adoption circumstances. What would be the impact on the child discovering that s/he was bought for a certain sum? How will the parents explain the child's origins?

The multidisciplinary team will also have to consider the impact of the child's immediate social environment on him/her (eg: within kinship family, school and among neighbours) of being identified as a bought child. This depends on how much attention the media has paid to the case and whether the local community is aware of the identity of the child and adults involved.

Possible award for damages

Another consideration of whether a child should remain with adoptive parents is the likelihood of an eventual civil or administrative suit against the parents. Article 9(4) OPSC

states that 'states parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible'. If in the future the adoptive child is likely to undertake legal proceedings against their adoptive parents who paid for them, then there may be a conflict of interest for the child to remain in their care.

Complicated and compound considerations

Whether a child who has been bought for the purpose of adoption should remain in the care of the adoptive parents is not clear cut. All decisions must be made with the child's best

interests as the paramount consideration. A careful assessment must be made of the long term future impact of the crime and parent's capacity to care for the child.

In this situation the Central Adoption Authorities of receiving countries must also find a balance between respecting the private life of adoptive family and the needs of countries of origin to know the outcomes of their children. In a spirit of co-operation and respect of biological parents, it is important that some information about the bought child is communicated to the central adoption authority of the country of origin as a minimum.

ISS/IRC team

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.

- **Brazil** : This country has updated the contact details of its central authority

LEGISLATION

Liberia: New regulations aim to improve frail alternative care conditions

The Government has drafted new regulations for the appropriate use and conditions of alternative care for children, which promise better protections for children once fully implemented.

In the bleak context of recovering from the devastating effects of civil war, about 270,000 orphaned children and the critical findings about the alternative care system in research by UN Mission in Liberia (UNMIL) as well as UNICEF and Holt International, the Liberian Government has taken the first steps to make children deprived of their family a priority with new regulations. The '*regulations for the appropriate use and conditions of alternative care for children*' (regulations) launched in 2010 mirror in many ways the Guidelines for the Alternative Care of Children, providing multiple innovations and protections, a handful of which are discussed below.

Addressing weakness in how institutions operate

Research by UNMIL in 2007 noted grave concerns about orphanages in the country many operating without any supervision, pinpointing breaches of basic rights, including *inter alia*, the right to an adequate standard of living, food security and health.

The regulations address some of these concerns with specific provisions about the

registration of institutions, minimum standards for their operations as well as the introduction of an independent complaints mechanism. The section on the provision of adequate and competent staff is particularly helpful, especially the minimum ratio of caregivers to children excluding support staff. For example, the ratio for children below 5 years is 1:3, for children aged 5-12 years is 1:5 and for children 13-17 years is 1:10.

Preventing separation and special care of children

The research mentioned earlier has also found that the great majority of children in the orphanages have biological parents, with the main reason for their separation being poverty. To address this phenomenon, the regulations state that 'financial and material poverty alone, or conditions directly and uniquely imputable to such poverty should never be a justification for the removal of a child from parental care...'. ISS/IRC believes that if this provision is coupled with active efforts to address poverty, children's rights to grow up knowing their parents will be better protected.

Where an institutional setting is the only option, the new regulations include a duty to devise individual plans for every child and the duty to allow contact with parents, guardians and relatives. Records should also be kept complete, up to date and in a secure manner. Such provisions will help combat the problem of orphanages not having individual files as well as assist with future searches about the child's origins. The section on community involvement in providing solutions and support for after-care should also facilitate the child's re-integration into the wider society.

Early days ...

It is still premature to say whether these regulations are being effectively implemented

in practice and biological families are in fact given ample support to maintain contact with their children. Much will depend on political will, how stakeholders work together and what resources are dedicated to meeting the regulations goal of 'de-institutionalisation'. As stated previously in our Reviews, whilst 'de-institutionalisation' is a noble goal, it is important that other viable and suitable alternatives to institutional care be developed.

Note: An electronic version of the regulations is available at the ISS/IRC. *Research:* (1) An Assessment of Inter-country Adoption Laws, Policies and Practices in Liberia (2007), UNICEF and Holt International and (2) Human Rights in Liberia's Orphanages (2007) UNMIL

PRACTICE

2009 Statistics: Few significant changes

The compilation of the numbers published by the main receiving countries paint a picture of 2009, which confirms the general trend which started in 2004, i.e. a global decrease in the number of intercountry adoptions and the top five countries of origin continuing to be head of the list.

