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EDITORIAL

Fraud with respect to civil status: a reality in intercountry adoption

On the occasion of the publication by the ISS/IRC of a guide on the risks relating to intercountry adoption developed for professionals and prospective adopters, the ISS/IRC wishes to address the tricky issue of fraudulent civil certificates, which are sometimes issued with a view to intercountry adoption.

The forging of birth certificates by unscrupulous civil registry officials in some countries of origin, and the lack of subsequent adequate control by immigration services in the receiving country, is having an impact on intercountry adoption since several years. In its study on 'The grey areas of intercountry adoption', which is currently underway, the ISS/IRC addresses, among others, the 'manufacturing' of adoptable children, once their birth certificates have been forged. Child protection experts increasingly rally on this issue (see, for example, David Smolin's numerous articles), and the Committee on the Rights of the Child has constantly been reminding States Parties of their obligations on civil status issues (including birth registration – a still unrecognised obligation in many countries[1]).

The background of fraud

The requirements linked to civil certificates remain quite abstract in some countries, in which the means to maintain civil registries and ensure the authenticity of official documents are often non-existent. A lack of resources, insufficient administrative structures, or the absence of political will are all factors, which prevent the implementation of an efficient system of birth registration. In the Democratic Republic of Congo, for example, the rate of

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registration is of 34%; it falls to 9% in Chad, and is lower than 20% in Ethiopia[2].
Faced with these gaps, fraud becomes easy, is diverse and sometimes difficult to identify: the document is issued by an authority, which does not hold the original certificate or has no access to it, the civil registry official has received a bribe in order to issue a forged document, the person issuing the certificate is not competent, etc.

The responsibility of the actors involved

In these circumstances, it is essential to remember the responsibility incumbent on each actor involved in an intercountry adoption procedure, whether the Embassies or Consulates, the accredited adoption bodies (AABs) or the prospective adopters themselves. It is indeed incumbent upon countries of origin to control, even punish, civil registry officials. Some countries of origin – including Vietnam[3] – have already taken to court corrupt civil registry officials, who were found guilty of forgery – an example to be followed and disseminated. On the other hand, it is incumbent upon receiving countries to inquire on the procedure for obtaining civil certificates, in order to ascertain their transparency and legality. In relation to the latter, the AABs' knowledge of the field is very useful and must be used in the fight against fraud.

Some thoughts…

In 2005, the International Commission on Civil Status (ICCS) adopted a recommendation relating to the fight against fraud in documentation relating to civil status[4]. In relation to inter-state cooperation, the ICCS recommended, for example, the systematic exchange of information on cases of documentary fraud, the collaboration among consular services, or else, the resort, by several countries, to a same specialist or trustworthy lawyer, in order to research in a foreign country. In particular, in 2007, the ICCS focused on the importance of issuing civil status certificates in cases of perinatal deaths[5].

Some regional initiatives are also worth highlighting, such as the Inter-American programme for universal civil status registration and the 'right to identity', which was adopted in 2007[6]. The Organisation of American States is to strengthen the institutions in charge of civil status registration. This technical assistance projects included, among others, campaigns of mobile registration units, registration campaigns in hospitals and schools, etc. Significant progress may already be observed. In Haiti, for example, over 4.2 million Haitian citizens have been registered on the civil status registry thanks to the local project. Similarly, in Honduras, 400,000 certificates of the National Registry of Persons have been recorded digitally, and in Guatemala, significant registration efforts have been undertaken with indigenous populations. Similarly, an increasing number of conferences are being held on this issue, in order to raise awareness and disseminate the main principles and the pitfalls to avoid.

Finally, the ISS/IRC's recent guide on *Intercountry adoption and its risks* also develops a series of questions relating to each stage of the adoption, including the 'official documents to be obtained in the country of origin' (see the article on p. 5).

