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EDITORIAL

Adoption 'on holiday' 

Stays abroad are often at the root of adoption procedures, which soon become particularly complex, since they fall outside any legal framework. Emotions often obscure the legal principles yet designed to protect children. The following is an overview of adoption on holiday...

Several cases recently submitted to the IRC have led us to address the delicate subject of spontaneously initiated adoptions, particularly during a stay abroad. With the theoretical basis offered here, we hope to open a debate that would enable us to gather the experiences and professional opinion of our readers.

Once upon a time.....

The story often begins in the same way: during a stay in a developing country, a couple, or an individual, meets a child and it is "love at first

sight". The adults approach the child, make contact with his/her family, are touched by their poverty, and gradually decide to adopt the child. If their project is successful, they either return to their country and request the recognition of the adoption granted abroad, or they initiate the process for the adoption of the child they have met.

This situation raises very delicate issues and, once again, makes light of the numerous misunderstandings, which still surround adoption. The fact that contact between the child and the prospective adoptive parents has

occurred outside any professional framework, without any preparation either of the “prospective parents” or of the child, as well as without any professional matching, is particularly debatable and confronts social services with an unsolvable dilemma: should they endorse the adoptive relationship on the basis of the new affective ties that have been created, and whose sincerity raises no doubts? Or must the legal position be the paramount consideration in order to justify the child’s return to his/her country of origin, with the attachment problems and the practical difficulties that this may involve? The answer obviously depends upon the particular case, but some principles must imperatively be respected.

Prohibition of direct adoption

According to article 29 of the 1993 Hague Convention on intercountry adoption, no contact between foreign prospective adoptive parents and the child’s parents shall take place before it has been secured that the conditions required by the Convention have been complied with (adoptability, subsidiarity, suitability of the prospective adoptive parents). Although a direct adoption well and truly violates this provision, the fact that the child is already in the adoptive family obliges the services in charge of the case to consider the overall picture before making any final decision (see Editorial N° 6/2005).

Consent

Whatever the circumstances surrounding the adoption project, it is of primary importance that the authorities in charge of such a case should have received guarantees confirming that the consent of the biological parents and even that of the child, if he is able to express it, have been clearly established. Even though this is not always easy to achieve, every effort must be made to ensure that the biological parents have clearly understood the meaning and the implications of adoption. Thus, it is not unusual to note that, even though the latter have well accepted that their child will leave for a foreign country so as to receive care and education, they often wrongly understand that he/she will no longer be their child, and that their ties with him/her will be permanently severed. This is particularly true in countries, which do not have a legal tradition of adoption, but which are familiar, on the other hand, with forms of temporary placement, within the extended family for example (see Editorial N° 7- 8/2006).

If the administrative or legal services of the country of origin concerned are not in a position to provide proof of the child’s adoptability, the embassies, NGOs active in the field of child protection, or even ISS’s international network may be called upon to contribute, in order to answer this question. If it should transpire that this condition has not been met, the adoption could neither be declared nor recognised, and measures for returning the child to his/her parents should be taken.

Understanding adoption

If one manages to confirm the consent, or when proof that the child’s parents are unknown has been established, it will be a question of studying very carefully the surrounding circumstances of the project. Although the basic conditions for a child’s placement must undoubtedly be met (accommodation, income, etc), the candidates’ motives must also be paid careful attention. Adopting a child on the spur of emotion is not harmless, and without questioning the sincerity of such a burst of initiative, the absence of any preparation to adoption may often be at the root of a failure. Therefore, it will entail trying to proceed to some sort of *a posteriori* evaluation so as, on the one hand, to ensure the parents’ educational abilities and, on the other hand, to provide them with tools, which will enable them to understand the meaning and implications of adoption. Once again, if this stage does not yield the necessary elements to ensure the child’s welfare, it will be a matter of assessing if it is better for him/her to be entrusted to another family in the receiving country or to return him/her to his/her country of origin, subject to proper support and provision of care awaiting the child upon his/her return.

A difficult debate

These few thoughts are obviously not sufficient to deal with these very complex files. The daily practice of the ISS/IRC nonetheless illustrates that many professionals have to deal with this type of situation. It therefore seems to us that it would be useful if the experience gained by our readers could be exchanged with others so as to highlight a certain number of good practices. Thus, we would like to encourage you to send us your thoughts to our usual address (irc-cir@iss-ssi.org). We will compile them if we receive a sufficient amount of material...

The ISS/IRC team

Project on distance training and exchange of experiences – New Fact Sheets on the ISS/IRC website:

Four new training Fact Sheets (N° 27, 28, 29 and 30) have been issued. These address the preparation of the child and of the prospective adoptive parents, the adoption meeting and the mutual acquaintance, and “simple adoption” versus “full adoption”.

They are available from the ISS/IRC website: www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_fic.html.

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.

- **Australia and Monaco:** These countries updated the contact details of their Central Authorities.
- **France :** This country updated the list of its accredited bodies.

