

**Monthly Review n° 11-12/2005
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We wish you all a very Merry Christmas and hope that 2006 will enable us to contribute ever more and together to the promotion of the rights of children deprived of family!

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EDITORIAL

Is intercountry adoption linked with trafficking for exploitation? 

*While some children are certainly “trafficked **for** the purpose of adoption”, there is no evidence, as far as we know, that children have been “trafficked **through** adoption for subsequent exploitation.”*

Few would deny that there is a great deal wrong with current practices in intercountry adoption from a number of countries in terms of the effective protection of children's rights. We are

very conscious of the ways in which intercountry adoption is vulnerable to questionable, illegal, and sometimes criminal activities.

However, we note with concern sweeping but unsubstantiated statements such as “intercountry

adoption is among the most frequent ways in which minors are trafficked for sexual purposes or exploitative labour” and that illegal adoptions are used “to procure children for organ trafficking”. Such allegations need to be examined very closely indeed.

Terminology

We first need to be clear about two concepts usually used in such allegations.

- *What is “trafficking”?* According to the Palermo Protocol¹ trafficking means the recruitment, transportation, transfer, harbouring or receipt of persons, through various illegal practices, for the purpose of exploitation.² Thus, for an act to be qualified as “trafficking” under this Protocol, it must be shown to have an exploitative aim, defined as including, at a minimum, the exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery, servitude or removal of organs.

However, the United Nations Convention on the Rights of the Child (CRC) has a broader approach, as *no exploitative aim is necessary* for an act to be qualified as “trafficking” (CRC art. 35). Under the terms of the CRC, then, trafficking can also be deemed to take place for a legal purpose such as adoption. This approach is supported, moreover, by the 1994 Inter-American Convention on International Traffic in Minors³ whereby, for an act to be qualified as trafficking, its purpose does not have to be illegal if the means used are unlawful.

- Allegations discussed frequently assimilate – unduly, as will be demonstrated further below – illegal adoptions with trafficking. *But what is an “illegal adoption”?* A decision on adoption is made in a court of law. The “illegality” of that decision could thus result from situations where, variously, the required procedures have not been followed, documents have been falsified, the child has been declared adoptable without due

cause or as a result of manipulation, money has changed hands... *but if it is truly an adoption, rather than some other form of transfer or removal, it will necessarily and by definition have been approved by a judge. It follows that all events and acts that would make it “illegal” must therefore have taken place up to and including, but not after, the judgement.* “Illegal international adoptions”, therefore, are not the same as “illegally moving children abroad”: in cases of the former, children are moved abroad legally following an adoption process that contains illegal elements.

Lack of evidence

Rumours of trafficking through intercountry adoption for the purposes of exploitation or the removal of organs have been circulating in relation to a number of countries world-wide since the mid-1980s. If there were serious grounds to fear human rights violations of this nature in the context of intercountry adoption, it is strange that over these two decades there are no proven cases, as far as we know, that could justify concern. In illegal underground operations, bodies are found in the end, criminal rings are identified and victims are rescued. To our knowledge, this has not been the case in the sphere of exploitation of adopted children, from or to any country in the world. This total lack of evidence must considerably undermine the credibility of allegations and the legitimacy of concerns in this regard.

Moreover, it is hard to imagine why anyone would take on both the costs and risks involved in using a very public judicial process like intercountry adoption to “traffic” children – as opposed to kidnapping or smuggling them, for example – in order to remove their organs.

So why do the allegations persist?

Several factors are germane to the persistence of these rumours.

First, perhaps, is the *unwarranted credence lent to the existence of such unproven “problems”* in the context of certain studies or in public pronouncements by certain individuals or entities. Sometimes this can apparently be attributed to a lack of rigour in the use of terms and concepts; sometimes, however, it is nothing less than empty speculation or the search for sensationalism.

Second, and linked to the above, is the problem of *deliberate “amalgam”*. In various countries, there are documented cases of parents abusing their adopted children physically, psychologically and sexually,

¹ UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000, supplementing the United Nations Convention against Transnational Organized Crime.

² Art. 3 a).

³ “International traffic in minors” means the abduction, removal or retention, or attempted abduction, removal or retention, for **unlawful purposes** (*prostitution, sexual exploitation, servitude*) **or by unlawful means** (*kidnapping, fraudulent or coerced consent, the giving or receipt of unlawful payments or benefits to achieve the consent of the parents, persons or institution having care of the child*) (art. 2). This Convention entered into force on the 15 of August of 1997.

sometimes with fatal consequences. Similar acts are regrettably facts of life too in biological families. But these acts are abuse, not “exploitation”. They were not an intended outcome of the adoption and, as far as we are aware, the children were never “trafficked” to this end. No one denies that these acts took place, and clearly similar instances need to be prevented notably by improved professionalism in selecting and counselling prospective adoptive parents and in matching them with children in need of adoption. To imply that such acts constitute evidence of “trafficking” and “exploitation” is, however, both unfounded and grossly misleading.

Finally, certain groups undoubtedly have a *vested interest* in keeping these rumours alive in order to divert attention from other issues that indeed constitute rights violations in the context of intercountry adoption.

Avoiding the wrong focus

In sum, to the best of anyone’s knowledge, there is no evidence at present to suggest that children are trafficked for exploitation through intercountry adoptions. However, this conclusion in no way denies the existence of other disturbing phenomena, including:


- a) trafficking and other illicit acts to procure children *for* adoption, and
- b) cases of abuse and rejection of children on the part of individual adopters once they have returned home with the child.

It is vital to distinguish systematically between children “trafficked for the purpose of adoption”, and children supposedly “trafficked through adoption for subsequent exploitation.” Only on that basis can the real problems be targeted in the fight against illegal and unprofessional practices in the adoption process.

Nigel Cantwell, ISS International Consultant on Child Protection Policy.