Even though this issue exceeds the intercountry adoption actors' competences and scope of activity, it obviously is an essential component of any procedure. As often, receiving countries may prove to be quite vulnerable when faced with these realities. However, it is essential that the latter adopt a critical approach in view of the documents that are submitted to them, and that they question their counterparts in countries of origin when doubts arise.
Birth registration represents the starting point for the recognition and the protection of every child's fundamental right to identity, and therefore a legal existence. To ignore this right is to ignore the child.

The ISS/IRC team
June 2011

Sources:
[1] See article in Monthly Review 06/2005.
[2] http://www.unicef.org/wcaro/wcaro_stats_BirthRegistration.pdf.
[3] See http://www.saigon-gpdaily.com.vn/Law/2009/9/74671/.
[4] http://www.ciec1.org/.
[5] http://www.ciec1.org/CadrEtudeDeces.htm.
[6] See http://scm.oas.org/doc_public/ENGLISH/HIST_10/CP24158E07.doc.

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ACTORS

Source: Bureau Permanent de la Conférence de La Haye: http://hcch.e-ision.nl/index_en.php?act=conventions.authorities&cid=69

- **Sweden**: this country has updated the list of accredited bodies.
- **Ireland**: this country has updated the information on accredited bodies.

BRIEF

New Ontario adoption law

The ISS/IRC welcomes the new law adopted in Ontario (Canada), aimed at easing national adoption of children in foster care. Until now, 75% of these children were ineligible for adoption because of court orders legally preventing them from being adopted. Under the new law, legal barriers will be removed to facilitate would-be-parents to adopt. Additional positive changes introduced by the law include the provision of increased support to youth as they transition into adulthood, allowing 16-17 yrs old to be eligible for financial support until the age of 21. New regulations are planned to ensure that this support also favours education options by giving youth access to larger student loans. These changes represent an important step that will facilitate national adoption and eventually provide children with the best foundation possible to succeed in life.

Source: Liberals-pass-law-to-ease-adoption-of-crown-wards, http://www.thestar.com/news/canada/article/1001192

LEGISLATION

PUERTO RICO: presentation of the recent Law on the adoption process

The 2009 Law for the comprehensive reform of adoption procedures [Ley de Reforma Integral de Procedimientos de Adopción del 2009], *whose objectives are to expedite and modernise the adoption process, by reducing its length and introduce innovations raise controversies.*

This Law – enforced since January 2011 – amends the three Laws on Child Welfare, on the Judiciary of 2003, and on Special Procedures of 1995. Its preamble offers a summary of the novelties, which the ISS/IRC will outline below: speeding up of the adoption process, creation of an adoption agreement during pregnancy and for the voluntary relinquishment of children, creation of a state adoption register, and the wish to harmonise the regulation of international and inter-state adoptions.

Expediting the adoption process

First of all, the Law establishes a placement agreement, defined as an agreement to stipulate the terms and conditions of children's placements in homes that are approved by the Family Department or adoption agencies, in order for them to be adopted. It is a pre-adoption agreement, which sets the beginning of the process. However, neither the Law nor the Civil Code mention how the matching should have previously taken place; nor is it known whether it is carried out by a competent authority with qualified professionals or whether it results from the prospective adoptive parents' selection of the child they wish to adopt, which would consist in a violation of the fundamental principle of adoption, according to which it is about finding a family for a child deprived of his or her own family, and not the opposite.

Secondly, the Law establishes that the adoption procedure should be completed within a maximum period of 75 days, from the time of the submission of the adoption application until its final resolution. Whereas, on the one hand, expediting adoption procedures makes it possible to reduce the length of time during which the child remains in an institution or with a foster family, on the other hand, there is a risk that not all the requirements, which ensure that the adoption respects the principles recognised by international instruments, may be fulfilled within 75 days. Arguably, it takes some time to obtain and ascertain the biological parents' consent and provide them with an adequate period of reflexion, prepare the adoptive parents and the

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child for the adoption, carry out the first meeting and allow for a probationary period of life together in order to ascertain the positive mutual adaptation, etc. Furthermore, it is necessary to allow for some flexibility in order for each of these steps to develop in accordance with the needs of each child and each biological and adoptive family.