INTERNATIONAL DOCUMENTS ON THE RIGHTS OF CHILDREN DEPRIVED OF THEIR FAMILY

The 1993 Hague Convention on intercountry adoption (HC-1993)

To date, there are 70 States Parties to the Convention.

The **Dominican Republic** has acceded to the HC-1993 on 22 November 2006 ; it will enter into force in this country on 1 March 2007.

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

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

The Protocol has been signed by 115 States, and 113 have ratified it.

Among other provisions, the Protocol provides that consent to adoption must be given in accordance with applicable international instruments (art. 3), in particular the HC-1993.

On 6 December 2006, 115 States had signed it and 113 States had ratified or acceded to it (see also Reviews 54, 63, 6/2005, 10/2005, 11-12/2005, 3/2006, 5/2006 and 10/2006).

The new States Parties in 2006 were : Belgium, Brunei Darussalam, Burkina Faso, Cyprus, Dominican Republic, Lao People's Democratic Republic, Latvia, Montenegro, Nepal, Sri Lanka, Switzerland and Thailand. Djibouti is the only new signatory State in 2006.

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

PROCEDURE

CHINA : New eligibility criteria for intercountry adoption

The China Center of Adoption Affairs has recently issued new criteria for the eligibility of prospective adoptive parents wishing to adopt a child in China.

As from 1 May 2007, the China Center of Adoption Affairs – the Chinese Central Authority – will assess adoption application files and select suitable prospective adoptive parents in light of new eligibility criteria.

These address and amend the following aspects:

Married couples only

In accordance with these new criteria, couples aged between 30 and 50 (55 in case of children with special needs) must have been married for

two years. In cases of divorcees, the current marriage must be older than five years. Therefore, single persons will no longer be able to see their adoption project succeed.

Maximum five children

Married couples wishing to adopt in China may have a maximum of five children under the age of 18 years, of which the youngest one must be older than one year. This does not apply to couples wishing to adopt a child with special needs. The Agence Française de l'Adoption (France), on the other hand, further explains that, in practice, children under the age of three will now only exceptionally be placed for adoption.

Sufficient resources

The couple must possess a minimum annual income of US \$10,000 per person, including the adopted child. Their properties (house, car, savings, etc) must be worth at least US \$ 80,000. In this respect, the Agence Française de l'Adoption also mentions that the applicants must be the owners of their home.

Excellent health

Both spouses must be in excellent physical and mental health and must not suffer from any illness or serious disability (these are further detailed by the Secrétariat à l'adoption internationale).

Other criteria

These include the completion of secondary studies, the absence of criminal offences, a good knowledge of adoption and its implications, and the willingness to submit the child's follow-up reports within required time-limits.

It is to suppose that these new criteria could be the result of the promotion and subsequent increasing number of domestic adoptions, in full compliance with the principle of subsidiarity as

enshrined in the 1993 Hague Convention on Intercountry Adoption and as reiterated by the Committee on the Rights of the Child in 2005. This approach could also respond to the implications of an ever increasing number of applications received from foreign applicants to adopt a child in China – the first country of origin in intercountry adoptions in recent years. It has therefore become necessary to establish stricter criteria for foreign adopters in order to limit the number of applications and to ease the process of selection of the most suitable prospective adoptive parents (see also Monthly Reviews N° 2005/8-9, 2005/10 and 2005/11-12).

Given the high number of applications, other countries of origin have also proceeded to impose stricter criteria – such as limiting intercountry adoptions to special needs children – or to reverse the flow of files – the country of origin sends the files of adoptable children to the receiving country rather than the latter sending the files of all eligible prospective adoptive parents to the country of origin. This may reduce some of the practical difficulties linked to the criteria imposed by the Chinese authorities, which may continue to receive high numbers of applications whilst also having to spend additional time and resources in ensuring that the applicants do indeed comply with the new criteria.

Sources : Departamento de Estado de los EE.UU, www.travel.state.gov/family/adoption/intercountry/intercountry_3110.html#; Secrétariat à l'adoption internationale (Québec Canada), (www.adoption.gouv.qc.ca/site/3.202.0.0.1.0.phtml); Agence Française de l'Adoption (France), (www.agence-adoption.fr/home/Les-nouveaux-criteres-du-C-C-A-A.html); Junta de Andalucía (Central Authority of Andalucía, Spain), www.juntadeandalucia.es/igualdadybienestarsocial/Upload/adopciones/1909_china.htm; BBC « *China rules on foreign adoptions* », 20 December 2006 (<http://news.bbc.co.uk/2/hi/asia-pacific/6194477.stm>).

CHILDREN'S RIGHTS

JAMAICA: Report on the situation of children in care

The NGO Jamaicans for Justice (JFJ) presented this report to the Inter-American Commission on Human Rights in October 2006.

JFJ conducted an evaluation of monthly monitoring reports of children's homes for the years 2005 and 2006. The Report's findings

point out many problems in relation to the monitoring system and the reporting process, and issues recommendations to improve this process. Based on this report, some problems

relating to the situation of children in care may be highlighted.

Problems with the implementation of the law and the management of the Child Authorities

In 2004, a Child Development Agency was created and a Child Care and Protection Act was approved. However, according to JFJ, their implementation has not changed much in the complicated situation of these children.

