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EDITORIAL

Intercountry adoptions: an ever tenses situation

Initial statistics for the year 2006 reflect a tendency towards a decrease in the number of intercountry adoptions. This slowdown, however, raises a number of questions, in relation both, to its possible causes and to its possible long-term consequences.

At the start of this new year, the first available figures seem to suggest that intercountry adoption decreased in 2006: 5% less in France¹ (2006: 3,977 / 2005: 4,136), 10% less in the United States² (2006: 20,679 / 2005: 22,728), 20% less in Sweden³ (2006: 879 / 2005: 1,083) and 25% less in Norway⁴ (2006: 448 / 2005: 582). Only Italy⁵ carried out 10% more adoptions

than in 2005, but still remains 10% below 2004 (3,402).

Germany⁶ and Canada⁷, for their part, had already registered a drop in 2005 and Spain⁸ also fears it will see a drop in the number of its adoptions. These figures will, of course, have to be supplemented by those of other receiving countries.

Changes in countries of origin

The root causes of this slowdown are manifold, but the prevailing circumstances in some countries of origin clearly play an important part. Thus, and without claiming to be exhaustive, the new structures put in place by China when the HC-1193 entered into force, as well as the new norms relating to prospective adoptive parents⁹, are undoubtedly slowing down the tempo of previous years. The new criteria for accrediting intermediaries in Russia have had the same effect (for example, the United States registers 1,413 fewer adoptions from China, and 933 less from Russia). Adoptions from Ukraine have decreased because of various reforms under way in that country; those from India continue to fall as a result of the rise of domestic adoptions; intercountry adoption has been extremely limited in Romania for a year; and Thailand¹⁰ has pursued its programme of annual quotas.

On the other hand, we note that Kazakhstan, Vietnam, Guatemala and Ethiopia are heavily represented in the leading group of statistics of receiving countries. It is worth noting that none of these States have ratified the HC-1993, and that some of them are causes of serious concern in the field of adoption.

Communicating vessels

While applications to adopt are still very many in receiving countries, it seems they are increasingly becoming difficult to satisfy. The restrictions imposed by some important countries of origin, in terms of the number of intercountry adoptions per year, compel applicants to look elsewhere for adoption possibilities, since domestic adoption still remains scarcely explored.

However, the contemporary history of adoption clearly shows that if the pressure exerted on countries of origin becomes too strong, abuses inevitably arise, followed by increased political and legal awareness, ending up with the introduction of structures reflecting greater respect for the rights of the child, but which will often also be more restrictive.

The joint efforts of international actors, such as the Committee on the Rights of the Child, the Hague Conference, UNICEF and NGOs (including local ones) play an ever more determinant role in the last phase of this development. Furthermore, if we believe that this trend is unavoidable, the day will come when the great majority of countries of origin will have gone through this process and will, as a consequence, limit the number of intercountry adoptions.

Awareness-raising of prospective adoptive parents

Once again, it therefore seems essential for receiving countries to devote more efforts to raising public awareness of this reality, by underlining the real meaning of intercountry adoption, as enshrined in international instruments. The placement of children for adoption is only possible if the development of closer cooperation with the States of origin is pursued. This would allow for the identification of those children who are in real need of adoption, especially of so-called children with special needs.

The ISS/IRC team

¹ Mission de l'adoption internationale (France), http://www.diplomatie.gouv.fr/fr/les-francais-etranger_1296/conseils-aux-familles_3104/adoption-internationale_2605/statistiques_5424/statistiques-adoption-internationale_14683.html

² U.S. Department of State (United States), http://www.travel.state.gov/family/adoption/stats/stats_451.html

³ Myndigheten för internationella adoptionsfrågor (Sweden), <http://www.mia.eu/>

⁴ Barne-, ungdoms- og familiedirektoratet (Norway), <http://www.bufetat.no/?module=Articles;action=ArticleFolder;publicOpenFolder;ID=790>

⁵ Commissione per le Adozioni Internazionali (Italy), <http://www.commissioneadozioni.it/Contents/?idpagina=32>

⁶ Initiative A-H-A, <http://www.adoinitiative.de/Statistik.htm>

⁷ Adoption Council of Canada, http://www.adoption.ca/news/news08172006_FRstats.htm

⁸ *El Mundo*, <http://www.elmundo.es/elmundo/2007/02/09/espana/1171029285.html>

⁹ See Monthly Review 1/2007.



¹⁰ See Monthly Review 4/2006.

IRC NEWS

• Changes in the team !

- *Laura Martínez-Mora*, ISS/IRC Programme Officer leaves this position after three and a half years of work with ISS (see Review 60-61). She will start working for the Hague Conference on Private International Law in May, as Coordinator of the technical assistance programme on intercountry adoption. This programme offers direct assistance to some States, which intend to ratify or accede to the 1993 Hague Convention on Intercountry Adoption, as well to those States facing difficulties in its implementation.

