

**Monthly Review N° 1/2011
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EDITORIAL

Intercountry adoption in 2010: a contrasted picture

At the beginning of this year, the ISS/IRC both enthusiastically and critically looks at the world of intercountry adoption in 2010 as well as how it has contributed to change.

2010 started terribly with the tragedy of the earthquake in Haiti is still having an impact one year later. Even now its indirect consequences concerning intercountry adoptions are felt and the issue of whether or not to resume procedures in this country is far from being solved (see page 5). This catastrophe has yet again shown that emotional, opportunistic or political responses still too easily, take priority over unanimously accepted standards relating to the protection of children in the context of disaster. The ISS/IRC report on 'expedited proceedings' (now available in French) has clearly

demonstrated that the absence of coordination among receiving States can only lead to a worsening of the protection of children's rights. Considering the current situation in Haiti, there is an urgent need for actors to commit to finding a common approach in relation to this country.

Significant progress

As evidenced by the considerable space granted to Guatemala in this issue (see pages 3 and 6), significant progress has been achieved in this country in child protection matters. Even though obstacles remain that must be overcome, the united efforts of the Guatemalan Government, the Hague

Conference, UNICEF and other involved organisations, such as the ISS/IRC, have already made the way for considerable advances.

This comment is also relevant to Vietnam, where, following our assessment mission in 2009, and thanks to the excellent cooperation of the Vietnamese Central Authority and UNICEF, the Socialist Republic of Vietnam approved a new law on adoption in 2010, as well as an implementation decree. The contents of these laws were the subject of constructive exchanges of views among the Vietnamese legislators, ISS/IRC and UNICEF. Moreover Vietnam signed the THC-93 on 10 December of last year and is awaiting its ratification.

The ISS/IRC's services were also requested in the Ivory Coast, Burkina Faso and Mali throughout 2010. We are pleased to note that our services have been appreciated and often followed by positive changes.

Finally, please allow us to highlight that the implementation of the Guidelines on Alternative Care of Children is also advancing, as seen by ISS/IRC's first mission focusing on this issue, which took place in Syria at the end of 2010.

What comes next?

Most certainly, there will not be a lack of work in 2011. As reported in last December's Monthly Review, this year the ISS/IRC will address the issue of the adoptability of children described as disabled: a difficult subject, which will undoubtedly require significant efforts. Other projects are already ongoing (a Guidebook for adoption applicants, the update of the Ethical Guidelines on Adoption, new assessment missions, the publication of a study on the grey zones of intercountry adoption, etc).

Of course other significant needs have been identified (e.g. the situation of intercountry adoption in Cambodia and Ethiopia), and this will require the mobilisation of additional resources.

The ISS/IRC therefore hopes to contribute for a long time to the protection of the rights of children deprived of a family, and like every year, would like to thank the Central Authorities and international organisations, which, thanks to their support, enable it to undertake its mission. Thanks also to those, who regularly express us their support and interest in reading this Review.

*The ISS/IRC team
January 2011*

ACTORS

Source: Permanent Bureau of the Hague Conference: http://hcch.e-vision.nl/index_en.php?act=conventions.authorities&cid=69.

- **Bulgaria:** This country has updated the contact details of its accredited adoption bodies, Central Adoption Authority and Competent Bodies
- **Germany:** This country has updated the contact details of its accredited adoption bodies
- **Iceland:** This country has updated the contact details of its Central Adoption Authority

BRIEF

Ecuador: the Government is requesting your assistance to undertake a new study

In January 2011, the ISS/IRC received information about a study that the Ecuadorian Government has launched via l'*Instituto de la Niñez y la Familia* (INFA – Institute for Children and Families) to gain an understanding of the situation of Ecuadorians adopted either at a national or international level. The objective of this study is to improve the adoption process and determine the beneficial factors promoting the well being of children and their adoptive parents. Accordingly, INFA is calling for the participation of adult adoptees, child adoptees (with the permission of their parents), adoptive parents, their families and friends to complete a survey which can be found at www.etica.ec. The ISS/IRC encourages the diffusion of this information to concerned persons and favourably welcomes this initiative destined to improve the adoption process in response to the needs expressed.