Problems regarding children in institutions

One of the main problems in Jamaica is that adolescents in conflict with the law are placed with children in need of care. As is well known, this goes against the social reintegration of adolescents in conflict with the law and raises risks of abuse of children under protection.

Besides, the problems in children's homes and safe places, pointed out by the report, concern, among others, the failure to use the required logs and maintain children's records; the lack of security; the lack of treatment for psychological or behavioural problems; the inadequacy of facilities; the inadequate levels of supervision; the allegations of corporal punishment; the inappropriate behaviour management systems; the inadequate medical attention and health care; and the inadequate monitoring systems and practices.

Permanency planning

Besides, there is no permanency planning for these children. Thus the development of an individualised plan for permanent, and

preferably family, life for each child placed in an institution or in a foster family (see Editorial N° 7/2005) is also recommended in the report. These plans have to be reviewed periodically.

Securing a better future for children

JFJ urges a change of this situation in order to guarantee children's rights. In order to achieve this change, it recommends the implementation of permanency planning; a clear separation of children in need of care and juvenile offenders in institutions; and specific and well undertaken reporting and monitoring.

Source: Jamaicans for Justice, www.jamaicansforjustice.org. The report is available at: www.crin.org/docs/jfi_iachr.pdf. For more information on the functioning of children's homes, see also: Keating's Report (May 2003), www.jamaicansforjustice.org/docs/Keating%20Report.pdf.

READING SUGGESTIONS

Promising Practices in Reunification, Susan Dougherty for the National Resource Center for Foster Care and Permanency Planning (NRCFCPP), Hunter College School of Social Work, USA, April 2004, 7 pp.

This document highlights several practices that NRCFCPP believes are important components of family reunification programs that appear to be achieving good results. These practices are: placement decision-making, parent-child visiting, intensive services, resource parent/birth parent collaboration, aftercare services.

INTERDISCIPLINARY APPROACH

Gender equality is important for the well-being of children

UNICEF's annual report on The State of the World's Children is dedicated to gender equality. Discrimination remains pervasive in the world, though the degrees and forms of inequality vary.

UNICEF has just published its annual report on The State of the World's Children. This 2007 edition is available in English, French and Spanish and is dedicated to gender equality and its importance for the well-being of children. Gender equality will not only empower women to overcome poverty, but also their children, families, communities and countries. A healthy, educated and empowered woman is more likely to have healthy, educated and confident children. The UNICEF report goes even further and argues

that without gender equality, it will be impossible to create a world of equity, tolerance and shared responsibility.

It is true that the status of women has improved in the past three decades, since the UN Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979. Today, women and girls have access to opportunities that were previously restricted. Primary school enrolment rates for girls have jumped, women are entering the labour force in greater number and women's political

representation is increasing in many parts of the world.

Eliminating gender discrimination will require enhancing women's influence in the key decisions in three distinct areas

Unfortunately, discrimination remains pervasive in every region of the world, though the degrees and forms of inequality vary. The oppression of girls and women can include, for example: the preference for sons over daughters; limited personal and professional choices for girls and women; the denial of their basic rights; gender-based violence such as domestic violence, sexual abuses, exploitation; the unequal division of household labour such as requiring girls and women to trek many kilometres to fetch water and firewood. Even if the report focuses on the more acute situations, one should not forget that discrimination against women and girls remains a big challenge in industrialized countries as well, where domestic violence, professional inequity and political under representation are still widespread.

According to UNICEF's report, eliminating gender discrimination will require enhancing women's influence in key decisions in three distinct areas: the household, the workplace and the political sphere. The report dedicates a chapter to each one of these areas. It intends to provide a road map for maximising gender equality through seven key modes: education; focusing additional resources on achieving gender equality; levelling the playing field in national legislation; legislative quotas to encourage women's participation in politics; women empowering women (involving women in the early stages of policy formulation helps ensure that programmes are designed with the needs of women and children in mind); engaging men and boys in the struggle for equality; improved research and data on the situation of women and girls.

Source: The State of the World's Children 2007 – Women and Children: The Double Dividend of Gender Equality, UNICEF. Available from: <http://www.unicef.org/sowc07/report/report.php>.

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **France – COPES** : *L'accueil familial d'enfants à temps complet. Rôle et dynamique du placement familial* (Full-time foster care. The role and dynamics of foster care), Paris, 19 - 22 March and 22 - 25 May 2007. This course is led by Vida Malek-Yonan, Psychologist, with the participation of several specialist speakers. *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.
- **United Kingdom - British Association for Adoption and Fostering (BAAF)**: *The role of men in fostering and adoption*, London, 19 March 2007. *Contact* : Pauline Thorbourne, BAAF Southern England, Saffron House, 6-10 Kirby Street, London EC1N 8TS ; Tel: 020 7421 2670 ; Fax: 020 7421 2669; pauline.thorbourne@baaf.org.uk, www.baaf.org.uk

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Table of contents of the Bulletins 1997 - 2007:

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

See Activities.

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