IRC NEWS

- **Changes in the team  : A renewed team:** The IRC team is dynamic and developing interestingly!
 - *Sylvain Vité*, the current Assistant Coordinator (see Review 1/2005) is relinquishing this function to resume research in international humanitarian law on the protection of civil populations under foreign domination at the University of Geneva. He will continue to undertake special missions for the ISS : he is currently responsible for a project on the development of international standards for children deprived of their family (see Review 10/2005, Committee on the Rights of the Child), elaborated jointly with UNICEF.
 - *Hervé Boéchat* has become the new Assistant Coordinator since 5 December. He is a Swiss national fluent in French, English, Spanish and German and is well known to a certain number of readers for having been a member of the Swiss Federal Central Authority for intercountry adoption from 2002 to 2005. A legal expert, qualified as a solicitor and holding a master’s degree on children’s rights, he has also worked for the International Committee of the Red Cross in Sudan and Afghanistan. He will, together with *Isabelle Lammerant*, the Coordinator, contribute to the development of IRC’s activities benefiting children deprived of parental care.
 - *Cécile Maurin*, Children’s Rights Assistant (see Review 60-61) left us on 1 November 2005 to return to the field in order to run activities for the promotion of children’s rights. In Paraguay, she contributes to a project drafting a manual for the running of the Central Authority and shadows its teams in their work. She also commits time to child participation projects led by Global Infancia, a correspondent of ISS in that country, which is directed by Marta Benítez.
 - Since 1 November, Cécile has been replaced by *Christina Baglietto*. Christina, of German and British nationality, is fluent in English, French, Spanish and German. She is a legal expert specialised in international law and holds a master’s degree in international human rights law. She has worked in a NGO for the promotion and protection of the rights of the child, contributing to projects in numerous developing countries or those in transition. With *Laura Martínez-Mora*, *Programme Officer*, and *Stéphanie Romanens-Pythoud*, *Children’s Rights Assistant*, she will be a part of the team who undertakes our research and prepares numerous replies to your requests, articles for the Monthly Review and country situation analyses.
 - *Holly Burke*, a Canadian social worker, is undertaking a six-month internship in ISS/IRC (October 2005-April 2006) within the framework of a Canadian Government programme of international internships. Holly has previously worked as a Child Protection Social Worker in the Department of Family and Community Services for the Province of New Brunswick. Her internship will enable her to expand her knowledge of the rights of the child at the international level.
 - The work of this dynamic team continues to enjoy the support of our hard working Administrative Assistants, *Liliana Almenarez* and *Chantal Lucas*.

- **Website updates** : Two thematic training project fact sheets on providing care for children deprived of their family have been added to our website under the heading « documents of interest ». The themes addressed in these new fact sheets are :

Fact sheet n°2: Support for families in difficulty as a means of prevention of the child's separation from the family of origin (http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/2ISS-IRCGPPrevention-ENG-0905.pdf).

Fact sheet n°3: Permanency planning: The principles to be taken into account (http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/3ISS-IRCPVPPinciples-ENG-1005.pdf).

We are interested in your opinion!

To share your comments with us or to point out a distribution problem, do not hesitate to write to us at irc-cir@iss-ssi.org.

We are also interested in receiving the particulars of other professional protagonists in the promotion and protection of the rights of the child deprived of parental care in your country (authorities, placement agencies, adoption bodies, NGOs, researchers, practitioners and resource persons) who would like to receive our Review and our thematic fact sheets.

Thank you!

CONVENTIONS AND INTERNATIONAL DOCUMENTS CONCERNING THE RIGHTS OF CHILDREN DEPRIVED OF THEIR FAMILY

Source: The Permanent Bureau of The Hague Conference: http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=70

The Hague Conference on Private International Law: publication of a brochure on the protection of children

In October The Hague Conference on Private International Law published a brochure on the protection of children across international frontiers. The document contains a brief summary of the three Hague conventions that concern children, notably those that deal respectively with international child abduction (1980), intercountry adoption (1993), and the international protection of children (1996). This brochure, furthermore, introduces the draft of a convention on the international recovery of child support and maintenance.

The second part of the publication addresses the implementation of the above-mentioned conventions and deals with the relevant bodies in this field (Central Authorities and the international judicial network).

An electronic version of this brochure in English, French or Spanish may be obtained on the website of The Hague Conference: www.hcch.net/index_en.php?act=events.details&year=2005&varevent=111.

Optional Protocol to the Convention on the Rights of the Child on the sale of children

114 States have become signatories and 101 are Parties to the Protocol.

In September, three new States signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (Bhutan, 15 September; Fiji and Vanuatu, 16 September 2005). Moreover, Saint Vincent and the Grenadines acceded to the Protocol on 16 September 2005 (for more information on the signatures, ratifications or accessions, see Reviews 10/2005, 6/2005, 63 and 54). As a

reminder (see Review 63), this instrument, which came into force on 18 January 2002, requires States, among other things, to make it punishable by law for an intermediary to "improperly" induce consent to domestic or intercountry adoption, in violation of applicable international instruments (particularly article 3 of The Hague Convention of 1993).

Source: Office of the United Nations High Commissioner for Human Rights, www.ohchr.org/english/countries/ratification/11_c.htm.