Finally, the Law stipulates that the previous term of 12 months for guardianship visits, during which reasonable efforts are made by the Family Department to reunify the family, is reduced to six months following the child's removal from his or her home. Whereas these measures may enable children not to remain in confusing situations for undetermined periods, by sharing their time between their family of origin and the alternative form of care, they at the same time risk violating the principle of priority being given to preventing abandonment. According to the latter, the government as much as civil society must do their utmost in order for families to have the possibility and motivation for caring for their child.

Harmonising the adoption process

Among its contributions, the new Law provides for measures of harmonisation of the adoption process within the country. For this purpose, it sets in motion a new standard state procedure, through which international and inter-state adoptions may be confirmed and recognised, and a birth certificate for the child may be obtained. However, according to our understanding of the Law, only adoptions of foreign children by Puerto Rican citizens are concerned. It also creates the 'Voluntary State Adoption Register of Puerto Rico' (R.E.V.A.), which includes: children (deprived or not of parental responsibility) whose permanency plan is adoption, any person interested in adopting and any potential adopter with a positive expert social study. These provisions not only allow for the centralisation of the adoption process with an improved supervision of the latter, but also promote inter-state adoptions before resorting to intercountry adoption.

Two criticisable innovations

In addition to the above-mentioned provisions, the Law offers two innovative elements, which raise controversy from the ISS/IRC's perspective. The first one refers to the voluntary relinquishment of children during pregnancy. Following the U.S. example of 'voluntary surrogate mothers', this adoption agreement is entered freely and voluntarily, and without any kind of compensation. This results in the biological mother relinquishing all the rights that arise from parental responsibility to the adopter. She has seven days following the child's birth to withdraw. With regards to the biological father, he is informed by the Department of the adoption proceedings and has 30 days, from the date of notification, to submit his position in relation to the ongoing adoption process. The ISS/IRC highlights, with concern, that this provision does not comply with international standards and, in particular, with article 4.4. of THC-93, which states that a mother's consent may only be expressed after the child's birth. Furthermore, the seven-day withdrawal period is insufficient for the mother to make a free decision, without any pressure, and without material or any other kind of compensation. Arguably once the child is born, it is necessary to provide the mother with a period of approximately three weeks to think again about her decision to permanently sever the ties with the child she now holds in her arms.

The second element of novelty of the Law is the voluntary relinquishment of children within 72 hours of their birth in a public or private hospital (a 'safe shelter', according to the Law). In this case, the mother has committed no crime of child abandonment. The Family Department immediately has to initiate the adoption proceedings. With regards to the biological father, the Department has to identify the parent, who has not consented to the relinquishment, and notify him of his rights. After a withdrawal period of days, the Department, the adoption agency or the adopter may grant a placement agreement and initiate the adoption procedure. According to our understanding of the Law, in this situation, no investigation is carried out to locate the child's mother and duly advise her in relation to the consequences of the adoption. In this respect, there appears to be serious confusion between the relinquishment of the child and his or her adoption.

By way of conclusion, even though the ISS/IRC recognises the value of the progress offered by this new Law, it remains concerned with the wish to expedite the adoption process. This speeding up, which results from new terms, which are too short to guarantee the free and clear nature of the biological mother's consent, has also created two mechanisms, which are clearly contrary to THC-93.

Source: "Ley de Reforma Integral de Procedimientos de Adopción del 2009", http://www.lexjuris.com/lexlex/Leyes2009/lexl2009186.htm.

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PRACTICE

Intercountry adoption and its risks: a Guide for Prospective Adopters

The IRC has recently released a new tool aimed at providing prospective adoptive parents with guidance on what to expect and how to recognize risks related to intercountry adoption

In the framework of its activities, the ISS/IRC represents a privileged observatory of the challenges that prospective adoptive parents (hereafter PAPs) might face when undertaking the intercountry adoption process. Often unaware of the potential risk related to adoption practices, ir is of the utmost importance for PAPs to be duly informed on the implications of their choice, as correct information is key for preventing bad practices and promoting international standards in line with the UN Convention on the Rights of the Child and the 1993 Hague Convention.