Hungary: New intercountry adoption criteria applicable to prospective adoptive parents (PAPS)

From 1 January 2011, the Hungarian Central Adoption Authority has introduced new criteria for PAPS. It will no longer accept applications for children who are less than seven and in good health. For the few dossiers that exist in this category, they will be attributed to countries that have worked with Hungary for a number of years. In addition, Hungary will not accept applications from singles, except if the project concerns a child more than ten years old or a sibling group. The number of dossiers for this category is not limited for any type of PAPS, in the framework of Hungarian national laws. The Hungarian Central Adoption Authority has explained these measures as being necessary because young children who are in good health are finding domestic solutions more easily and therefore there is no need for intercountry adoption.

Source : AFA (www.agence-adoption.fr/home/spip.php?article355)

Moldova: New adoption law comes into force 30 January 2011

The new Adoption Law was adopted in May 2010 and entered into force on 30 January 2011, with technical assistance from UNICEF. The law includes improvements including, *inter alia*, clearly mentioning the principle of subsidiarity, responsibilities of adoption actors, right of the child to participate in the adoption process, the need for the mother's consent to be at least 45 days after the child's birth as well as the inclusion of penalties. It is hoped that this new law will be effectively implemented on the ground, especially with regard to ensuring that domestic solutions are promoted, supported and exhausted prior to resorting to intercountry adoptions. The law is available in English and Moldovan at ISS/IRC.

Philippines: Resolution 060-52/2010 introduces a temporary moratorium on new applications

The Inter-country Adoption Board (ICAB) has put in place a temporary/partial moratorium in an effort to shorten the waiting period and number of applicants. The resolution applies to foreign adoption accredited bodies that have submitted more than ten applications per year for the last three years, who are requested to refrain from sending new applications until the waiting period has been reduced to two years. This moratorium does not apply to applications for special needs children and to applications with an approval for suitability to adopt by the ICAB before 31 January 2011. The ISS/IRC welcomes this resolution as a good practice for reducing pressure on the country of origin and better management of the expectations of prospective adoptive parents.

PRACTICE

A country of origin's complex journey towards the full implementation of children's rights in adoption: the situation of Guatemala

Three years after the Adoption Law and THC-93 entered into force, this article examines some of the significant steps forward and challenges, resulting from the legislative and institutional changes in the country.

In the field of adoption, Guatemala could be a particularly paradigmatic example among countries, whose past has been typified by irregularities and contraventions of children's rights. To remedy this situation, new domestic legislation was approved and the THC-93 came into force at the end of 2007. This represented a fundamental milestone towards securing necessary change. Thanks to this move, a new phase for adoption and children's rights in the country could begin.

Three years later, it is possible to highlight some vital steps forward as well as some pending challenges, characteristics which Guatemala shares with other countries with similar situations or backgrounds.

From significant progress following the entry into force of legislation...

As a result of the Guatemalan Adoption Law, some fundamental principles and requirements for the implementation of children's rights in adoption proceedings have been incorporated into the domestic legal

framework: principle of subsidiarity, multidisciplinary professional intervention throughout the procedure, creation of a Central Authority, etc. With regards to the latter, it is worth highlighting the significant efforts made by the *Consejo Nacional de Adopciones* (CNA) and its personnel to implement the legislation. They have been committed to guaranteeing the child's right to living in a family, giving priority to his biological family environment and should that be impossible, finding an adoptive family (see Review 1/2009).

The CNA has also processed the adoption of a significant number of children with different profiles by Guatemalan families, something that was quasi impossible under the prior framework. Furthermore, the CNA has engaged in strengthening its professional practice and exercising its functions within the wider child protection framework: involvement in some judicial child protection proceedings, supervision and accreditation of protection and care homes, strengthening of relations and joint practices with other entities in charge of child protection... Thus, the Central Authority, which was created on the basis of the 2007 laws has progressed considerably in the implementation of the new adoption system, with beneficial results that are already visible.