PROTAGONISTS IN MATTER OF ADOPTION

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

- **Brazil:** The new particulars of the Federal Central Authority are: Autoridade Central Administrativa Federal, Secretaria Especial dos Direitos Humanos – Presidência da República, Edifício Sede, sala 212 , 70064-900 Brasilia; tel: +55 (61) 3429 3975 / 3429 3481; fax: +55 (61) 3429 3261; www.presidencia.gov.br/sedh, sedh-acaf@sedh.gov.br; contact: Ms Patricia Lamego de Teixeira Soares, Coordinator, patricia.soares@sedh.gov.br.
- **Burundi:** The particulars of the Central Authority have been updated: Ministère de l'Action sociale et de la Promotion de la Femme, Boulevard de l'Uprona, Building Nyogozi, 3^e étage, B.P. 2690, Bujumbura; tel: + 257 222 431; fax: + 257 226 901 / + 257 224 247; contact: Ms Marie Goretti Nduwimana.
- **China:** This country has named its Central Authority : the Ministry of Civil Affairs, the particulars of which are: 147 Beiheyuan Street, Dong Cheng District, 100721 Beijing. It has also named the Central and Competent Authorities for the Special Administrative Regions of Hong Kong and Macao.
- **El Salvador:** This country has named the contact person at its Central Authority (La Procuraduría General de la República) : Ms A.Y. Lopez de Pineda, the particulars of which are 13A Calle Peniente, Centro de Gobierno, San Salvador ; tel: + 503 222 3815 ; fax: 503 221 3602.
- **Georgia:** This country has updated the particulars of its Central Authority: Ministry of Education of Georgia, 2 Uznade Str., Tbilisi 380002 ; tel: + 995 (32) 952 514 / + 995 (32) 953 155 ; fax: + 995 (32) 953 155 ; contact : Mr Tamaz Tatishvili, Deputy Minister.
- **India:** This country has updated the particulars of its Central Authority: Central Adoption Resource Agency, West Block VIII, Wing II, Floor II, R.K. Puram, New Delhi 110 066 ; tel: + 91 (11) 2618 0194/96 and + 91 (11) 2610 5346 ; fax: + 91 (11) 2618 0198, e-mail: cara@bol.net.in; www.adoptionindia.nic.in; contact: Mr S.K. Mishra, Joint Director and Officiating Secretary and Mr B.K. Sahu, Deputy Director, tel : + 91 (11) 2610 3378.
- **Norway:** This country has updated the list of its regional Competent Authorities and has confirmed that its Central Authority, the Norwegian Directorate for Children, Youth and Family Affairs is competent for the delivery of the certificate of conformity.
- **Philippines:** This country has updated the particulars of its Central Authority, the Intercountry Adoption Board: tel: + 63 (2) 4101643/4 / + 63 (2) 726 4568, + 63 (2) 726 4551 or + 63 (2) 414 9974; fax: +63 (2) 727 2026 ; contact: Ms Lournia T.R. Laraya, Executive Director.
- **Poland :** The following information supplements the existing particulars of the Central Authority (Ministry of Labour and Social Policy) : tel: + 48 (22) 661 0480, + 48 (22) 629 6289; fax: + 48 (22) 661 0493; contact: Ms Victoria Biederman, Deputy Director, fax: +48 (22) 661 0481.
- **Slovakia :** The particulars of the Central Authority have been amended : Centrum pre medzinárodnoprávnu ochranu detí a mládeže (Centre for International Legal Protection of Children and Youth), Spítalska 6, P.O. Box 57, 814 99 Bratislava; tel: + 421 (2) 5975 2315; fax: + 421 (2) 5296 2898; www.cipc.sk, cipc@employment.gov.sk; contact: Mrs Alena Mátejová, Director, amatej@employment.gov.sk.
- **The Netherlands:** This country has updated the particulars of its accredited bodies.
- **Cyprus, Denmark, Finland, France, Hungary, Israel, Italy, Latvia, Monaco, Mongolia, South Africa, Spain, Sweden and Switzerland:** These countries have updated the particulars of their Central Authorities.

LEGISLATION

This section introduces three legislative reforms that have taken place during 2005 in Germany, Sweden and the United Kingdom. If we include Belgium (which will be the subject of an article in the next Review) and China (the possible consequences of whose ratification of The Hague Convention of 1993 are addressed in the following section), it is noteworthy that intercountry adoption and related topics (providing care for the child deprived of a family, domestic adoption, preparation and evaluation of the suitability of

prospective adoptive parents, regulation of accredited bodies etc.) are currently the subject of intensive legislative activity world-wide. The ever more effective application of The Hague Convention of 1993 (THC-1993), as well as of the United Nations Convention on the Rights of the Child (CRC), thus induces a number of countries to proceed with major reforms that integrate, and more often than not in a direct and very specific way, the basic principles such as, for example, the respect for the best interests and for the rights of the child or supervision of accredited bodies and of adoption fees. It often follows on the heels of an important in-depth analysis of the national state of affairs in this field, which enables to carry over into the political agenda topics sometimes neglected. Both THC-1993 and the CRC thus play a determinant role in developing the understanding and implementation of the rights of the child, something which we can only rejoice about at this end of year.

GERMANY: Further implementation of THC-1993 through statutory instruments

Secondary legislation detailing the accreditation and supervision procedures of non-governmental adoption bodies, and regulating the fees and the refund of adoption costs in Germany, has entered into force in May 2005.

The Federal Ministry for Family Affairs has enacted regulations, which set out the detailed implementation of the Adoption Placement Act 2002 (*Adoptionsvermittlungsgesetz*) and focus, amongst others, on the accreditation – the term employed being ‘recognition’ – and monitoring of non-governmental adoption bodies carrying out domestic and international adoptions and on the possibility for state bodies only – i.e. Central Adoption Authorities of the “Länder” and local youth welfare offices’ adoption bodies – to charge fees and request a refund of costs. The Regulations on the Recognition of Non-governmental Adoption Agencies and Costs to be reimbursed in Adoption Proceedings (*Verordnung über die Anerkennung von Adoptionsvermittlungsstellen in freier Trägerschaft sowie die im Adoptionsvermittlungsverfahren zu erstattenden Kosten*) was enacted under the Adoption Placement Act and entered into force on 19 May 2005.