- *Cécile Maurin*, a trilingual jurist committed to the protection of children and with a strong interest in the interdisciplinary approach, will replace Laura from May. Cécile Maurin had been a Children's Rights Assistant at the ISS/IRC between 2003 and 2005 (see Reviews 60-61 & 11-12/2005). At the end of 2005 she went to Paraguay, where she led a project on the drafting of a manual of procedures for the Adoption Centre. She also contributed to strategic proposals for the development of the Centre's activities and followed its teams in the field. Furthermore, she spent some of her time on projects of active participation of children within municipal and regional councils, led by the non-governmental organisation GLOBAL Infancia, ISS's correspondent in this country.

- **Project on distance training and exchange of experiences – New Fact Sheets on the ISS/IRC website** : Two new training Fact Sheets (N° 31 and 32) have been issued. They address follow-up and post-adoption services and the search of origins. These are available from the ISS/IRC website: www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_fic.html.
- **Website – International and regional legal instruments** : The ISS/IRC webpage on these instruments has been updated. This section offers links to international and regional legal instruments relevant to the rights of children deprived of their family. This page will also provide access to the list of States Parties to these instruments and to that of their Central and Competent Authorities. Finally, some additional comments on these conventions are also provided at the end of the section. See: www.iss-ssi.org/Resource_Centre/Resource_Center_EN/Int_Conventions/int_conventions.html.

INTERNATIONAL DOCUMENTS ON THE RIGHTS OF CHILDREN DEPRIVED OF THEIR FAMILY

1993 Hague Convention on Intercountry Adoption (HC-1993)

To date, there are 71 Contracting States to this Convention.

Kenya has acceded to the HC-1993 on 12 February 2007. The Convention will enter into force in this country on 1 June 2007. Source: Permanent Bureau of the Hague Conference: http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69.

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.

- **Kenya:** This country has named its Central Authority. Its contact details are: Adoption Committee, Office of the Vice-President and Ministry of Home Affairs, Department of Children's Services, P.O. Box 46205 – 00100, Nairobi; Tel: +254 (20) 228 411, ext. 3004617; E-mail: childk@nbnet.co.ke.

LEGISLATION

ARGENTINA: The first Latin American law creating a system of foster family placements

This specific law sets out the rules for placements in a foster family, from its inception to its implementation, as well as the role of different actors involved and the measures of control.

Although there have been precedents – Law N° IV-0093-2004 on solidarity families in the Argentine province of San Luis – Law N° 2213/LCABA/06 on the placement in foster families of the Autonomous City of Buenos Aires constitutes considerable and unique progress in the integral protection of children and

adolescents. In compliance with the principles set by local (Law 114 of the Autonomous city of Buenos Aires), national (Law 26.061, commented in Review 6/2006) and international laws (Convention on the Rights of the Child), it establishes a system of placement in foster families based upon the best interests of the child. This system offers an alternative to

institutionalisation and makes it possible to maintain the child separated from his/her family in a family environment. The placement in a foster family, already provided for by the public policy on childhood, is henceforth enshrined in law.

'Integral, temporary and non-institutional care'

Placement in a foster family, as defined by law, is a form of alternative family care offered to a child or an adolescent temporarily deprived of his/her family, or in relation to whom a court or administrative measure has been issued. This type of placement may also occur upon a request from the child's or adolescent's family. This measure allows him/her to remain in a family environment, which respects his/her life story and identity. It occurs as an exceptional measure and for a period of maximum three months, with a possibility of extension. If no limit is set for this extension, the law insists, however, on maintaining ties with the family of origin and on the implementation of rapid and effective mechanisms, which would enable the child's or adolescent's prompt return to his/her family environment and community of origin.

Which foster homes for which children?

In order to benefit from this measure, children must reside in the city of Buenos Aires. When placing them, the law gives priority to the extended family and families close to their personal environment. Foster families have a duty to offer the child adequate living conditions, fully guaranteeing his/her rights. They must cooperate with the authority responsible for the implementation of the system, and with the child's family of origin, in order to reinforce the child's ties with the latter and to encourage their future reunion. They must meet a certain number of conditions linked particularly to age, to the absence of a police record and to participation in training activities. Additional conditions are foreseen for families other than the extended family or those from the community (residence, age difference with the child).