... and the challenges in complex historical contexts in the field of adoption...

These important steps forward have, unfortunately, sometimes been challenged by the heritage of the previous adoption system, including the existing networks engaged in irregular adoptions and trafficking, lack of ethics among some professionals working with the entities previously or currently in charge of the various stages of the adoption process, historical weaknesses of the wider child protection system... Some of these challenges, which Guatemala also shares with other countries of origin with similar situations, have been highlighted in the latest Concluding Observations of the Committee on the Rights of the Child (Committee)¹ and by the recent report published by the International Commission Against Impunity in Guatemala (CICIG). This report mentions the well-known background of adoption in Guatemala and points out its remaining implications for adoptions belonging to the

period 'of transition' and even for adoptions initiated under the current system, which was established by the 2007 Adoption Law². These are important challenges that will have to be overcome before a protection system, which fully guarantees the rights of children in adoption proceedings can exist. As has been mentioned repeatedly, it is fundamental that there is a solid protection system in place, which secures the rights of the child, in order for a solid domestic and intercountry adoption system to exist in a country.

... to initiatives for the continuous strengthening of the protection and adoption system

In the previously-described context the efforts of CNA in accordance with its competences are vital as these might strengthen the current procedures and remedy some of the multiple pending challenges. In addition other initiatives to strengthen the wider child protection system are also essential. From a legal perspective, the country approved the Regulations of the Adoption Law in July of last year, and it now has a Law, which considers irregular adoptions to be a form of human trafficking (see page 6).

It is also worth highlighting the initiatives taken by some receiving countries, which, despite their interest in resuming intercountry adoptions in Guatemala, have been wise in deciding not to rush their involvement. The USA, after having initially expressed its interest in the intercountry adoption pilot plan (see Review 1/2010) has decided to withdraw its interest, given its view that adoptions under the pilot programme would not meet the requirements of the THC-93 and that it was necessary for more safeguards for children to be in place before processing new intercountry adoptions³.

With approaches and initiatives such as these, receiving countries may contribute to preventing the pressure, which is sometimes imposed on countries of origin. Their role is essential in securing a reasonable period of time for the strengthening of the child protection system and the full implementation of children's rights, equally in protection measures and adoption proceedings.

Finally, it is fundamental that all domestic and international actors ensure that irregular adoptions do not remain unpunished, in order to put an end to unethical practices in this

field. This could be through trials against actors and professionals involved in irregular adoptions, non-cooperation with agencies involved, institutional cleansing as promoted in some of the recommendations issued by the Committee and the CICIG.

The background and current situation of Guatemala are not unique. Therefore lessons can be learnt for other countries. Collaboration by all domestic and international actors is essential to ensure sustainable positive changes, in particular as a result of recent ratifications of international instruments and the adoption of innovative legislation on this issue.

¹ Concluding Observations of the Committee on the Rights of the Child, October 2010,

<http://www2.ohchr.org/english/bodies/crc/index.htm>.


² *Informe sobre actores involucrados en el proceso de adopciones irregulares en Guatemala a partir de la entrada en vigor de la Ley de Adopciones* [Report on the actors involved in the process of irregular adoptions in Guatemala after the entry into force of the Adopton Law], CICIG, December 2010,

http://www.cicig.org/uploads/documents/informe_adopciones_CICIG2010.pdf.

³ *Guatemala Pilot Program*, Office of Children's Issues, US Department of State, 5 October 2010, <http://www.adoption.state.gov/news/guatemala.html>; Reply of the Consejo Nacional de Adopciones, 7 October 2010,

<http://www.cna.gob.gt/portal/adopcionesinternacionales.html>.