Based on these observations, the ISS/IRC has received the support of the Federal Central Authority of Canada to produce a guide that provides PAPs with an overview of intercountry adoption and the practical implications of such a process. The Guide is a tool that takes prospective adoptive parents through the whole procedure, providing them with concrete information on each and every stage. Specifically, all phases are presented through a bipartite structure: on one hand, the signals that PAPs might encounter on their way and that indicate risks for potential malpractice. On the other hand, the danger signals are punctually complemented with the questions that PAPs need to ask themselves, the central authorities or their accredited body to avoid risks.

Through this practical approach, the booklet provides parents with concrete advice on what to expect throughout the process and it concurrently offers them the possibility to acquire a correct perspective, the "protection angle" that is needed to ensure that intercountry adoption takes places solely in the child's best interest.

The Guide has gathered the contribution of several international experts to guarantee consistency and easy reading comprehension. Thanks to its compact format and accessible language, the Guide is both a practical and user-friendly tool, which is intended for both professionals preparing PAPs and PAPs undertaking intercountry adoption.

SPECIAL SERIES – CHILDREN WITH DISABILITIES

Europe paves the way by promoting the deinstitutionalisation of disabled children – a process that is far from being over

On 3 February 2010, the Committee of Ministers adopted a text, which recommends Member States to give priority to disabled children's community living. Institutional placement raises numerous concerns with regards to its compatibility with the enjoyment of children's rights.

Historical background

Millions of disabled children and adults live in long-term institutions in the Council of Europe's 47 countries. At the end of the 1990s, the estimated number of disabled children living in institutions in Europe's 27 countries and in the Baltic countries amounted to 317,000. In 2002, 30,000 seriously (intellectually or physically) disabled children, half of whom were orphans, were living in 151 institutions that were managed by Russian social services. More recent statistics prove that the proportion of disabled children in institutions remains very high: in 2007, there were 107,000 children living in institutions in France and, in 2008, approximately 10,500 children living in institutions in Romania. The Council of Europe adopted the 2006-2015 Ten-Year Action Plan, which aims at a major change in the way we see disabled persons and in practices.

Laws and Convention

The Convention on the Rights of Persons with Disabilities (UN) came into force in May 2008. It states that disabled children shall fully enjoy all human rights and fundamental freedoms on an equal basis with other children. States Parties commit

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themselves, where the immediate family is unable to care for a child with disabilities, to undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

More specific, the Recommendation of the Committee of Ministers (see box above) recommends that the governments of Europe's Member States take all measures to replace institutional provision with community-based services. This Recommendation is the first instrument to be adopted at international level, which in a precise and concrete manner, provides for these measures. It underlines the importance of securing, throughout the transition process, the rights of disabled children and young vulnerable adults, who are placed in institutions.

In particular, the Recommendation provides for mutual support programmes for parents, and for access to various measures that offer respite to families during the deinstitutionalisation process.

The Recommendation requests Members States to adopt specific legislation, which would mandate the competent authorities for creating new networks of community-based services and set a deadline at which point institutional placement would cease. It recommends the establishment of a timescale for legislative review and the precise setting of the objectives to be reached.

The Recommendation states that funds should be allocated at national level, and that they may be sought from international bodies. The countries that may face difficulties should be able to request the international community to share its knowledge and other forms of support. The Recommendation also mentions an essential aspect, which is the education of disabled children: wherever possible, their education or vocational training should take place – in all phases of their schooling – within schools used by other children and they should receive the support required to facilitate this schooling and training within the mainstream systems.

