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**EDITORIAL**

**In Africa, the word 'adoption' does not exist** 

*The African conference held in Addis Ababa on 29-30 May on Intercountry Adoption: Alternatives and Controversies brought together hundreds of participants concerned by this issue from across the continent.*

**U**nder the initiative of the non-governmental organisation African Child Policy Forum<sup>1</sup> (ACPF), the first African conference devoted to intercountry adoption took place at the heart of the Ethiopian capital. Over 500 people travelled to Addis Ababa, among them several high-level national delegations, the United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, and Mr Van Loon, Secretary General of the Hague Conference. Several receiving countries (United States, France, The Netherlands, etc) were also represented, as well as civil society, several international experts and accredited bodies.

**An African perspective**

Both the preparatory works (publications are available on the ACPF's website<sup>2</sup>), and the

debates that fuelled these two days of work have clearly underlined the need and the will to see African actors reclaim child protection-related issues. Indeed, placing children in institutions or their adoption by Western prospective adopters do not reflect traditional African values, which rather promote informal forms of care by the extended family and the community. It is true that the objective constraints faced by a high number of countries (political, humanitarian, economic, health crises, etc) weaken these social protection mechanisms, but the informal care of children remains the most common and often the most effective answer across the continent. It was within the context of this debate that one speaker pointed out that in Africa, the word 'adoption' did not exist, which clearly illustrates the fact that this means of parenthood is still perceived as an

'imported', or even 'imposed', model. On the other hand, a similar dialogue also developed in relation to orphanages, whose increase has been mainly driven by the intervention of foreign actors – mostly NGOs – and which, to date, still avoid strict state control.

### Three national reports

In the framework of the preparation for the Conference, Malawi, Nigeria and the Democratic Republic of Congo all prepared national reports on the situation of adoption in their respective countries. These three reports agree on the main conclusions, which stress the need to strengthen child protection systems, to harmonise domestic law with international standards (Convention on the Rights of the Child, African Charter on the Rights and Welfare of the Child, 1993 Hague Convention), to improve the monitoring of private actors (within the framework of adoption and orphanages), and to fight against improper material gain.

### Conclusions

The conclusions adopted by the Conference - available in French and English on ACPF's

website - reiterate the main principles that must govern child protection and intercountry adoption, but they also stress the need to identify needs (through the establishment of a database), to prepare children for their adoption, to ban independent and private adoption, and to combat unlawful financial gain.

From a less formal perspective, this event has mostly been an opportunity for professionals from the continent to share their practices and the issues resulting from them. Several sub-regional cooperation initiatives were mentioned, and it is hoped that they will become a reality and consequently enable African countries to experience progress similar to that of other countries of origin across the world, which have been able to achieve it.

The ISS/IRC team  
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<sup>1</sup> The African Child Policy Forum, <http://www.africanchildforum.org/site/>.

<sup>2</sup> Addis Ababa Communiqué on Intercountry Adoption, <https://www.box.com/s/1431254ed2748e6172ee#/s/1431254ed2748e6172ee/1/295360660/2376417510/1>.

## ACTORS

Source: Hague Conference on Private International Law: [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

- **Fiji:** This country has acceded to the HC-1993 and has named its Central and Competent Authorities.
- **Peru:** This country has updated the contact details of its Central and Competent Authorities.
- **Vietnam:** This country has named its Accredited Bodies.

## BRIEF NEWS

### Belgium: Simplification of the procedures in cases of adoption of a second child

A Law has recently been approved in Belgium; its objective is to simplify procedures in cases of adoption of second children. This amendment will apply equally to domestic and intercountry adoptions. To date, the preparation of prospective adopters was less complex in the case of second-child adoptions. Even though the preparation will be optional with this new Law, the social report of the Children's Court will remain in force.

Source: RTL Info Belgique, <http://www.rtl.be/info/belgique/politique/882121/chambre-simplification-de-l-adoption-d-un-deuxieme-enfant>.