Haiti: one year on, still waiting for resources, stability and a unified approach

This brief article examines the latest developments in Haiti and the controversy surrounding intercountry adoptions 

With the 'evacuation' of 318 children by the French Government just before Christmas 2010, Haiti again became the subject of heated debate. It is difficult to conclude whether intercountry adoption is in the best interest of each individual child without more information. However for many reasons, some of which are cited below, we can repeat that in principle intercountry adoptions should not yet be envisaged in Haiti.

Stability and resources still lacking in Haiti

Stability would not be the word that best describes the current Haitian context. The NY Times reports that a year later 'more than a million displaced people still live under tents and tarpaulins. Reconstruction, of the build-back-better kind envisioned last March, has barely begun.'¹ It has not helped that part of the country is plagued with the outbreak of cholera and that the presidential election has been divisive. The totality of money promised following the earthquake has not surfaced.

It is therefore not surprising that the I.B.E.S.R (Haitian Central Adoption Authority) is still not adequately, let alone fully equipped. It lacks the resources to verify the origins of each child and their need for adoption. At the 3rd Special Commission in June 2010, it was unanimously agreed that

'no new adoption applications should be considered in the period after the disaster or *before the authorities in that State are in a position to apply the necessary safeguards*.'² It is questionable whether undertaking any intercountry adoptions in these circumstances is judicious. Such a question seems to be rhetorical given that in addition, the new adoption law is not yet in force, nor has the THC-93 been ratified or implemented.

Uncertain outcomes in receiving countries

Since the earthquake at least 2,400 Haitian children (doubling numbers in 2009) left the small island with the hope of joining an adoptive family. Cases in multiple countries have surfaced where local tribunals have refused to recognise the Haitian adoption judgments due to missing documents or insufficient proofs, leaving children in a state of legal limbo and sometimes in institutions. This situation contravenes the receiving countries obligations to ensure that Haitian children would be able to enter and reside 'permanently' (article 5c THC-93).

Even for adoptions that were 'legally' trouble free, the psycho-social well being of children is not fully guaranteed. Admittedly much more longitudinal research needs to be undertaken, but preliminary observations have indicated that some children have not adapted well to

their new environment and certain adoptive parents are not well prepared.³

Calls for uniformed approach falls on deaf ears

The mixed messages being sent are leading to confusion. Either Haiti's intercountry adoptions procedures lack safeguards requiring an overhaul or all is well. Governments like the Netherlands are taking firm stands, temporarily suspending adoptions in December 2010 stating that 'the limited capacity of the Haitian government means that a careful adoption procedure cannot be guaranteed at this time'⁴. Some 20 countries had already taken similar positions. In contrast, countries such as France, USA and Switzerland are continuing to process adoptions. For some countries this can involve cases with an adoption judgment and for others, new cases.

The international community has long been calling for a unified approach. For example at the 3rd Special Commission, it was agreed that there was a 'need for a common approach on the part of Central Authorities in dealing with such situations and for Central Authorities to discuss and review actions taken in response to, and lessons learned from, disaster situations.'⁵ Until certain safeguards are in place Haiti, one can hope that common agreement in refraining from intercountry adoptions will soon be reached.

The ISS/IRC can only welcome the latest report *Misguided Kindness: making the right decision for children in emergencies*⁶ by Save the Children based not only on its experiences in Haiti but also the Asian Tsunami and genocide in Rwanda. This report is a timely reminder that, in principle, intercountry adoptions should not be relied upon in emergency situations based on lessons from the past.