Recommendation CM/Rec(2010)2 of the Committee of Ministers to Member States on deinstitutionalisation and community living of children with disabilities

I. Basic principles :
1.1 Disabled children have the same rights to family life, education, health, social care and vocational training as all children;
1.2 All disabled children should live with their own family;
1.3 Parents have the primary responsibility for the upbringing of the child;
1.4 The best interests of the child take precedence over other considerations;
1.5 If a family fails to work in a disabled child's best interests, the state should intervene;
1.6 The state has a responsibility to support families so that they can bring up their disabled child.
II. Deinstitutionalisation and the transitional process at national level (in particular, mutual support programmes for parents and measures to allow families to take a break).
III. Alternatives to institutional forms of care (placement in small living settings).
IV. Give priority to the schooling and training of disabled children in mainstream settings, attended by other children.
Recommendation available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1580285&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

Impact on the ground in Russia and the Baltic countries

A 2005 UNICEF report already showed that, for decades, a considerable number of disabled children had been placed in institutions – a practice that continued during the post-Soviet transition. These young people, who have been separated from their families and their community from a young age, and are often confined to huge and closed institutions and specialised schools, may only have, as their option for the future, a placement in an institution for adults, in which their fundamental rights may be systematically jeopardised. The report states that outdated methods, which do not take into account the child's interests, in addition to great poverty and the absence of alternatives, account for the high rate of child abandonment or institutionalisation. In reality, many parents consider that they do not have any other option. What these families require is solid social and financial support. Most of the countries have approved laws that aim at improving these children's fate, and an increasing number of young disabled persons integrate into society. However, according to UNICEF, a lot remains to be done.

Important reforms are under way in Moldova to ensure the return and remaining of children within their families. In 2008, the government adopted measures to place children with difficulties with families, and closed down five institutions by reintegrating or placing children with families.

Thus, the Recommendation should help these countries in the implementation of legislation and practice adapted to this process.

Impact in Switzerland, Sweden and Norway

These countries had already initiated the deinstitutionalisation process.Thus, in Switzerland, children with a disability or with educational needs are

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increasingly integrated into mainstream classes. An inter-cantonal agreement has entered into force on 1st January 2011. The aim of this agreement is that all the cantons respect the same principles in matters of specialised education. The Conference of Cantonal Public Education Directors (CDIP) has seized this opportunity to promote the principle of 'integration over separation', as provided for in the federal law on the elimination of inequalities affecting disabled persons. The agreement provides for disabled children and pupils with poor results to be schooled as normally as possible.

Like its Swedish neighbour, but some years later, Norway has firmly led a policy of closure of specialised institutions. The movement is far from being concluded, in particular given the absence of a clear law that would grant the right to adapted accommodation, except for persons with mental disorders, who live in institutions and who may enjoy this right thanks to the law on dismantling. The government has set financial subsidies in order to facilitate the exit from these institutions, and this policy of incentive seems to bear fruit.

The Council of Europe's Recommendation should also allow these countries to perhaps act faster and to share their experiences and know-how with the other countries, for which this process has come later and is faced with more difficulties.

Europe has therefore paved the way in terms of deinstitutionalisation and some countries have started to act. It is now incumbent on each country to adopt the laws and practices needed for these changes.

Sources: Council of Europe, www.coe.int; UN, http://www.un.org/disabilities UNICEF, Facts on children (Child Protection), http://www.unicef.org/media/media_45451.html;Swiss forum: http://www.forum-helveticum.ch/fr/forum_helveticum/; Swiss Conference of Cantonal Ministers for Education, http://www.edk.ch/dyn/11553.php.

READER'S FORUM

Intercountry adoption from the perspective of child psychology

In this article, Dr Fanny Cohen Herlem reminds us of the essential elements that constitute an intercountry adoption, from the particular perspective of child psychology.