### Ghana: Changes in the adoption system and creation of a Central Authority

According to information confirmed by the Ghanaian Central Authority (Department of Social Welfare), Ghana has contributed to some important changes in its adoption system through the establishment of a Central Authority, in charge of receiving all intercountry adoption requests, and of supervising the transparency of the whole adoption process. The ISS/IRC will continue to inform its readers of the developments of this situation.

Source: Ghanaian Central Authority, <http://www.ghanabusinessnews.com/2012/06/04/ghana-to-streamline-inter-country-adoption>.

## Haiti: Ratification of the 1993 Hague Convention

On 11 June, the Parliament of Haiti approved the ratification of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (HC-1993). As usual, the Convention will enter into force three months after having deposited the ratification instrument with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, which is the depositary of the Convention. The Institute of Social Welfare and Research – which is already in charge of adoptions in Haiti – has been appointed as the Central Authority. The Central Authority will therefore have to comply with human and financial resources, as provided for in the HC-1993 and as requested by the Inter-American Commission on Human Rights. The draft law on adoption will also have to be approved as soon as possible, in accordance with the standards of the HC-1993.

Source: Inter-American Commission on Human Rights, [www.cidh.oas.org/Comunicados/French/2012.75.htm](http://www.cidh.oas.org/Comunicados/French/2012.75.htm).

## Kyrgyzstan: Resumption of intercountry adoption

According to Quebec's Central Authority (SAI), the Kyrgyz Parliament approved a new Law on 14 April 2012, which allows for the resumption of intercountry adoption on its territory through an accredited body in charge of the supervision of all procedures, following the 2009 moratorium that suspended all adoption processes. This information has been confirmed by the Permanent Bureau of the Hague Conference on Private International Law.

Source: Central Authority of Quebec (SAI),

<http://www.adoption.gouv.qc.ca/download.php?f=98c39c72330b56c236eab6a96a297d98>.

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## LEGISLATION

### Mexico/Veracruz: A new Law on adoption

*To the ISS/IRC's knowledge, the Law on Domestic and Intercountry Adoption of the State of Veracruz (Ley de Adopciones para el Estado de Veracruz de Ignacio de la Llave) is the first legislation of its type in Mexico.*

This Law<sup>1</sup> creates a new legal framework, which provides children and adolescents with guarantees and establishes an adoption process that is now placed under the supervision of a Technical Council, itself under the authority of the State of Veracruz's System for Integral Family Development (*Sistema para el Desarrollo Integral de la Familia*, DIF). The State-Attorney for Children, Family and Indigenous People recently explained that all pending adoption applications must be submitted to the DIF<sup>2</sup>. In addition to the fundamental principles drawn from international treaties ratified by Mexico and incorporated into this legislation, this new legislative instrument is interesting because it sets out standards intended to promote ethical adoptions.

#### The enactment of fundamental principles

This Law contains, indeed, fundamental principles such as: respecting the best interests of the child (arts. 1, 4 and 41) and the principle of non-discrimination, aimed, amongst others, at children suffering from a 'physical or mental disability'. Regarding the principle of subsidiarity (arts. 4 and 18), the Law states that a regional ('place of origin') and subsequently a national

solution must be sought for children deprived of a family. Furthermore, it states that a family-based solution must be given priority.

Similarly, article 8 establishes the child's right to be heard and informed about the consequences of his potential adoption, in accordance with his degree of maturity and understanding. This legislation also insists on the psychological support that must be provided to children, who are about to be adopted. This provision must be positively highlighted, given that it complies with the Convention on the Rights of the Child as well as with General Comment N°12 of the Committee on the Rights of the Child on the right of the child to be heard.

On the biological parents' consent, article 12 states that it must be given in writing, without pressure or compensation, after they have been duly informed of the consequences of the adoption, in accordance with the terms of the HC-1993. In particular, in relation to the biological mother, this article states that she cannot consent to the adoption of her child before the sixth week following the birth.