Table n°1

	2002	2003	2004	2005	2006	2007	2008	2009
USA ¹⁾	20 099	21 616	22 884	22 728	20 679	19 613	17 433	12 753
Italy	2 225	2 772	3 402	2 874	3 188	3 420	3 977	3 964
France	3 551	3 995	4 079	4 136	3 977	3 162	3 271	3 017
Spain	3 625	3 951	5 541	5 423	4 472	3 648	3 156	3 006
Germany	1 919	1 720	1 632	1 453	1 388	1 432	1 251	1 025
Canada	1 926	2 180	1 955	1 871	1 535	1 712	1 208	605
Sweden	1 107	1 046	1 109	1 083	879	800	793	912
Netherlands	1 130	1 154	1 307	1 185	816	782	767	682
Denmark	609	522	527	586	448	429	395	498
Switzerland	558	722	658	452	455	394	497	444
Australia	561	472	502	585	576	568	440	441
Norway	747	714	706	582	448	426	304	344
Total	36 938	39 670	43 142	41 921	38 285	35 818	32 834	27 691

Sources: CIC (Canada), Department of Family Affairs (Denmark), Service de l'Adoption Internationale (France), Commissione per le Adozioni Internazionali (Italy), Dutch Ministry of Justice (The Netherlands), Bufdir (Norway), Ministerio de Trabajo y Asuntos Sociales (Spain), Swedish National Board of Intercountry Adoptions, MIA (Sweden), Autorité centrale fédérale en matière d'adoption internationale (Switzerland), Statistisches Bundesamt (Germany), U.S. Department of State (U.S.A).

¹⁾ Between 1 October 2008 and 30 September 2009.

Once again, the year 2009 confirms that the global number of intercountry adoptions continues to decrease: 15% less than in the previous year (35% less than in 2004, the

record year). As reflected in the table above (*Table N°1*), the United States is the country that has experienced the biggest decrease, mainly as a result of the suspension of procedures in Guatemala, Vietnam and

Cambodia, and due to a considerable slowdown of adoptions from China. Canada has also seen its numbers decreasing by half. With regards to the other receiving countries, it is noticeable that Italy, France, Spain, the Netherlands, Australia, Switzerland and Norway have, more or less, maintained the levels of the previous year. Germany has decreased by approximately 15%, whilst, on the other hand, Denmark (+26%) and Sweden (+15%) have noticed increases.

With regards to countries of origin, and on the basis of the available data (the data is not easily comparable, as some receiving countries only publish numbers relating to their top countries of origin, whilst others provide comprehensive lists), we have addressed the numbers by adding those of the 12 receiving countries mentioned in Table N°1 in order to highlight some of the main trends (*Table N°2*).

	country	Total		country	total
1	China	4589	26	Lithuania	85
2	Ethiopia	4010	27	Mexico	84
3	Russia	3534	28	Cameroon	79
4	Ukraine	1411	29	Uganda	73
5	South Korea	1362	30	Peru	72
6	Colombia	1287	31	Ivory Coast	72
7	Vietnam	1146	32	Jamaica	65
8	Haiti	1086	33	Chile	55
9	Guatemala	768	34	Bolivia	52
10	India	582	35	Cambodia	51
11	Philippines	453	36	Congo	40
12	Brazil	427	37	Somalia	40
13	Poland	378	38	Tunisia	38
14	Taiwan	366	39	Slovakia	33
15	Kazakhstan	365	40	Madagascar	32
16	Thaïland	246	41	Sri Lanka	29
17	South Africa	182	42	Burkina Faso	29
18	Nigeria	156	43	Armenia	27
19	Bulgaria	141	44	Belarus	26
20	Mali	121	45	Morocco	25
21	DRC	119	46	Djibouti	24
22	Ghana	107	47	Kenya	22
23	USA	106	48	Czech Rep.	22
24	Latvia	99	49	Pakistan	11
25	Hungary	97	50	Swaziland	8

The compilation of data raises the following issues. First of all, the leading group remains dominated by China, Ethiopia, Russia, Ukraine and South Korea (i.e. one out of five is a

Contracting State to the Convention). Then come Colombia, Vietnam, Haiti, India and the Philippines (i.e. 40% are Contracting States, excluding the case of Guatemala). In relation to this first group, and in the light of the numbers of the previous years, it is noticeable that China has reduced the number of its intercountry adoptions by close to half over a period of four years, and Russia by close to 40%. On the contrary, Ethiopia has seen its numbers double over the same period. Furthermore, one can not help but notice that the proportion of adoptions carried out outside the framework of the THC-93 remains the majority, with the well-known risks that this situation may entail.

It is then interesting to observe that within the series between the 12th and the 23rd position (over 100 adoptions), countries such as Nigeria, Mali, the DRC and Ghana appear, thereby confirming the constantly increasing position of countries of origin from the African continent (18 countries out of 50, i.e. 36%).