This new report complements ISS' report on Haiti which is now also available in French thanks to the generous support of the French Central Adoption Authority and can be downloaded at <http://iss-ssi.org/2009/index.php?id=49>

1. http://www.nytimes.com/2011/01/04/world/americas/04haiti.html?_r=1&scp=2&sq=Haiti&st=cse
2. http://www.hcch.net/upload/wop/adop2010concl_e.pdf
3. http://www.lemonde.fr/idees/article/2011/01/04/318-enfants-d-haiti-pour-noel_1459455_3232.html, Monthly Review 10/2010 and ISS report on Haiti
4. <http://english.justitie.nl/currenttopics/pressreleases/archives-2010/101213adoptions-from-haiti-temporarily-suspended.aspx?cp=35&cs=1578>
5. See note 2 above
6. <http://www.crin.org/bcn/details.asp?id=23753&themeID=1005&topicID=1033>

LEGISLATION

GUATEMALA: Endorsement of the Regulations on the Adoption Law

Guatemala has recently published Regulations on the relevant provisions of the Adoption Law. These came into force on 13 July 2010 and this article presents its main provisions as well as the challenges that remain for the adequate implementation of the legislation in force.

The publication of the Regulations on the Adoption Law¹ represents an important step, which was awaited by many since the entry into force of the Adoption Law² at the end of 2007. Thanks to their endorsement in July last year, the Regulations have partially responded to some of the Law's gaps. However, the Regulations were expected to have addressed other essential aspects by way of additional measures, in order to prevent abuses and strengthen the

implementation of children's rights in the process of protection and adoption.

Structure of the National Adoption Council

One objective of the Regulations is to regulate the operation of the National Adoption Council [*Consejo Nacional de Adopciones*, CNA] – the central authority in matters of adoption – and the first part of the text therefore describes this structure. Efforts to officially establish the various bodies and departments of the CNA are welcomed, especially with respect to reiterating the

CNA's technical functions, such as the domestic and intercountry adoption processes, authorisation and inspection of children's homes and authorisation of foreign bodies, which are all under the responsibility of the Multidisciplinary Team. It is also worth emphasising the importance granted by the Regulations to the establishment, in law, of the Council's administrative departments, such as the General Under-Directorate, the Internal Auditing Office, its Financial Administration and Human Resources.

Adoption procedure

Given that another of the Regulations' objectives is the development of the technical and administrative adoption proceedings, the Regulations' commitment to strengthening the adoption procedures initially established by the Adoption Law is a very encouraging step. In particular, some stages of this process have been positively developed in the Regulations, such as the process of counselling for biological parents, assessment and preparation of applicants, and post-adoption follow-up.

However, it is regrettable that the Regulations have not clearly set out aspects that are relevant to the investigation, assessment and declaration of adoptability of a child. The Regulations continue to give priority to the legal perspective over the social and psychological aspects, given that adoptability remains a subject that is solely decided at judicial level by the Children's and Adolescents' Courts, except when there is a wish for voluntarily relinquishment by one or both parents, who then enter the counselling and support process provided by the CNA. It is fundamental that this assessment always involves a multidisciplinary approach, as it is worth recalling that not all children without parents or in institutions are always adoptable.

Other positive inclusions include additional provisions, which develop the procedures for the authorisation of children's homes as well as the promotion of closer cooperation with other Guatemalan authorities, which intervene in the protection of children in the country.

Intercountry adoption

With regards to intercountry adoption, the Regulations include and reiterate some essential aspects. As an introduction, they

state the importance of adoption, as well as the number and profile of authorised bodies, truly responding to the needs of the children.

Furthermore, intercountry adoption will now be at the CNA's *request* – a process also known as the 'reversal in the flow of files'; this would contribute to preventing undue pressure on the Guatemalan authorities in this field.

The Regulations also reiterate that intercountry adoptions will only proceed via the Central Authority and/or accredited bodies, which a cooperation agreement has been entered with, and the Regulations consequently reiterate the ban on independent and private adoptions, and establish a process of authorisation of these bodies.

The principle of subsidiarity has also benefited from adequate consideration, but it is hoped that the CNA's professional guidelines will adequately address the process and conditions for exhausting the possibilities for domestic adoption.