Non-governmental adoption bodies

The above-mentioned Regulations not only detail the criteria and procedure for the accreditation of adoption bodies but also the application process for a licence specifically issued to intercountry adoption bodies. In accordance with the relevant provisions, non-governmental adoption bodies are required to meet the criteria of a strict accreditation procedure, as established by the Central Adoption Authority of the concerned Land Youth

Welfare Office, and to subsequently undergo continuous monitoring and supervision.

In addition to the general requirements for recognition – such as its status as a not-for-profit organisation, its financial situation and its financial plan, the intercountry adoption agency is also required to submit other documentation relating more specifically to its intercountry activities. These include designation of the countries of origin, which children will be placed for adoption from; identification of the Central Authority or accredited bodies of the countries of origin, which the adoption procedure will be carried out with; evidence of the licence or, where the countries are not Contracting States to THC-1993, proof of professional qualifications of the agencies in the countries of origin; evidence of cooperation with agencies in the countries of origin, including relevant agreements; proof of the authorisation granted to, or the professional qualifications of, the agency in the countries of origin to decide on adoption placements; description of the adoption placement procedures and process, including a plan of action, if applicable; an estimation of the average costs for adoption placement procedures, detailing individual countries of origin; and demonstration of the particular suitability of the adoption agency’s staff and their compliance with professional requirements.

At the end of each year, non-governmental adoption agencies are also required to submit a detailed report of their activities as well as statistical data to the accrediting authority, in order for the latter to evaluate compliance with

professional standards and minimum personnel and institutional requirements.

It is worth noting that German legislation does not require prospective adopters to go through an accredited body in all cases.

Adoption fees and costs

Adoption fees and other expenses relating to intercountry adoption have also been affected by these legislative changes. More specifically, the legislation sets out the fees to be charged by State adoption bodies for their adoption procedure as well as the expenses they may be refunded when carrying out intercountry adoption placements (i.e. purchase of certificates, translation and expert opinion). This provision applies to the Central Adoption Authorities of the "Länder" and the Local Youth Offices only, and does not affect non-governmental bodies. The amount of the fees is determined by the extent of the work required, e.g. home visits, home study report and is limited to a maximum of € 2,000 (€ 800 for proceeding without a home study and € 1,200 for the home study only), plus expenses. It is essential to note that initial general counselling

services for adoption applicants are not subject to a fee and that no separate fee can be fixed for the preparation of follow-up reports.

Sources: Heidemarie Bienentreu, Lawyer, Familie International Frankfurt e.V (ISS Correspondent in Germany), bientreu@fif-ev.de, www.fif-ev.de; Bundeszentralstelle für Auslandsadoption (German Central Authority); Verordnung über die Anerkennung von Adoptionsvermittlungsstellen in freier Trägerschaft sowie die im Adoptionsvermittlungsverfahren zu ersttenden Kosten (Adoptionsvermittlungstellenanerkennungs- und Kostenverordnung – AdVermiStAnKov), 4 May 2005, in Federal Law Gazette (*Bundesgesetzblatt*), Part I, No. 28, 18 May 2005: <http://217.160.60.235/BGBL/bgbl1f/bgbl105s1266.pdf> (in German only); Gesetz über die Vermittlung der Annahme als Kind und über das Verbot der Vermittlung von Ersatzmüttern (Adoptionsvermittlungsgesetz – AdVermiG), 1 January 2002, Federal Law Gazette (*Bundesgesetzblatt*), Part I, S. 2950): www.bundeszentralregister.de/bzaa/adop_pdf/6adop.pdf.

SWEDEN: A new legislation on intercountry adoption

The Swedish legislation on intercountry adoption was amended by several texts, which took effect from 1 January 2005. These amendments mainly concern the reform of the Central Authority (see Review 3/2005), the activity of an intermediary in intercountry adoption, and the evaluation of the suitability of prospective adoptive parents. Each year, about 1000 children are adopted from abroad in Sweden.

One of the main transformations introduced to the new legislation is the reform of the central administrative body in charge of intercountry adoption. The amended version of the 1997 Act consequent on Sweden's accession to *The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption* (THC-1993) stipulates that the Swedish Intercountry Adoptions Authority (MIA) is the Central Authority as referred to in THC-1993 (Section 2).

This reform is aimed at strengthening the best interests of the child as a fundamental principle in the intercountry adoption procedure. Whereas the function of the previous administrative service in charge of supervising this procedure consisted in "facilitat[ing] adoption in Sweden of children from other countries" (*Ordinance Containing Instructions for The Swedish National Board for Intercountry Adoptions*, Section 1 (Repealed)), the new legislation provides that the MIA shall "monitor that the work of the Swedish authorized associations with intercountry adoption intermediation is conducted according

to law and the principle of the best interests of the child [...], and in an ethically acceptable way otherwise" (*Ordinance containing instructions for the Swedish Intercountry Adoptions Authority*, Section 3). Other tasks of the MIA also include the observation of international development related to adoption of foreign children and the control of the evolution of costs for adoption of foreign children (*Ordinance containing instructions for the Swedish Intercountry Adoptions Authority*, Section 3).

Mediation by Adoption Accredited Bodies

The new legislation also confirms that *intercountry adoption must be mediated by adoption accredited bodies (AAB)*, except in "cases of adoption involving related children or where there are otherwise special reasons for adopting without intermediation by an authorized association". In cases of this kind, the MIA must consider whether the procedure is acceptable before the child leaves the country (*Intercountry Adoption Intermediation Act*, Section 3). These provisions undoubtedly provide additional

guarantees for the protection of the interest of the child.

According to the Swedish legislation, accreditation to work in Sweden may only be granted to associations whose main purpose is the intermediation of intercountry adoptions. Moreover, the association must proceed in an expert and judicious manner, on a non-profit basis and with the best interests of the child as its foremost guiding principle. In this case, this general accreditation may be granted for at most five years in relation to activities undertaken in Sweden; it is limited to two years for activities carried out overseas (*Intercountry Adoption Intermediation Act*, Section 6, 6a and 7).