## The promotion of ethical adoption

Mexico has experienced cases of fraudulent adoption involving unscrupulous intermediaries<sup>3</sup>. Thus, the presence in this Law of several provisions aimed at fighting against all forms of corruption and abuse is welcomed. The same applies to the prohibition of private adoptions (i.e. directly agreed between the biological and the adoptive parents) and the adoption of unborn children (arts. 4 and 5), in accordance with article 4(c)(4) of the HC-1993. The practice of obtaining the biological parents' specific consent for the adoption of their child (i.e. specifically naming who will adopt the child) is also prohibited, and so is any contact between the adoptive parents and the biological parents, the child or anyone involved in the process.

In order to fight against abuse and corruption of those administrative and judicial bodies involved in the process, the Law uses the wording of articles 8 and 32 of the HC-1993 prohibiting the securing and payment of 'improper financial gain', in relation to both, the biological families as well as the mentioned bodies. It is also stated that prospective adoptive parents are not allowed to get in touch with public and private institutions caring for adoptable children.

## Details relating to domestic procedures

The Technical Adoptions Council (CTA) becomes the only body responsible for managing the administrative phase that precedes the issuance of the Court Order for the (domestic and intercountry) adoption. This body is under the authority of the DIF of the state of Veracruz. Its main tasks include: the assessment of the files of prospective adopters, the approval or rejection of these files, the matching of children and prospective adopters based on their characteristics, the monitoring by a multidisciplinary team of the probationary period, post-adoption follow-up, etc. The ISS/IRC notes, however, that no provision mentions the preparation of the child and the prospective adopters.

The Law also introduces the figure of the 'foster family' as an option for temporary care prior to adoption. The procedure is as follows: when the child is matched with prospective adopters, the child leaves the foster family; the probationary period – of minimum three weeks – may begin (arts. 28-30).

With regards to the biological parents' rights, in accordance with article 26, which refers to

abandoned or neglected children, parents have maximum three months to appeal the DIF's decision not to reintegrate the child into his family environment in preparation for adoption. When parents voluntarily relinquish their child to the DIF of the state of Veracruz for his adoption, the latter have 30 days to withdraw their decision (arts. 34-36).

As for the implications of domestic and intercountry adoption, the new Law states that it will have solely the implications of a full adoption, as enshrined in articles 6 and 7.

## Brief provisions on intercountry adoption

The new Law makes a distinction between intercountry adoption (i.e. by foreign citizens residing outside of Mexico), which is governed by the HC-1993, and adoption 'by foreigners' (i.e. by foreigners residing in Mexico), which is governed by the mentioned Law.

Thus, for intercountry adoptions, only States Parties to one of the Conventions ratified by Mexico will be able to adopt Mexican children. With regards to other conditions, these are based on the HC-1993 (consent, best interests of the child, a full report on the latter, the prospective adopters' suitability to adopt, as certified by the receiving country).

While this section refers explicitly to the HC-1993, it is surprising to note the absence of provisions relating to accredited adoption bodies, as key actors in any adoption process, whose practice must respect ethical and transparency requirements, as reiterated in the *Guide to Good Practice N°1*. This is an unfortunate absence.

However, the ISS/IRC welcomes the many provisions complying with the best interests of the child and safeguarding the rights of all parties involved in the adoption process. The prohibition of private adoptions is a major step forward, which should prevent abusive practices, such as the buying/selling of newborns.

<sup>1</sup> Available at the following address: <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Veracruz/wo62481.pdf>.

<sup>2</sup> See *Adoptantis*, October 2011.

<sup>3</sup> For example, see: <http://www.nytimes.com/2002/01/31/world/5-arrests-in-us-and-mexico-halt-a-ring-smuggling-children.html?scp=176&sq=trafficking%20adoption%20children&st=cse&pagewanted=print>.