A controlled system, which respects the child's opinion

This system is based upon the involvement of an authority, which implements the system, namely the General Directorate for Children and Adolescents (GDCA), which belongs to the Ministry of Human and Social Rights of the Government of the Autonomous City of Buenos Aires. This authority is answerable for its actions to the Council for the Rights of Children and Adolescents. The implementation of the system

of foster family placements is based upon the GDCA's preparation of an agreement between the parties concerned, i.e. the child or adolescent first and foremost, the family of origin and the foster family. In this agreement, the rights, guarantees, objectives and responsibilities of each party are explained, observant of the child's opinion. The view of the child is also taken into account by the GDCA when the process is initiated. This same authority is also responsible for the control and good operation of the system and for the monitoring of the child, his/her family of origin and his/her foster family. In its role of assistance to the child when he/she is placed in care, it may freely decide to grant financial assistance to the foster family and the family of origin. A specialised team, belonging to the GDCA, will be set up to implement the system.

As highlighted by Matilde Luna, an expert in foster family placement in Argentina¹, this first specific law on the matter is an unprecedented tool. Some modalities, however, remain to be spelt out; this should be done in the framework of its implementing regulations.

Amongst them, Matilde Luna mentions the definition of the concept of the family, the legal and administrative nature of the situation in which the foster family finds itself, as well as the relationship between this type of care provision and other measures of protection, such as adoption.

READING SUGGESTIONS

Vínculos en la Infancia. Nuevas contribuciones al acogimiento familiar (Ties of childhood. New contributions to foster placement), *Matilde Luna, Lumen-Humanitas, Buenos Aires, 2005, 160 pages.*

This collection of knowledge and experiences offers the reader a practical approach to placement in a foster family, which has recently been the subject of a law in Argentina (see *Legislation*). Among the issues addressed by this publication, it is worth mentioning the placement with the extended family; the preservation of the children's identity when they are placed; respect for cultural diversity and different family concepts; community participation; and the necessary proximity of the family of origin in the framework of the placement.

On the same subject: **Acogimiento familiar. Respuesta social y de Estado en el cuidado de la infancia** (Foster placement: Social and State response in the care of children), *Matilde Luna, Lumen-Humanitas, Buenos Aires, 2001, 160 pages.*

Source: Ley N° 2213/LCABA/06 de Acogimiento Familiar de la Ciudad Autónoma de Buenos Aires (Law N° 2213/LCABA/06 on the placement in foster families of the Autonomous City of Buenos Aires).

¹Matilde Luna is a psychologist and a teacher specialised in minors and the family, at the National

University of Lomas de Zamora, Argentina. She has explored foster family placement, both in theory and in practice. Today, she is involved in the training, evaluation, support and supervision of the planning of foster family placements, within governmental and non-governmental bodies.

PROCEDURE

Nepal: Changes are needed to improve adoption procedures

In the frame of the 1st International Conference on Intercountry Adoption, irregularities in the adoption procedures in Nepal have been highlighted by many organisations. Reforms are necessary to change the situation.

Irregularities in Nepal's intercountry adoption procedures have been one of the most discussed issues during the First International Conference on Intercountry Adoption held in Kathmandu on 11-13 March. The following problems drew particular attention:

- Children are proposed for intercountry adoption without their parents' knowledge or consent. In order to become adoptable, false declarations state that the children are orphans. When a child is not claimed within 21 days, he/she can be proposed for adoption, according to the law.
- Priority to Nepalese prospective adoptive parents is not provided (principle of subsidiary of intercountry adoption).
- The inadequacy of laws regulating the adoption procedures leads to the existence of many loopholes which favour the trafficking of children.
- Many adoptions are carried out independently: There is little government control because those children already in orphanages are rapidly declared adoptable, and prospective adoptive parents merely have to go to Nepal or to send a file to an orphanage requesting a child.
- In many cases, intercountry adoptions result in improper financial gains and some inappropriate and unscrupulous practices.

Suspension of intercountry adoptions in Nepal by some receiving countries

This situation drove the French Central Authority to prohibit private adoptions of Nepalese children from 1 February 2007. Furthermore, the German Central Authority has decided to discontinue intercountry adoptions of Nepalese children until it has been established that data on Nepalese children are factually

correct and that Nepalese agencies are genuinely acting to protect the children concerned.

Kathmandu Declaration

In order to try to overcome this difficult situation, the above-mentioned conference concluded with the adoption of the Kathmandu Declaration. This called on the Nepalese government to ratify the 1993 Hague Convention on Intercountry Adoption, to issue legislation in line with international conventions, and to establish a Central Authority to regulate and facilitate the process of intercountry adoption. It also called on the government to acquire a clear provision for licensing institutions, organisations and agencies working in adoption. The Declaration also stressed the need for a national information centre on adoption, for information-sharing and for making the entire process more transparent.