« As a professional, who has been working in the field of adoption for many years, I remember an adoptive mother, who came to me anxious about this question: how to tell her daughter, adopted at the age of six in Kazakhstan, that she had, in fact, siblings in the orphanage in which she was 'found' by her mother? I also think of the mother of Romain, now aged 20, shut away in his room, refusing to come out, threatening his parents. His mother is 70 years old and his father 75, and nobody is able to confront this tall adolescent. As for Jules, he arrived from Haiti in January 2010, just after the earthquake, repatriated at Roissy, after having met his parents in October 2009, he has nightmares and sometimes cries for no apparent reason. Three different stories, three suffering children, three families requesting help, and which inspire the following thoughts in me.

What to do, as a practitioner, when faced with these situations?

The position of the clinical practitioner in matters of childhood and therefore of adopted children, is, I believe, based on two essential principles. On the one hand, we are to work with the families as they come to us, without making any judgement, but very carefully. Although it is not about letting them shirk responsibilities in the welcoming and listening environment that we offer to them, one must well try to ensure that all manage to make something out of the story they have chosen, or that 'has happened' to them, without accepting the '*fait accompli*', and therefore guarantee that these children may develop and build their life. On the other hand, our experience in psycho-pathology must lead us to a preventive task, not only with the prospective adopters by showing them the risks and implications of an adoption that is not carried out in accordance with the rules, but also with the authorities and institutions in charge of adoption, in order for these precautions to be sufficiently integrated into the adoption procedures, or even to be provided for in law.

A necessary reform of the authorisation to adopt

In France, the authorisation to adopt must enable the best evaluation of the adoptive

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capacity of the prospective adopters, knowing that a child's arrival may also 'reveal' parents! Furthermore, it may be observed that there are few rejections of authorisations to adopt, and that the possibility of appealing them allows some applicants to be granted the authorisation, despite an initial negative opinion. This situation is no longer acceptable, given that it results in couples or single persons travelling on their own with their file, most commonly to those countries, which are not HC-1993 Contracting States, where the requirements to be met in order to adopt are sometimes easier, but often less controlled.

A necessary solid preparation

Another concern in relation to intercountry adoption in France lies in the fact that the prospective adopters are not really prepared to this particular form of filiation. Some parents will tell us that they have learnt, like all other parents, 'on the job'. This form of learning should, however, not remain the standard, considering that adoption has changed, as much from the perspective of the profiles of adoptable children (older, groups of siblings, and sometimes with special needs) as from the point of view of everything we have learnt on filiation processes. Solid, serious preparation, as undertaken in most European countries, is therefore essential. It would also be useful for practitioners to be offered the opportunity to participate in the elaboration of this preparation, in order for the psychological dimension to be taken into account, in addition to the social and legal aspects.

The issue of the adopters' age

To become the parent of a baby when one is old enough to be grandparents, who does it do a favour to? Of course, nobody sees himself getting older, we are all young and our parents and grandparents have lived long lives; but is this a reason to think that our psyche will be more flexible than our body when we will be 70 years old and our children 20? In this field, the associations of adoptive families should be able to have their voices heard, without being forced to, sometimes, becoming lobbying groups.

As clinicians, we must think, take the role we are given, in order to defend those ethics that are sometimes criticised, and to find the means to set them straight without any do-good approach or dogmatism. Despite the debates, adoption should not be 'defended', nor blamed. Adoption is, and must remain, a form of child protection, a specific response for a child, who needs it. Nothing would be able to support the opposite, and if adoption becomes a political affair, rather than a human story, here one must look for what distorts it. »

Dr Fanny Cohen Herlem

CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Switzerland**: EUFAMI's 5th European Congress: *Community Care – a blessing or a curse*? Basel, 24-25 Sept. 2011. Details can be found at www.eufami.org
- **United Kingdom**: *Good practice in parent and child fostering placements*, London, 13th September 2011. For further information, please refer to: http://www.baaf.org.uk/training/allevents/2011-09-13t000000

Erratum: Please note the article "An accredited body shares the experience of its representatives in countries of origin" published in the Monthly Review in June (p. 7): "the Adoptionscentrum organises a seminary in Sweden every two years" and not twice a year. We apologize for the inconvenience.

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.

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