## Ukraine: Experience and benefits of the ‘Mother and Baby Units’

*Implemented by the British NGO Hope and Homes for Children in cooperation with regional authorities, the ‘Mother and Baby Units’ intend to prevent young mothers from abandoning their newborn babies at maternity hospitals by offering them practical services and qualified help.*

**W**ith their efforts focused on Central and Eastern Europe and Africa, Hopes and Homes for Children (HHC) works intensively to prevent the breakdown of families and cases, in which children are separated, and to close childcare institutions, by promoting the reintegration of children into their families, their communities, with foster families or in small family homes. It works closely with Governments on deinstitutionalization, having managed to close seven institutions in the world in 2011 alone. Ukraine is one of the countries, in which HHC is pioneering new methods for the prevention of family breakdown.

### Background and objective of the project

Ukraine has one of the highest numbers of children growing up in institutions in Europe, with more than 700,000 children allegedly growing up in institutions, and over 800 babies abandoned every year. This number has increased over the past decade and, according to HHC, the most mentioned reasons for abandonment are financial difficulties, domestic conflicts, and the absence of social assistance. In order to decrease the number of newborns abandoned at maternity hospitals, HHC Ukraine partnered with UNICEF to implement preventive measures, such as the provision of help by social workers and psychologists to expectant mothers, who ‘have expressed a wish to leave their babies’. Babies left at hospitals and maternity wards usually end up being placed in an institution, with few opportunities of being reunited with their family. In 2003, HHC Ukraine and UNICEF opened the first Mother and Baby Unit, which provides long-term

social and psychological support to young women, whose circumstances prevent them from returning to their families with their babies. 70% of those women, who enter these units, are not ready to live an independent life, given that they have grown up in institutions themselves.

### Increasingly encouraging results

In 2006, a regional Mother and Baby Unit was established in cooperation with Kiev’s regional representatives, and 96% of those women cared for in the initial two units have chosen to keep their babies. Since the creation of the initial two Mother and Baby Units, the Ukrainian government has followed their example, and established another 15 Mother and Baby Units as well as 688 ‘consultative offices’ in maternity wards across the country. Between 2007 and 2008, these units prevented 48 cases of abandonment, while also providing computing lessons and 15 trainings on responsible parenting, genetic/reproductive health, family planning and early childhood development for women from various Mother and Baby Units.

The ISS/IRC welcomes this project which, by preventing the abandonment of babies by their mothers, is ensuring that these children will grow up in homes rather than in institutions, thereby curbing the institutionalisation trend and enabling more children to grow up in a family environment.

Source: Hope and Homes for Children, <http://www.hopeandhomes.org/what-we-do/where-we-work/ukraine>.

## **A brief introduction to the literature from the Fifth International Policy Conference on the African Child on intercountry adoption in Africa**

*In addition to the presentations made by many actors, which are all available on the Conference's website, valuable reports, drafted prior to the Conference, as well as draft Guidelines, are the result of this important event in Africa.*

### **An overview of intercountry adoption in Africa**

The first report produced by ACPF, entitled *Africa: The New Frontier for Intercountry Adoption*, addresses each of the fundamental principles governing intercountry adoption, by illustrating them with several examples linked to countries of origin. This report being the first of its kind, the reader gains a totally new overview.

This report, as well as the advocacy report (presented in more details below), put the emphasis on intercountry adoption figures, which undeniably evidence that Africa is the new 'pool' for receiving countries.

The authors of this first report also wished to emphasise the domestic alternatives to intercountry adoption, starting with the provision of genuine support to families of origin. Finally, this report's conclusions highlight some issues, which require reflection in the future, and partially meet the recommendations contained in the second report produced by ACPF and the communiqué adopted on 30 May 2012 during this Fifth International Conference.

### **Current issues...**

The second report entitled *Intercountry Adoption: An African Perspective*, which was mainly prepared by international expert Nigel Cantwell, takes even more of an advocacy perspective. According to the author, the signs of risk to be taken into account are the very rapid growth of intercountry adoption in Africa (while it is decreasing on other continents) and the young age, at which African children are adopted abroad – a situation clearly contrary to the principle of subsidiarity. The report's author mentions, for example, the case of Malian children adopted in France. In 2011, nearly a third of these children were aged six months or under at the time of their adoption. The report also highlights a central phenomenon: the speed of some intercountry adoption procedures; it mentions the example of an adoption procedure between Madagascar and the United States, which lasted a total of 71 days. These are worrying facts.