USA also appears within the group of countries of origin that carry out over 100 adoptions, where close to half of these intercountry adoptions obviously relate to American children mainly adopted into Canada, of which most are under one years of age.

The children

Italy, which remains the receiving country that provides the most information on its intercountry adoptions (see: <http://www.commissioneadozioni.it>), provides extremely comprehensive and interesting statistics. In relation to 2009, the average age of the children adopted in Italy was 5.9 years, an age which has been constantly increasing since 2000. The numbers available on the official websites of the Central Authorities, for comparative purposes, are unfortunately rare. Nonetheless, if one compares the numbers available with those of Quebec, one may observe an average age of 28.6 months (i.e. 2.38 years) in 2009. If one links the average age and the country of origin, in Italy the highest age averages relate to Belarus (14.6 years), Ukraine and Hungary (8.5 years), followed by Lithuania and Poland (8.2 years). Within the category of the lowest average age, one may find Mali (1.7 years), China (1.5 years) and Vietnam (1.1 years).

With regards to children with special needs, and taking into account the fact that there is no unanimously-accepted definition of the realities

covered by this, Italy has recorded 14.2% of adoptions of children have special needs. The latter represent 30% of all adoptions carried out in the Russian Federation and Ukraine.

Italy's 2009 report has also addressed the grounds for child abandonment (or the causes for their adoptability); this is also worth a careful reading.

As reiterated during the Special Commission, which took place at The Hague last summer, ISS/IRC encourages all countries – whether receiving countries or countries of

origin – to publish their statistics relating to intercountry adoption, in order to allow for a true compilation and analysis to be undertaken for the benefit of all. The ISS/IRC notes that numerous countries were able to submit their numbers for the past five years at the Special Commission (see: http://www.hcch.net/index_fr.php?act=conventions.publications&dtid=32&cid=69), which shows that these numbers exist and must simply be published.

INTERDISCIPLINARY RESOURCES

Brazilian Association *Terra dos Homens*: From intercountry adoption to preventive work with a specific community in Rio de Janeiro

C Cabral and A Pacheco encourage us to reflect on the background of children, who are the victims of serious violations of their rights and the various preventative mechanisms available, stemming from their experience of working with a community in Rio de Janeiro.*

There are numerous existing laws and regulations protecting the family and community life, many of which are based on the studies relating to the impact of institutionalisation on children and the principle that the family is the best environment for a child's development. For the past 25 years and in this context, the Brazilian Association *Terra dos Homens* (ABTH) team has been devoting its efforts to finding successful responses to cases of serious violations of the human rights of children and adolescents. The Local Roots [*Raíces Locales*] Programme is one of them.

Some background ...

Before becoming independent from the Swiss Foundation *Terre des Hommes*, and emerging as an autonomous NGO in 1996, ABTH used to carry out intercountry adoptions focusing on interracial adoptions and adoptions of older children. At the same time, and in order to promote the culture of adoption within the country, ABTH also started a campaign for domestic adoption. Based on the reality that only an average of 12% of institutionalised children were legally adoptable and that over 65% had contact with their family of origin, the next step was to invest in family (re)integration and other alternatives to institutional care, such as the 'foster family' programme. These

alternatives take into account the exceptional and temporary nature of the child being separated from his family. Thus, ABTH developed a successful methodology which is widely disseminated via its training courses. Given the increasing investment of working with children and their families, a new challenge arose: working with the communities.

The benefits of preventive work with the communities

The Brazilian reality reveals that many children look for a solution to the problems they face within their families and communities of origin in the streets of the cities. Most children in institutions remain there for similar reasons. There are many communities in the country that are distinguishable by their high levels of poverty, the lack of a formal (governmental) network of support to the population and the insidious presence of drug trafficking, which have a direct impact on the life of the children who are born and grow up there. We then realised that the main protection and socialisation environments – the family and the community – had not been able to carry out their functions for a great number of children. The migration of these children to the streets of other municipalities reiterates the importance of prevention and integration work in contrast to the institutionalisation that is usually provided.

Such work is indispensable enabling the community and family to offer better perspectives of care and protection and to become attractive to children.

A project based on the communities' abilities and own resources

The biological and psychosocial structure of an individual begins at home and immediately spreads to his community environment (daycare centre, health centre, sports club, etc). Thanks to the experiences and people encountered in these places, the children manage to have reference models, physical and emotional security, and therefore develop their cognitive, emotional and social abilities. ABTH works by the principle that the precariousness of the communities does not mean that they are absent. On the contrary, every human being and his environment, even if they lack some aspects have their own abilities, which may be strengthened and channelled towards personal and community transformation.

