

**Monthly Review n° 4/2006
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TABLE OF CONTENTS

Editorial

- p. 1 [Post-Adoption \(III / 1\): The search for origins.
First part: Theoretical issues](#)

IRC News

- p. 3 [Two team members finishing their term with
the General Secretariat](#)

Conventions and International Documents relating to
the Rights of the Child Deprived of Family

- p. 3 [Bulgaria: Accession to the 1996 Hague
Convention](#)

Protagonists in matter of adoption

- p. 3 [Republic of Moldova, Spain](#)

Legislation

- p. 4 [Guatemala: The need for an adoption law
and for the renewed approval of the 1993
Hague Convention on Intercountry Adoption](#)
p. 5 [Kenya: New regulations clarify roles within
the adoption process](#)


Procedure

- p. 6 [Thailand: Renewed quotas for foreign
adopters](#)
p. 6 [Ukraine: New Adoption Authority](#)
p. 7 [United States of America: Comments on the
final rules implementing the 1993 Hague
Convention](#)

Forthcoming conferences, seminars, symposia and
courses

- p. 8 [South Africa, Switzerland/International](#)

EDITORIAL

POST-ADOPTION (III / 1): The search for origins 

First part: Theoretical issues

This editorial is the third of a series devoted to the post-adoption period. In the previous two editorials, we presented the issue of professional support in the first moments of the adoptee's life together with his/her new family, and addressed the question of follow-up reports required by the States of origin. Given the complexity of the search for origins, it will be addressed in two parts: the first one presents the theoretical aspects of the issue whilst the last editorial will be dedicated to the implementation of this specific aspect of adoption.

Every human being may feel the need to know his/her origins in order to build his/her identity and to grow in the best possible conditions. In

general, the term 'search for origins' covers the series of steps which an adopted person takes in order to revive his/her pre-adoptive past. The adopted child does not only wish to know the

identity of his/her mother and father of origin, but also (and sometimes only) wishes to obtain *general information (sometimes unidentifiable)* about his/her background and socio-economic community until his/her entry into his/her adoptive family.

Although access to this information is increasingly being recognised by practitioners as *an indispensable psychological need for some children* in building their identity, the question of the existence of a right to know the identity of one's parents of origin remains open.

A right to know one's origins?

In accordance with the interpretation of The Hague Conference and of UNICEF¹, the right of a child to know his/her parents and to be cared for by them, as enshrined in article 7.1 of the Convention on the Rights of the Child (CRC), implies, on the one hand, the right to information about his/her origins, and, on the other hand, the need for authorities to preserve this information and to enable the child's access thereto. The 1993 Hague Convention on intercountry adoption (HC-1993) provides that competent authorities shall preserve the information they hold on the origins of a child and that they ensure that the child has access to this information, under appropriate guidance, "in so far as is permitted by the law of that State" (art. 30.2). In these circumstances, the HC-1993 guarantees the child's access to his/her adoption file (which includes the information stipulated in art. 16 HC-1993). However, it relies on domestic laws to regulate access to information relating to the biological parents' identity.

To date, thus, the right to know one's origins is not explicitly formalised in these international conventions. Its existence is still the subject of debates fueled amongst specialists and the responses provided vary in accordance with the legal tradition of the countries.

Thus, some countries recognise a *right of absolute veto* of the parents – essentially to the mother, on the disclosure of their identity (anonymous birth or a similar system), whereas others explicitly provide the adoptee with a right to information on the identity of his/her biological parents.

It is also noted that in a number of countries, the right of veto of blood parents is not, or no longer, recognised. In this respect, a current study of the Innocenti Research Centre, relating

to the implementation of the CRC, notes that an increasing number of countries (particularly in Latin America) are inclined to develop strategies which would enable the preservation of the child's story. In practice, these States have established support and guidance services for parents in difficulty, which are available throughout the pregnancy, as well as a systematic procedure which guarantees the *discretion of the adoption in relation to third parties* (without keeping it secret from the adoptee).

The search for origins within the framework of an international adoption also raises specific questions of international private law, depending on whether the receiving States or the States of origin apply one or the other of the responses mentioned above.