In this respect, and in addition to these general conditions, the association must also fulfil further requirements in order to work in another country. In particular, *it may only work in countries where the legislation on adoption takes into account the fundamental principles of the UN Convention on the Rights of the Child and THC-1993, and where the local administration is functional concerning intercountry adoption. Furthermore, the association must report of its costs abroad and how they are distributed.*

Prospective adoptive parents

To adopt a child is not a right for adults. Adoption is, on the contrary, a protective measure for the child. This is one of the main reasons why THC-1993 stipulates that the suitability of the prospective parents to adopt must be assessed (art. 15).

In Sweden, such assessment is carried out by local social welfare committees. According to the new legislation, these committees must take particular regard to *“the applicants’ knowledge*

and understanding of adoptive children and their needs and the implications of the planned adoption, the applicant’s age, state of health, personal qualities and social network” (Social Services Act, Section 12). In addition, *the prospective adoptive parents must follow a parental training in order to be authorized to adopt. (Social Services Act, Section 12).* The declaration of suitability is valid for two years, but can be withdrawn earlier

The original legislative project also contained measures to strengthen home evaluations and to create a specialized post adoption support for adoptees and their families. These proposals however were not followed by the government.

A child-oriented procedure

The new Swedish legislation on intercountry adoption thus puts the child in the centre of the procedure. The amendments which entered into force in 2005 clearly stipulate that each protagonist intervening in the procedure must be guided by the principle of the best interests of the child, by the vision of an ethical global policy concerning intercountry adoption and by a complete knowledge of the situation in the countries of origin. The explicit description of the criteria that social welfare committees must take into account when assessing the prospective parents’ suitability also contributes to reaching this goal. Such an evolution could inspire legislative changes in other receiving countries.

Sources: MIA: for updated information, see Review 3/2005. Adoptions centrum, www.adoptionscentrum.se/.

The new legislation is available at ISS/IRC in an electronic version.

UNITED KINGDOM: Entry into force of the Adoption and Children Act 2002

The Adoption and Children Act 2002 reflects a significant step in the process of modernisation of adoption-related legislation in England and Wales and takes a step further in protecting the best interests of the child.

An important number of provisions of the Adoption and Children Act 2002 will enter into force on 30 December 2005 and concern domestic as well as intercountry adoptions. The Act has subsequently been supplemented with a number of statutory instruments, designed to detail the Act’s implementation process and procedural requirements. These include the Adoption Agencies Regulations 2005, the Suitability of Adopters Regulations 2005, and the Adoptions with a Foreign Element

Regulations 2005; these will come into force at the same date.

Central issues of consideration in domestic and intercountry adoption

The Government has made efforts to raise the status of adoption as an option for permanent placement, to incorporate the principle that the welfare of the child is paramount across its legislation and to ensure that the rights of the child are adequately protected at all stages of

the decision-making process relating to his or her care and adoption. The Act's initial provisions outline the issues, criteria and requirements for a child's placement for adoption, including consent, placement orders, contact, adoption orders, applications, information and records kept and disclosed, status conferred by adoption, and registration of adoptions. In addition to this wide array of provisions applicable both to domestic and intercountry adoption, Chapter 6 of the Act also makes specific provision for adoptions with a foreign element. This covers non-Convention adoptions, from the perspectives of the United Kingdom as a receiving country and as a State of origin. Convention adoptions are regulated under a different legal framework which has been updated to be consistent with the Adoption and Children Act 2002.

Specific provisions for intercountry adoption

Part 3, Chapter 1 of the Adoptions with a Foreign Element Regulations 2005 outlines procedural requirements where the United Kingdom is the receiving State of intercountry adoptions. With a view to strengthening the safeguards for adoption and to improving legal controls on intercountry adoption, the adopters' eligibility and suitability for adoption, the requirements imposed on adopters, adoption agencies and local authorities and the implications of adoption for the child have been

subject to detailed criteria and requirements. In this respect, it is worth mentioning that assessments of prospective adopters may only be carried out by local authorities and voluntary adoption agencies.

Part 3, Chapter 2 of this legislation, on the other hand, addresses issues relating to adoptions where the United Kingdom is the State of origin. In this respect, concerns and aims are similar: major issues remain the provision of counselling and information for the child as well as for the birth parent or guardian, ensuring that specified stages in the decision-making process are complied with by adoption agencies and panels and that parental responsibility is granted appropriately.

In conclusion, the United Kingdom has made efforts to ensure that the need for permanent family life and the welfare of the child are given primary consideration in any decision throughout the professional adoption procedure.

Sources: Department for Education and Skills, Adoption (Central Authority): www.dfes.gov.uk/adoption/index.shtml; Adoption and Children Act 2002: www.opsi.gov.uk/acts/acts2002/20020038.htm; The Adoptions with a Foreign Element Regulations 2005: www.opsi.gov.uk/si/si2005/20050392.htm; Adoption Guidance: Adoption and Children Act 2002 (DfES): www.dfes.gov.uk/adoption/update290705.shtml; British Association for Adoption and Fostering: www.baaf.org.uk/info/lpp/law/adact.shtml.

CHILDREN'S RIGHTS

CHINA: Implications of the ratification of THC-1993 for the country with the highest number of internationally adopted children

The People's Republic of China's ratification of THC-1993 and the examination of its periodic report by the United Nations Committee on the Rights of the Child will undoubtedly contribute to the country's development of its legislation and practice in matters of adoption.

With over 11,000 children adopted internationally in 2003 from China, according to The Hague Conference on Private International Law, China became the 67th State Party to THC-1993 on 16 September 2005. In accordance with China's declaration, it was decided that the Convention would also apply to the Special Administrative Regions of Hong Kong and Macao.