On this basis and from a perspective of 'community integration', ABTH created the pilot project 'Local Roots'. With the objective of contributing to the activation and coordination of the community, and by identifying its issues and finding solutions, ABTH established a community care centre. The Manguerinha community was selected because of its high number of children on the streets of RJ. It is part of a 'complex' of four communities, of approximately 25,000 inhabitants. It can be described as having very poor sectors as well as a clear separation of the community (low and high areas of the hill) in accordance with the geography; an association of inhabitants without homes or discriminated by the remaining population; a strong influence of the political forces; visible drug trafficking; the absence of a police station and existence of only one day care centre.

Several lines of action

Following a process of bringing together the community and awareness raising of its network of services, a number of handicraft workshops and study groups were launched at the above-mentioned centre. At the beginning, the handicraft workshops were a space for learning and for awareness raising about useful alternatives. With the strengthening of relations among groups and the involvement of its members, the activity has become an efficient

option to gain additional resources and thereby contributes to the process of autonomy and the skill assessment of those involved.

Issues of common interest are debated in the study groups. The progressive augmentation in family participation resulted in the creation of a group of action aimed at strengthening community participation in public life via its representation in meetings and council of rights as well as the organisation of thematic events. This move expanded the actions and created a new line of work: *advocacy*. At the same time, some young people

expressed their interest in participating in the action group and development of new ideas, which are already in the process of being implemented with the team's support. This move resulted in another line of action: *juvenile leadership*.

Furthermore, psychosocial counselling is undertaken in the most serious cases of violation of rights (domestic violence, street life or child labour). Personal support is offered to those families who require it based on systemic methodology. It is undertaken by an interdisciplinary team via interviews, home visits and permanent contact with the social network. The relationship which is created between the family and the team makes it possible to be acquainted with the members of the family, their dynamics, their background, their culture and to reverse the situation of established violence.

Reading suggestion

The challenge of being parents - Post adoption ("El reto de ser padres-Guía de post adopción")

Juan J. García Ferrer, SALVAT, Espagne, 2008, 296 pp.

This practical book is designed to assist parents at every stage after their child arrives at home. The chapters deal with, *inter alia*, health of the child, educational integration and conflict situations, which are illustrated by experiences and testimonies of parents. As a result the book is a tool that is a very useful source of guidance and advice that is clear. Additionally, numerous experts share their experiences in the psychology, sociology and pedagogy domains. The practical advice for various situations at the end of each chapter is the strength of this work, confirming its enormous value.

Lessons learnt

Only once in the community, is it possible to understand how it functions and gauge the direction as to which paths should be followed, which may be different from what was initially planned. Through a brief account of this experience, initiated in 2008, and which is beginning to build its own history, we have learnt some lessons:

- how one arrives in the community will determine the success of the project. It is essential to be careful and respectful when gathering information as well as considering its aptitudes, codes, culture, routine, system and sub-systems which already exist in the community;
- one must overcome the community's obstacles and consider the opportunities and potential, which already exist;
- working within the community is a simultaneous process of planning and action, in which a change of direction is part of the process. It is fundamental to have a spirit of openness when listening and taking into account the interests of the community, which

must occur within a climate of trust and cooperation;

- the community becomes appealing to its inhabitants when there are attractive spaces for exchange;
- when working with the community, technical knowledge can only have a sustainable impact if it acts as a catalyst for releasing the potential, creativity and interests of the community itself and of its inhabitants;
- creation of citizenship values are only possible if the minimum conditions for its development are offered;
- self-sustainable community development may only be achieved if the external actors develop their proposal of work with the solid intention of leaving the scene as soon as possible, in order for the inhabitants to benefit from their full citizenship.

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FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Czech Republic:** *Quality in Alternative Care Conference*, SOS Children's Villages, Prague, 4-6 April 2011. Call for papers 10 November 2010. For more information: www.quality-care-conference.com.
- **Ethiopia:** *Fourth International Policy Conference on the African Child: Budgeting for Children*, The African Child Policy Forum, Addis Ababa, 7-8 December 2010. For more information: <http://www.africanchildforum.org/fourthipc/>.
- **South Africa:** *31st FICE International Congress*, FICE South Africa, Cape Town, 7-9 December 2010. For more information: <http://www.fice2010.org.za/>.
- **United Kingdom:** a) *Can State Care Improve Children's Lives? Lessons from the last 30 years & their implications for the future*, BAAF, London, 3 December 2010; b) *Facing up to Facebook: The impact of social networking on adoption and fostering*, BAAF, Cardiff, 3 December 2010. For more information: www.baaf.org.uk.

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www.iss-ssi.org/Resource_Centre/Resource_Center_EN/About_ISS-IRC/about_iss-irc.html. See Activities.

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