To conclude on this first part, there appears to be, on the one hand, a trend in the doctrine (and the case-law, to a certain extent) to recognise a real right to know one's origins. On the other hand, however, the social, legal and family concepts of the actors involved may be so different – as is often the case in questions relating to the privacy of the persons concerned – that a single response appears to be premature at this stage. The examples presented in the next editorial will, however, provide some ideas which, according to the level of their implementation, should allow the preservation of the rights of everyone.


The ISS/IRC team.

Previous editorials are available at: http://www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_edi.html.

You can also consult Documentation Reviews n° 3, 5 and 11, which provide a bibliography on this subject.

¹ Presentations at the European Seminar on Post Adoption, Istituto degli Innocenti, Florence, January 2006.

IRC NEWS

- **Two team members finishing their term with the General Secretariat**  :

Both Canadian Social Work interns Holly Burke and Yvonne Gomez have returned to Canada following their six-month placement at the General Secretariat. The internships were part of the Young Professionals International (YPI) programme, provided by Foreign Affairs Canada. Yvonne spent her time at the GS as a caseworker with the Casework Division, while Holly was a part of the IRC team. During the past six months, Yvonne was able to participate in research aimed to enhance the casework division while Holly contributed to the development of the country situation database and also the Monthly Review. Holly has since returned to Nova Scotia to practice social work and Yvonne is in British Columbia working towards the completion of her Master's of Social Work at the University of Victoria. The YPI placements were a huge success as both Holly and Yvonne enjoyed their time in Geneva and the GS greatly appreciated their commitment.

CONVENTIONS AND INTERNATIONAL DOCUMENTS ON THE RIGHTS OF THE CHILD DEPRIVED OF PARENTAL CARE

BULGARIA : Accession to the 1996 Hague Convention

The Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children was acceded to by Bulgaria on 8 March 2006, where it will enter into force on 1 February 2007.

The country has made a declaration in accordance with article 34, paragraph 2, stating that « the requests under paragraph 1 of the same article shall be communicated only through its Central Authority », which has been named as the Ministry of Justice, 1 Slavianska Str., Sofia 1040, Bulgaria.

Furthermore, Bulgaria has also made a reservation in accordance with articles 60.1 and 55.1, reserving « the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory, as well as the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property ».

Source: The Hague Conference on Private International Law, http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=70.

PROTAGONISTS IN MATTERS OF ADOPTION

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

- **Republic of Moldova** : The U.S. Department of State has informed that the Moldovan National Committee for Adoption is now operating (http://travel.state.gov/family/adoption/notices/notices_2195.html).
- **Spain** : The Central Authority of the Spanish Autonomous Community of Catalonia has updated its particulars: Instituto Catalán del Acogimiento y de la Adopción, Departamento de Bienestar y Familia, Generalidad de Cataluña, Plaza de Pau Vila, 1, 08039 Barcelona, Spain ; tel : + 34 (93) 483 1527 ; fax : +34 (93) 483 1883, (93) 483 18 69 or (93) 483 18 75.

GUATEMALA: The need for an adoption law and for the renewed approval of the 1993 Hague Convention on Intercountry Adoption (HC-1993)

Accession to the HC-1993 is a great step forward, but an adoption law is still required.

As we already explained in previous Reviews (see n° 54, 58 to 62, 72-73 and 2/2005), the situation in Guatemala is delicate. On the one hand, in 2003, a judgement of the Constitutional Court declared the country's accession to the HC-1993 as unconstitutional. On the other hand, both the depositary of the HC-1993 (the Ministry of Foreign Affairs of the Netherlands), and a vast majority of the doctrine (see Review 2/2005), consider that the HC-1993 *is still valid in relations between Guatemala and other Member States*, which have not raised objections to the accession of Guatemala.

In any case, at the moment, the Commission of External Relations of the Congress of the Republic and the Government have decided that the HC-1993 requires a renewed approval.

One of the reasons for ratifying the HC-1993 would be that Guatemala wishes to continue its collaboration with the U.S.A., the leading country in the adoption of Guatemalan children. For its part, the American Department of State has announced that Guatemala must implement the HC-1993 in order to guarantee the protection of children in intercountry adoption.