Financial aspects

Some financial aspects have been sufficiently dealt with in the Regulations, such as the transparency in the costs of the foreign accredited bodies, ban on the reception of donations by the latter and reassertion that domestic adoption is free-of-charge. However, given the amount/importance of costs and fees in the field of adoption, it is essential that the CNA publishes the amounts that it will request for intercountry adoption and specifies their use, given that its budget explicitly includes fees for intercountry adoption and various types of donations. Furthermore, the Regulations still authorise donations to children's homes, which always raises a risk for childcare becoming a lucrative process. In this respect, it is worth mentioning that the Law against sexual violence, exploitation and human trafficking³, through its article 53, has incorporated the offence of irregular adoption into the Criminal Code, defined by a link between an adoption and a gain of an economic or other nature.

Current situation in the country

The Regulations are an additional tool in the strengthening process of the protection and adoption system in Guatemala. Nonetheless, considerable efforts and changes are still required across the protection system,

including throughout the domestic and intercountry adoption system, in order for these to genuinely guarantee the rights of affected children.

In particular, it is essential that the process of declaration of a child's adoptability becomes a truly multidisciplinary protection process and does not remain a mere judicial act; that financial aspects are addressed with all the necessary safety nets to prevent abuses; and that sufficient economic and human resources are committed to the strengthening of the whole process and protection system, particularly programmes aimed at family strengthening and the prevention of abandonment, measures that may offer a family environment in cases of temporary separation of a child from his or her family, such as the similarly-entitled programme of the Social Welfare Secretariat (SBS), and appropriate conditions in children's homes.

In relation to these issues, several important and recent initiatives, which contribute to this process. Firstly, both CNA's Agreement (guidelines for the involvement of foster families and temporary homes⁴), and the publication in the Official Journal of the Supreme Court's opinion on the placement of children only with those foster families, ensure that there strict separation between the foster care measure and the adoption procedure. Moreover there must be an

authorisation and training through the relevant programme of the SBS. Secondly, CNA has endorsed quality standards for children's homes⁵.

By way of conclusion, it is worth reiterating that it was expected that the main objective of the Regulations would be the regulation of the general application of the Adoption Law, and not merely the operation of the CNA. This has resulted in some fundamental aspects of the protection and adoption procedure, as well as of the Law, remaining unaddressed adequately for their appropriate implementation, such as the regulation of psycho-social assessments for the child's protection and adoptability, of interinstitutional coordination, etc.

¹ *Reglamento de la Ley de Adopciones*, Governmental Decree N° 182-2010, <http://www.cna.gob.gt/portal/doc/acuerdogubernativo1822010.pdf>.

² *Ley de Adopciones*, Decree N° 77-2007, <http://www.cna.gob.gt/portal/doc/58267%20DECRETOS%20DEL%20CONGRESO%2077-2007.pdf>.

³ *Ley contra la violencia sexual, explotación y trata de personas*, Decree N° 9-2009, <http://www.acnur.org/biblioteca/pdf/7047.pdf>.

⁴ Internal Agreement N° CNA-CD-010-2010, 17 August 2010, <http://www.cna.gob.gt> (*Noticias*).

⁵ Internal Agreement N° CNA-CD-008-2010, 7 June 2010, <http://www.cna.gob.gt> (*Noticias*).

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Canada:** *Fetal Alcohol Spectrum Disorder*, Vancouver, Canada, 2-5 March 2011. For more information: ipdocs@interchange.ubc.ca
- **France:** a) *Les échecs dans la situation adoptive: reconnaissance, soin et prévention (Adoption failures: recognition, care and prevention)*, COPEs, 11-13 May 2011 and 15-17 June. For more information: www.lecopes.org and b) *Le rôle des paroles adressées à l'enfant (The role of words addressed to the child)*, Association Pikler Loczy, 21-23 March (Paris) and 5-6, 20 October (Lyon). For more information: www.pikler.fr
- **United Kingdom:** a) "Hot topics" in Adoption and Fostering, BAAF, Cardiff, 18 March 2011 and b) Making good assessments, BAAF, London, 17 March 2011. For more information: www.baaf.org

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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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