On the other hand, the report's author highlights the challenges faced by Africa today in terms of intercountry adoption. Thus, the fifth part of this report describes the pressure, which receiving countries put on countries of origin, the impact of money, the risks linked to independent adoptions, the lack of state control over adoption agencies, and the legislative gaps relating to intercountry adoption. With regards to the current issues related to alternative care in Africa, the author highlights the phenomenon of privatisation of alternative care services and the fact that traditional care models are not being considered.

### **... and concrete solutions**

While the advocacy report suggests that the various intercountry adoption actors develop specific actions, the *Guidelines for Action on Intercountry Adoption of Children in Africa* project, for its part, provides practical guidelines in accordance with the fundamental intercountry adoption principles, based on the principle of subsidiarity and the best interests of the child.

First of all, it is reminded that poverty alone cannot be a reason for the child not to grow up with his family of origin. Similarly, intercountry adoption must never be considered in cases of natural disaster or armed conflict. Finally, moratoriums must be respected by all receiving countries.

The Guidelines also highlight the rules to adhere to in terms of finances. The importance of establishing, amongst other things, a transparent and coherent fee plan is reminded.

Finally, the emphasis is put, among other things, on the need to prohibit illicit activities linked to intercountry adoption, in particular the 'laundering' of children or the extortion of the biological parents' consent, aimed at their child being adopted in an abusive way, and to prosecute the authors of these acts. For example, the creation of national bodies that would be competent to carry out investigations, hear witnesses and ensure that children have a legal channel to submit a complaint and be duly advised, is being suggested.

Faced with an evident increase in the number of intercountry adoptions in Africa in recent years, these various documents are valuable tools in the best possible preparation of the future of intercountry adoption on this continent, and in avoiding situations of violations of children's rights.

Sources:  
Publications from the ACPF's Fifth Conference, [http://www.africanchildforum.org/ipc/index.php?option=com\\_content&view=article&id=103&Itemid=41&lang=fr](http://www.africanchildforum.org/ipc/index.php?option=com_content&view=article&id=103&Itemid=41&lang=fr), Addis Ababa communiqué on intercountry adoption <https://www.box.com/s/1431254ed2748e6172ee>.

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## THE STORY OF AN INTERCOUNTRY ADOPTION

### The wealth of our differences

*Joachim Forget, a Doctor, who, himself, comes from intercountry adoption, shares with us his perception of the difference experienced by any adopted child. He shows us how this experience may be given value, if adoption is considered as a chance offered to a child to live in a family.*

I was born in South Korea on 15 April 1983 and named Kim Jae Duk. I was abandoned on the streets of Seoul when I was three months old, placed in an orphanage and then with a foster family, before being adopted by a French family when I was nine months old. My case was similar to that of many other adopted children from South Korea to Europe and Switzerland in the 1970s-1980s.

#### **To confront one's identity, a stage restricted by an emphasis on the difference**

To be adopted in a favourable living environment and in good health is a chance. We will never say it enough. A child, who comes from intercountry adoption, often realises this rather belatedly and with difficulties. He lives ontologically some sort of personal dissociation, at least the one he is being attributed or suggested, given that he comes from what is commonly called 'diversity'. He therefore grows up being conditioned to the fact that he should be different to some extent from the group, and he is steadily remembered of this, despite the obvious non-existence of the cultural gap. The issue is not completely similar to that of immigrant children: the latter may assert double cultural qualifications, an identity picture that comes from their family environment. As for the adopted child, he only has the culture, which he receives from his new parents. Even in cases of late adoptions, it is common to notice a prompt replacement of the mother tongue by that of the new linguistic environment, as evidenced by the scientific works in cognitive neuroimaging<sup>1</sup>.