However, ratification of the HC-1993 alone is not a sufficient guarantee for the protection of children in need of adoption.

The need to adopt the measures required to implement the principles of the CRC and the HC-1993

Thus, as was mentioned at the international seminar "La Adopción: Un Derecho Humano de los Niños y las Niñas de Pertenecer a una Familia" (Adoption: A human right of children to belong to a Family), held in Guatemala City on 14-15 October 2004 (see Review 72-73 and 2/2005), *Guatemala needs to adopt the*

measures required to implement the principles, rights and guarantees, which the Convention on the Rights of the Child (CRC) and the HC-1993 stipulate in matters of adoption. In practice, this would mean the approval of a *specific and comprehensive law which would regulate adoptions, in accordance with the principles of the new doctrine on full protection.* This law should, among other things, solve problems of uncertainty with regards to ascertaining whether or not the adopted child has been subjected to theft or purchase from the mother, by deceitfully obtaining false DNA samples, etc.

Various initiatives have been taken in this respect. There exists an adoption bill, even though it has not evolved since last September. The Office of the Attorney General of the Nation, the Social Welfare Department, the Ministry of Foreign Affairs and the Judicial Organ were, reportedly, taking some measures in order to make the procedures more transparent. Furthermore, a number of State entities, involved in adoption, and civil society are working on the drafting of a protocol of good practices, based on the CRC, its Optional Protocol on the sale of children and on the Law on Integrated Protection of Children and Adolescents, in order to promote good adoption practices.

These initiatives, together with the sole application of the HC-1993 in Guatemala, are a first step in improving the state of adoptions in the country. However, they would not replace an adoption law, which would regulate all aspects of the adoption procedure and would solve current problems.

Sources: The First Lady's Secretariat for Social Work; UNICEF-Guatemala; U.S. Department of State, www.travel.state.gov/family/adoption/notices/notices_2858.html.

KENYA: New regulations clarify roles within the adoption process

The Children (Adoption) Regulations 2005 specify procedures for the registration of adoption societies and also detail the functions societies assume throughout the adoption process. Additionally, the new regulations set out the conditions which prospective adoptive parents (PAPs) must meet, in particular in intercountry adoptions.

The Children Act 2001 established that both foreign and local adoption societies could not initiate adoption arrangements in Kenya without prior approval by the Kenyan Adoption Committee, designated to oversee adoption processes in Kenya.

Last May, the Kenyan Government approved the Children (Adoption) Regulations 2005. These additional regulations to The Children Act define the Adoption Committee, which functions under the Department of Children's Services (Ministry of Home Affairs), as the body responsible to co-ordinate international adoptions and approve the registration of both foreign and local adoption societies wishing to conduct adoption in Kenya.

Role distinction defines process

The Children Act 2001 did not initially outline the specific required roles for adoption societies throughout the adoption process; although this matter has since been addressed within the new regulations. The regulations describe foreign adoption societies as being responsible to arrange for PAPs to travel to Kenya within three months of notification of their approval for adoption. Following the PAPs' arrival in Kenya, the matching process, and supervision of the required three-month placement is carried out by the local adoption society.

Regulations facilitate collaboration among local and foreign adoption societies

Given that it would be a challenge for foreign adoption societies to establish the facilities and the case committee required to become a

registered adoption society in Kenya, the regulations state that an application for adoption from foreign adoption societies shall be made through a local adoption society. This enables foreign adoption societies to coordinate their services with those of the local adoption societies which are able to successfully meet the Adoption Committee's criteria.

Although there are reportedly three NGOs which have been officially announced to assist with adoption issues, the Child Welfare Society of Kenya (CWSK) is currently the only approved local adoption society known to the ISS/IRC. The CWSK has requested that applications for approval for adoption from approved foreign adoption societies be made through the CWSK. To contact the CWSK, e-mail: cwsktoto@yahoo.com

Steps in aligning adoption practices with the 1993 Hague Convention

In passing the Children Act 2001, Parliament requested that the Kenyan Government ratify the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (HC-1993). The Convention remains unratified in Kenya; however, the new regulations are another sign that the Kenyan Government values the HC-1993, whereby all foreign adoption societies must be signatories to the Hague Convention.