This is a significant step in the wider process that China is undertaking with respect to

domestic and intercountry adoption. First steps in this respect were taken in 1998, when the Standing Committee of the Ninth National People's Congress passed the Resolution on the Amendment of the Adoption Law, which allowed for existing legislation to be put into line with international standards and which took effect on 1 April 1999.

Legislative steps

The amendments to existing legislation approved in 1999 focused on the principle of the

best interests of the child, on the criteria for adoption and adopters wishing to adopt Chinese children from abroad and on the establishment of a consistent model for the registration of “adoptive relationships” (See Monthly Review 12). Given the consequences of the one-child policy, particularly the phenomenon of child abandonment, the establishment of such legislation was welcomed (for more information on the evolution of the situation of children deprived of parental care in China, see Monthly Review 8-9/2005).

The implementation of these changes have been enforced in accordance with the 1993 Regulations for the registration of adoptions by foreign nationals in the People’s Republic of China and other instruments, which detail the strict requirements for foreign prospective adoptions and the information the persons entrusting a child for adoption must provide.

In this respect, the China Center of Adoption Affairs (CCAA), which is part of the the Ministry of Civil Affairs and has been delegated the powers of the Central Authority, is a major actor in overseeing the enforcement of this new legislation and in ensuring compliance with domestic and international legal requirements. It has also recently issued a number of essential documents, including the Basic Requirements for Foreign Adoption Organisations in Cooperation with the CCAA and the Provisional Regulations and Requirements for Foreign Adoption Organisations doing Adoption with China, which were enacted in 2003.

Issues of concern raised by the Committee on the Rights of the Child

Despite efforts to bring legislation and practice in line with international norms, the United Nations Committee on the Rights of the Child reiterated a number of concerns when it examined China’s report in September 2005. In particular, it focused on the lack of adequate information available on *the number of intercountry adoptions and the number of agencies facilitating such adoptions* in the mainland. It also raised concern with respect to the “lack of explicit guarantees that *children without birth certificates* maintain their right to identity throughout the adoption process”. Therefore, the Committee made a number of recommendations for improvement, including incorporating international norms into national legislation, strengthening the monitoring of agencies facilitating international adoptions, enacting legislative and administrative measures

to guarantee that all children without birth certificates are guaranteed their right to identity and promoting, amongst officials and other professionals, *the principle that international adoption is an exceptional option for alternative care* (see Monthly Review 8-9/2005 for more information on the principle of subsidiarity).

In view of the current evolution and practices in the People’s Republic of China, the enactment of the specific secondary legislation mentioned above, in relation to the creation of a system of *annual authorisation of foreign adoption agencies*, has to be considered as an improvement. However, it remains important to draw attention to issues like *adoption costs* in China, considered high, and sometimes insufficiently transparent and incomplete medical reports on adoptable children, and of the way in which the emotional needs of certain children have been disregarded when they were presented to prospective adopters (according to various ISS correspondents and IRC contacts in receiving countries).

Implications of the ratification of THC-1993

In the light of the comments mentioned above, China’s ratification of THC-1993 (see Monthly Review 10/2005) will undoubtedly create an opportunity to develop the guarantees to ensure that intercountry adoptions and relevant procedures involved are transparent, comprehensive, and systematically take account of the principles of the best interests of the child, as enshrined in the United Nations Convention on the Rights of the Child (art. 3 CRC) and THC-1993 (art. 1.a), and of the subsidiarity of intercountry adoption (priority to maintaining or reintegrating the child into the birth family or, if not possible, to domestic adoption: art. 21.b CRC and art. 4.b THC-1993).

In close link to the comments made by the Committee on the Rights of the Child regarding inconsistent information on bodies facilitating intercountry adoptions, the ratification of THC-1993 has imposed an obligation on the State to notify the Permanent Bureau of the Hague Conference on Private International Law of its Central Authority(ies), competent authorities and accredited bodies in matters of intercountry adoption (arts. 13 and 22 THC-1993). All of these have so far not yet been notified.

Moreover, procedural requirements enshrined in THC-1993 will hopefully contribute to ensure better monitoring of bodies involved in facilitating such adoptions and their procedures.

In addition, ratification of THC-1993 should also incite China to address its repeatedly criticised high adoption costs and to comply in this respect with the requirements of arts. 32.2 and 32.3 of the Convention (reasonable professional fees). Finally, THC-1993 reinforces the obligation of China to respect and protect the child's fundamental rights, including his or her right to identity and to being given consideration of his or her emotional needs throughout the care and adoption process, and to ensure that informative reports on adoptable children include all relevant information.

Sources: Hague Conference on Private International Law: <http://hcch.e-vision.nl>; Second Periodic Report: China (CRC/C/83/Add.9, 15/07/2005): [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/dee0df902365733fc125707a003878e1?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/dee0df902365733fc125707a003878e1?Opendocument); Concluding Observations of the Committee on the Rights of the Child (CRC/C/15/Add.271, 30/09/2005): [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/e479f5e3f8325546c125708c004c2217?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/e479f5e3f8325546c125708c004c2217?Opendocument); China Center of Adoption Affairs (www.china-ccaa.org): contains the main Chinese regulations on intercountry adoption.

PAKISTAN: Humanitarian crisis highlights gaps in the child protection system

Once again, a crisis situation has exacerbated the structural weaknesses of a country, particularly in child protection matters. The development of international standards could contribute to the reinforcement of existing capacities and to the improvement of child care throughout all phases of the crisis.

In recent months, the world has been overwhelmed by several natural disasters, the most notorious being the South-East Asian tsunami (see Monthly Review 1/2005). On 8 October 2005, a devastating earthquake in Pakistan, similar in magnitude to the Tsunami, left an estimated 74,000 deceased, 100,000 injured and 3 million homeless persons. Considering that 50 % of Pakistan's population is under 18, we could assume that a large part of these statistics represent children. Protecting children from post quake consequences requires myriad supports, if only to nurture the potentially thousands of children who have been either orphaned or separated from their parents.