However, the visual difference for the other remains present and questions arise very early on school playgrounds: 'Where are you from?', 'Are

you Chinese?'. As for me, convinced of being a good French citizen, I often forgot my Asian face, failing a bathroom or lift mirror to remind me of it.

Thus, confronting the difference compels to having to justify oneself and to sharing the privacy of a past that comes from elsewhere.

#### **'To be adopted': The preconception of the 'identity' disorder, careful danger!**

Many works on adoption mention people, who suffer. I, however, wish to bring a more moderated and deeply positive message on adoption, by warning against excessive pathologisation of the adopted child's identity. Let us recall the example: 'I do not feel different, but I am constantly being reminded that I am'. Everything is at stake here. The discrimination that is carried out, whether negative or positive, evidences an ethnic difference based on appearance – as beautiful as it may be, that of Asian or African features among Caucasian faces. The identity label 'adoptee' offers a tempting explanation to all identity problems. It is a true danger, and so-called psycho-analytical interpretations are easy to express and hear, thereby threatening to place this adopted person in some sort of conditioning, which results sometimes in an excessive feeling of (self) guilt. With regards to social interactions, we will also witness how introspective thoughts and friendly advice arise, such as 'I am abandonic, that is why I become attached' or, the opposite, 'You are adopted, that is why you are scared of becoming attached and of committing, you know'. It is always possible to find a plausible hypothesis, in which adoption will be blamed for some difficulty in one's existence. This way of thinking may soon become the excuse to point out what has been,

*de facto*, a nice gift: that of a better life than in an institution or on the streets.

Deep down, we have all – adopted or not – experienced some shocking developments in our personality, an adolescent crisis, parental conflicts, an unhappy love story. Who has never asked himself during childhood whether his parents were really his true parents? These are the emotional problems of humans, rich in complexity and similarity, irrespective of the background and the culture.

### **To know how to minimise and recognise the value of difference at the same time**

The positioning of the adoptive parent is delicate, as it is for any parent; learning on a trial-mistake basis is consistent, in order to find a fair balance between stigmatising and recognising the value of the uniqueness of this double-faced identity.

What should be done? The best we can, as there is no secret to parenthood. Adoptive parents have experienced, oh how painful,

stages, before completing their adoption project. Parents, give us with love what you will know how to learn from your role in contact with the child you will have welcomed into your home. Be aware of the vicissitudes of these emphasis or neglects of the difference, in order for your child to know how to build a full and unique identity, his identity. You, adoptive parents, are probably impatient to welcome your child; but then, to have a child grow up – whether adopted or not – requires a lot of perseverance, in order to manage to reconcile the different aspects of an identity full of diversity. These are dynamics, which require the strictness of counterpoint, the accuracy of harmonies, the resolution of disharmonies, as well as the lyrical and decorated lightness of an invention for three voices of Johann Sebastian Bach. With its mystic beauty and its part of spontaneity, of course.'

<sup>1</sup> Pallier *et al*, 'Brain imaging of language plasticity in adopted adults: can a second language replace the first?' *Cerebral Cortex*, 2003, 13, 155-161.

### FORTHCOMING CONFERENCES, SEMINARS AND COURSES

- **Mexico:** *Congreso sobre la situación de niños, niñas y adolescentes institucionalizados* [Conference on the situation of institutionalised children and adolescents], Group on Childhood of the Office of the Attorney-General for Human Rights of the state of Guanajuato, 16-17 August 2012, Guanajuato. For further information: Gabriela Hernández, [ceddh\\_pdhg@hotmail.com](mailto:ceddh_pdhg@hotmail.com).
- **United Kingdom:** *4<sup>th</sup> International Conference: Celebrating Childhood Diversity*, Centre for the Study of Childhood and Youth, 9 – 11 July 2012, University of Sheffield. For further information: <http://www.cscy.group.shef.ac.uk/activities/conferences/index.htm>.



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