Sources: Kenya Gazette Supplement: Act, 2001, The Children Act, 2001; Kenya Gazette Supplement No. 37, Legislative Supplement No. 21, The Children (Adoption) Regulations, 2005.

PROCEDURE

THAILAND : Renewed quotas for foreign adopters

The Thai Authorities have, for the second year in a row, adjusted the maximum number of new applications from prospective adoptive parents to the needs of their children.

Central Authorities of several receiving countries have informed that the Thai authorities have authorised them to submit a limited number of new applications from prospective adoptive parents in 2006, as they did in 2005. According to the receiving countries, the number varies between 20 and 40. The criteria used by the Thai authorities to determine the different quotas are still not clear (see Review 8-9/2005).

This practice of quotas responds to the fact that the number of children in need of intercountry adoption in Thailand is well below the number of applications from prospective adoptive parents (on this subject, see Editorial 60). However, according to one of the Central Authorities, adoption of children over 4 years of age, and of those who have special needs would not be subjected to the quota, as well as

adoptions organised by certain private Thai institutions.

For more information about Thailand, see Reviews 60-61 and 63.

Sources : Family Records and Inter-country Services (Australia); Service de l'Adoption (French Community of Belgium); Secrétariat à l'adoption internationale (Quebec, Canada), www.adoption.gouv.qc.ca/site/3.166.0.0.1.0.phtml; Department of Family Affairs (Denmark); Mission de l'Adoption Internationale (France) www.diplomatie.gouv.fr/fr/les-francais-etranger_1296/conseils-aux-familles_3104/adoption-internationale_2605/pays-origine_3233/fiches-pays_3895/thailande_9634.html; MIA Swedish Inter-country Adoptions Authority (Sweden); Department for Education and Skills (United Kingdom), www.dfes.gov.uk/intercountryadoption; Office fédéral de la justice (Switzerland).

UKRAINE: New Adoption Authority

The Cabinet of Ministers has approved a Decree which creates the State Department for Adoption and Protection of Children's Rights.

As mentioned in our Monthly Reviews 7/2005 and 1/2006, a *Decree on Urgent Measures to Protect Children's Rights*, approved in July 2005, established that the responsibility for adoption issues would be transferred from the National Adoption Centre under the Ministry of Education to a structure within the Ministry of Family, Youth and Sports. On 22 December 2005, a new law confirmed this move.

On 25 March 2006, the Cabinet of Ministers of Ukraine finally approved a new *Resolution, n° 637, which creates the new Adoption Authority*. As noted in our Monthly Review 1/2006, the new Authority is called the State Department for Adoption and Protection of Children's Rights.

Responsibilities of the new Authority

This new State Department has broader responsibilities, as it is in charge not only of adoption, but also of guardianship, family type-orphanages, foster families, protection of

children's rights, freedoms and interests, and the prevention of neglect and homelessness.

As explained in a public announcement from the Ministry of Family, Youth and Sports, the transfer of adoption documentation from the old National Adoption Center to the new State Department should be done during the month of April. It is expected that the new Department will be operational in early May.

First step?

Further to the assessment carried by ISS/IRC in Ukraine last year (see Monthly Review 1/2006), the ISS/IRC hopes this will be the first step in promoting a real change in the adoption system in Ukraine. The fact of having all responsible authorities in charge of child protection issues under the same Ministry is in itself an important step for the coordination of all actions and the prevention of abuses.

Sources: U.S. Embassy in Kiev, http://kiev.usembassy.gov/amcit_adoptions_notice_0329_eng.html.

UNITED STATES OF AMERICA: Comments on the final rules implementing the 1993 Hague Convention

Following the Department of State's issuance of the Final Rules on the accreditation of agencies and approval of persons, which came into force on 17 March 2006 (see Monthly Review 3/2006), Ethica has released its comments on the practical implications of these regulations.