The Red Cross / Red Crescent Society immediately began the family reunification process by registering separated children and ensuring that those children requiring medical treatment were treated and then released to family members. However, the territory has undoubtedly imposed life threatening delays with the onset of the Himalayan winter, thus increasing the vulnerability of displaced persons, especially separated children. UNICEF reported that locating those affected was such a challenge that there were thousands of unreached children in the mountains even two weeks after the disaster.

Following the quake, there were pleas from various organisations emphasising the necessity of an immediate emergency response, yet the \$5.8 billion pledged at the international donors' conference on 19 November 2005 are mainly directed at long-term objectives. Several experts

have warned that the absence of immediate resources risks the potential for a second humanitarian crisis, as vulnerable children remain in dire need of basic assistance. Timely evolution to a reconstruction phase is crucial to reduce the trauma experienced during such a period of displacement and will also enhance the family tracing and reunification capacities of assisting organisations.

Priority for family reunification and support

In Pakistan, unlike the reaction to the Tsunami, the issue of practices contrary to ethics guiding intercountry adoption following the earthquake are not a focal concern. Indeed, Islamic Law does not permit intercountry adoption practice and no "appeal for adoption" was expressed from the Western communities. Shortly after the quake Pakistan's government clarified that the adoption of children would not be permitted, as declared by Prime Minister Shaukat Aziz.

Initial assessments from UNICEF report that a majority of unaccompanied children were under the care of extended families. Continued ongoing support services for unaccompanied children will be provided via the coordination of UNICEF and the government's Ministry of Social Welfare and Child Protection. UNICEF maintains a holistic approach to emergency response, recognising that family reunification is not merely an act of rejoining a child with their parent(s), but rather an on-going support process. To recall principles supported by ISS: establishing timely identification and registration procedures is a priority for children separated from their parents and for whom no adult is responsible by law or

by custom. Research should also be carried out into a child's family and community history. During this emergency phase, unaccompanied children must be taken into care at the local level, either in a foster family in their community, or be placed in existing institutions. The creation of new institutions should be avoided as far as possible (see Monthly Review 01/2005).

Need for changes in child care and protection legislation

Prior to the earthquake, Pakistani institutions for children in need of alternative care were criticised by the Committee on the Rights of the Child (CRC) for various inadequacies such as the absence of guaranteed standards and clear procedures, and deficient means for record-keeping and evaluation of children in need of the alternative care. Observations made by the CRC have also highlighted the lack of monitoring throughout the placement of children with extended family and the insufficient assistance provided to caregivers. Recognising that such a gap in legislation could severely impair a long term emergency response, UNICEF has recommended that the Parliament of Pakistan accelerate the process at which the Child Protection Bill will be passed as a measure to address both post-quake and future protection issues for the children of Pakistan.

Impending guidelines for children deprived of parental care

Although tragic, current conditions in Pakistan illustrate a need, which previously led UNICEF and ISS to call for an international instrument to

supply guidelines for the protection of children without parental care. Having such a resource would provide general guidelines while also detailing specific practices adapted to emergency situations (see Monthly Review 72-73). ISS is the convener of an NGO working group currently in the drafting process of the NGO proposal version which will be submitted to the United Nations General Assembly in 2006. This document could be a particularly valuable resource in response to the alternative care predicament in Pakistan, especially in the absence of guiding State legislation.

For more information about current emergency responses visit: UNICEF (www.unicef.org), or the International Committee of the Red Cross (www.icrc.org).
Sources: Concluding Observations of the Committee on the Rights of the Child: Pakistan, 27/10/2003. CRC/C/15/Add.217 ([http://193.194.138.190/tbs/doc.nsf/\(Symbol\)/ae8223e67667611fc1256df1002eac68](http://193.194.138.190/tbs/doc.nsf/(Symbol)/ae8223e67667611fc1256df1002eac68)); NGO Working Group on Children Without Parental Care, (www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/NGOGpGuideOverview040205_000.pdf); International Social Service and UNICEF, Care Care for Children in Emergency Situations: Implications for International Standards (www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/EmergencieENG.pdf); Save the Children UK, (www.crin.org/resources/infodetail.asp?ID=6518&flag=news); The Daily Times, (www.dailytimes.com.pk/default.asp?date=10%2F21%2F2005); UNICEF, (www.unicef.org/infobycountry/pakistan.html); UN News Centre, (www.un.org/apps/news/story.asp?NewsID=16635&Cr=pakistan&Cr1=quake); UN News Centre, (www.un.org/apps/news/story.asp?NewsID=16622&Cr=Pakistan&Cr1=); USA TODAY, (www.usatoday.com/news/world/2005-10-16-quakeadoption_x.htm); Society for the Protection of the Rights of the Child (SPARC) (<http://www.sparcpk.org/>).

INTERDISCIPLINARY APPROACH

The integration of adopted children in school takes time and flexibility on the part of the educational system and the various actors involved

The French association of adoptive parents Enfance et Familles d'Adoption has carried out a study of adopted children and their schooling. It has published it in the last two issues of its quarterly review, Accueil. It has also made it the subject of its national congress.

School occupies a central place in today's societies, particularly in the West. Success in school is considered a pre-requisite for professional, and even social, success. In fact, he/she who is successful in his/her studies, crowned with diplomas, is generally well received socially, whereas those who follow a mediocre path risk being rather marginalised. In this

context, it is important that the adopted child finds his/her place in the educational system, that is to say not only in school but also through out-of-school and family support mechanisms. The French association Enfance et Familles d'Adoption (EFA) recalls this point in its section « Savoir(s): Nos enfants et la scolarité » (*Knowledge: Our children and schooling*) published in the last two issues of its quarterly

review *Accueil*. This theme was also the subject of the association's national congress last October (we will keep you informed of the publication of the congress's proceedings). The document published in *Accueil* provides the results of a wide-ranging study that EFA carried out among its members by means of a questionnaire to which more than a thousand people replied. The publication also gives the floor to adoptive parents (essentially), adoptees, their teachers and adoption specialists.