Given the controversial character of intercountry adoption in the U.S.A. and in follow-up to last month's article on the recently issued Final Rules, the present article seeks to present Ethica's view in relation to this new legislation. This non-profit education, assistance, and advocacy group, which seeks to be an independent voice for ethical adoption practices worldwide, has recently issued its comments on the practical implications of the Final Rules. Although Ethica welcomes the many positive aspects of the regulations which will improve intercountry adoption services, it also expresses its concern in relation to their failure to address many of the most problematic features of current intercountry adoption practice, and with important risks still requiring attention.

Positive comments

The organisation welcomes the requirement that everyone who provides adoption services in the United States now has to be accredited or approved. Additional provisions also outline the subsequent requirements for oversight of agencies and persons. As a whole, it is hoped that these provisions will strengthen U.S. adoption policy and will provide stronger protection.

Other positive steps are the designation of a "primary provider" in each case, in order for parents to know who is responsible for a particular adoption; the obligation to provide pre-adoption training to every parent and to provide extensive medical information on the child; the duty for agencies and persons to have professional liability insurance, to provide a sample contract, to disclose fees and offer statistics as well as to have a complaint policy and procedure.

Concerns

Despite welcoming the improvements mentioned above, Ethica remains concerned by issues relating to four main areas. In particular,

Ethica reports that the new legislation might cause an increase in the potential for child buying, by allegedly broadening the range of permissible payments to birth parents. Furthermore, the organisation has expressed its criticism at the unregulated fee structures and the possible consequent failure to place meaningful limitations on exorbitant fees which may work against the principle of subsidiarity by attracting adoption services to intercountry adoptions. In addition, although this issue is strongly debated, it also remains concerned by the lack of agency oversight and accountability for actions of foreign intermediaries, such as the elimination of the requirement that agencies enter into an employer-employee relationship with in-country providers, thus limiting liability. Finally, Ethica feels that there is a lack of protection of prospective adoptive.

The implementation of the Final Rules will undoubtedly have implications for the numerous actors involved in intercountry adoption in the U.S.A. Furthermore, as mentioned in Monthly Review 3/2006 and, as is visible from Ethica's comments, the new legislation raises ethical questions and controversial issues, which not all actors and observers may agree with or endorse. However, it is hoped that by raising these, the rules will indeed emphasise and contribute to safeguarding children's rights in adoption practices and that their implementation will reflect the positive steps towards the ratification of the HC-1993, which it is designed to achieve.

Source: *Ethica Comments on the Final Regulations Implementing the Hague Adoption Convention*, March 2006,

<http://www.ethicanet.org/HagueReqComments.pdf>;

Final Rules on "Accreditation of Agencies and Approval of Persons Under the Intercountry Adoption Act of 2000 (IAA)" (22 CFR Part 96) and "Intercountry Adoption – Preservation of Convention Records" (22 CFR Part 98), Federal Register, Vol. 71, N° 31, Wednesday 15 February 2006.

FORTHCOMING CONFERENCES, SEMINARS, COLLOQUIA AND COURSES

- **South Africa:** *The President's Emergency Plan for AIDS Relief Annual Meeting - The 2006 HIV/AIDS Implementers' Meeting: "Building on Success: Ensuring Long-Term Solutions"*, 12 – 15 June 2006, Durban, South Africa. Track C: Care of those living with HIV/AIDS, including orphans and vulnerable children, and HIV counselling and testing. Amongst others, this track will focus on programs for orphans and vulnerable children, addressing sustainability and scale of local systems and structure, and referrals to education, care, medical and social services, and quality oversight. For further details: <http://www.blsmeetings.net/ImplementHIV2006/flyer.cfm>.
- **Switzerland/International:** *Institut International des Droits de l'Enfant (IDE) / Institut Universitaire Kurt Bösch (IUKB) and the Ministry of Family and Integration of Luxembourg:* Université d'été autour the droits de l'enfant: Une culture générale des Droits de l'Enfant (Summer University on Children's Rights : A general culture of children's rights), Sion (Switzerland), 17 – 21 July 2006, in French. See Review 3/2006. The IUKB has informed us that the e-mail address of the IDE has been amended to ide@childsrighs.org.

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.

Table of contents of the Bulletins 1997 - 2006:

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

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