Adapting to school seems easier when the child has already acquired basic reading levels in his/her country of origin

What emerges particularly from this report is that adopted children generally have similar school careers to those of other children, even if they often have a little more difficulty in adapting, particularly in the early school years. The parent of an adopted child explains that "the difficulties were rather short lived. [...] The motivation for school was not obvious at the beginning of CP [1st year of primary education] but it then started well during that same year".

These acclimatisation difficulties at the beginning of schooling seem, nonetheless, to dwindle if the child has already achieved the basics of reading in his/her country of origin. Thus, this parent of a child who became brilliant both at French and foreign languages, as well as mathematics and physics, reports that "the fact that Diego (adopted at the age of seven in Brazil) knows how to decipher letters, even though he could not read fluently, certainly helped him a lot. He had only the language barrier to overcome"

The child needs time before immersing him/herself into his/her new school environment and to adapt to it

In any case, the adopted child needs time before immersing himself in this new school environment, especially if he was adopted when he was already older. "To throw him straight away, if he has reached school age, into this world of acquisitions, is like asking him to run and jump, to clear hurdles or toss a weight without bothering with providing him with the prerequisite bone and muscular structure without which such movements are obviously impossible" states Michel Lemay in his book entitled « J'ai mal à ma mère »⁴ (*I ache for my mother*) and quoted in the EFA report.

⁴ *J'ai mal à ma mère*, Michel LEMAY, Ed. Fleurus, Paris, 1993.

When the child settles in his new school, he/she still needs time to master his new school environment, to adapt to it and to really feel ready to learn something. In fact, the child needs to feel confident and to gain his/her self-respect in order to be able to learn. From this perspective, the views of others, and primarily those of his/her parents, are very important as this couple's comment bears witness: "we have the impression that our daughter, adopted in France at the age of eight, lacks self confidence and that this is preventing her from tapping her resources. No doubt she feels the pressure from us, our fear of failure is enormous, but we always try to reassure her for the best and we know how to show her that in the end, she has succeeded. This also brings with it a great amount of time devoted to homework."

Integration of the child is sometimes complicated by the rigidity of the system

Furthermore, the integration of the child in school environments is sometimes complicated by the rigidity of a system which has difficulty assimilating different children. Some parents feel really frustrated by it: "Antoine arrived from Poland at the age of nine not knowing how to read or write and with dyslexia problems. At the request of the inspector of the academy [academic district], he was placed straight into CE1 (2nd year primary education), given his age. He has been shifted from school to school and has never properly adapted to school life."

Under these circumstances, it is often up to the family, the adopted child him/herself and especially the teacher to make the difference. A majority of the latter achieve this. "Adopted at the age of ten, I went to school a few months after I arrived in France. Starting again from zero was for me and for the teacher an enormous challenge. In this single class at the heart of rural Bresse, I learnt the basics and gradually forgot my mother tongue. The atmosphere was so conducive to learning and socialising that I felt just like the others. A year later, I understood French" reports an adoptee. Others are not so lucky: "if at a very early age I had a thirst for learning and discovering new things, I had difficulties with the rigid structure of the Lycée where I was and with the lack of teaching skills and psychology of most of the teachers", reports this adoptee who, despite a chaotic start in school, made a success of his History degree and Journalism studies.

There is, therefore, not one typical path. But as one parent aptly put it, "you have to find a school environment and the teachers who accept older

children who haven't had any schooling and who are therefore, out of the ordinary in terms of "national education", by respecting their rhythm and considering them as a person as a whole and not with the sole aim of catching up with schooling. It is for many people a matter of the individual rather than the structure".

Savoir(s): Nos enfants et la scolarité (Knowledge: Our children and schooling), *Accueil*, n° 2-3, Enfance et Familles d'Adoption, 2005, Paris. Available, in French only, at Enfance et Familles d'Adoption, Fédération nationale des Associations de Foyers adoptifs, 221 rue de La Fayette, 75010 Paris. E-mail : revue.accueil@adoptionefa.com. Web page: www.adoptionefa.org.

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **France/COPES :**

- a) *Sensibilisation à la question de l'adoption* (Raising awareness of the question of adoption), Paris, 2 - 3 February 2006. This workshop is led (in French) by Omblin Ozoux - Teffaine, a psychologist. *Themes addressed:* legal and administrative mechanisms; the accreditation procedures; information about the different aspects of domestic and intercountry adoption. The workshop is intended for junior professionals who have not yet had to deal with adoption matters and for professionals with less than a year's experience or who are awaiting appointment. At the end of this first round of training, other more advanced workshops will be available.
- b) *Les adoptions tardives : aspects psychologiques, juridiques et cliniques* (Late adoptions: psychological, legal and clinical aspects), Paris, 6 - 10 March 2006. This workshop is led (in French) by Omblin Ozoux - Teffaine, psychologist, with the participation of several specialised contributors. *Themes addressed :* Children adopted abroad, like wards of court ('*pupille d'Etat*') in France, are more and more often older children at the moment of their adoption; are later adoptions always desirable and possible?; bringing the two parties together in late adoptions implies the collaboration of all the child's partners; social workers are faced with abandonment, but more frequently with growing neglect; the difficult question of a petition to the courts; the arguments that would justify a legal decision compatible with the interests of the child; the follow-up and the handling of family situations following late adoptions; the search for origins by the late adopted child. This workshop is intended for adoption and child support protagonists.
Contact : 20 rue de Dantzig, 75015 Paris ; tel : +33 1 53 68 93 40 ; fax : +33 1 53 68 93 45 ; copes-formation@wanadoo.fr; www.lecopes.com.

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