Sources: Marlène Hofstetter, Adoptions Officer, Fondation Terre des Hommes and international adoption consultant for UNICEF; UNICEF-Nepal; Child NGO Federation Nepal, www.cnfnepal.org; 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/nepal/9622.html; Bundeszentralstelle für Auslandsadoption (Germany), www.bundesjustizamt.de/cln_048/nn_257850/DE/Themen/Zivilrecht/BZAA/BZAAInhalte/Aktuelles.html; Association suisse des amis de l'enfance népalaise. Newspaper articles: *The Rising Nepal*, www.gorkhapatra.org.np/content.php?nid=14535, www.gorkhapatra.org.np/content.php?nid=14610, www.gorkhapatra.org.np/content.php?nid=14388; Radio Australia, www.radioaustralia.net.au/asiapac/programs/s1873036.htm; Peace Journalism, <http://peacejournalism.com/ReadArticle.asp?ArticleID=17655>; Observa, www.observa.com.uy/Obuscar/notaarchivo.aspx?id=71897.

A matter of belonging: A handbook on community-based care alternatives

This publication provides innovative examples of preventive and responsive actions to the needs of children without parental care, in particular by and for faith-based organisations and local community groups.

A *matter of belonging*, published by Christian Aid, UNICEF and Islamic Relief, and designed for faith-based organisations and community groups, intends to support the latter in responding to the needs of orphans and in providing children with an alternative family environment. It takes account of the particular difficult conditions in which these actors intend to fulfil their mission, in particular the limited resources, the remote locations and the limited access to communication means or the internet.

The role of extended families

The first chapter of this handbook highlights the important role played by extended families and the community, not only in providing children with moral guidance, emotional support and material sustenance, but also in helping children to acquire a cultural understanding of practical knowledge and skills and a wider sense of belonging. The concept of family itself varies from one culture to another, but its role in religious teachings is strongly and widely recognised.

Although many orphanages were set up by faith-based organisations, this publication reiterates that these and other forms of long-term residential care should be a last resort, in particular given that a high number of children in orphanages still have members of their extended family. Their very nature makes it impossible to provide children with the family setting they require for their emotional and social development. Furthermore, institutional care consumes an enormous amount of resources, which could more adequately be directed at the development of community and family-based alternatives.

In this context, faith-based organisations play an important role for a number of reasons : they usually know which children become vulnerable and separated from their family and what happens to them; they live and work close to the communities they serve; they have a prominent position in the community and are respected; and religious leaders are well listened to.

Activities to ensure that children grow up in a family

A number of activities are outlined in the handbook and focus on strengthening families and communities (through the prevention of family breakdown, home-based care, child reunion with families or extended families, fostering and adoption, temporary provision of safe homes); on material support (income-generating activities for families and communities, group savings and loans schemes and micro credit, improved access to social services); on emotional and spiritual support (in particular, support for children and their carers); on education support (keeping children in school, training for out-of-school youth, life-skills education); and on advocacy on behalf of children (tackling stigma and discrimination, giving children a voice, legal representation for children).

These examples of initiatives are all based on, and evidenced by, 17 case studies of local faith and community-based organisations worldwide, introduced in the fourth section of the handbook. Each case study includes a detailed presentation of the problem and its solution, the background to the local situation, the features of the project and a beneficiary's personal story.

Implementation of programmes

As the handbook proceeds to carefully outline some key aspects of the implementation of programmes with vulnerable children, it particularly emphasises the importance of their participation in this process. Based on a better understanding of their needs, on their right to be consulted and on their need to feel ownership of these programmes, the publication sets out some practical recommendations as to how to consult these vulnerable children. This includes suggestions on the organisation of group and individual discussions with children, their guardians or carers; on addressing difficult and sensitive experiences; on understanding the different needs of girls and boys; and on considering the needs of all age groups.

It is also reminded that, in order to ensure that these children are protected, it is important to have rules and procedures in place, addressing

such issues as the organisation or group's appropriate behaviour when working with children, guidelines for staff actions in accordance with the situation, confidentiality of disclosures and an organisational child-protection policy. In relation to these issues, and to the wider work with vulnerable children, *A matter of belonging* finally emphasises the importance of working together with, and learning from other organisations' projects, and therefore suggests a

range of mechanisms to do so: informal cooperation, local exchanges, networks, formal partnerships, mentoring and international exchanges.

Source: A matter of belonging, Christian Aid, UNICEF and Islamic Relief, 2006, <http://www.crin.org/docs/A%20Matter%20of%20Belonging.pdf>. It has been published in English and will soon also be available in French, Spanish and Arabic.

READERS' FORUM

Interview with Faratiana Esoavelomandroso, from Madagascar

This month, Faratiana Esoavelomandroso, a Senior Lecturer at the Department of Law of the University of Antananarivo and Director of the Institute of Legal Studies, shares her thoughts on the current situation of adoption in Madagascar with the readers of the Monthly Review.

Name, Surname: Faratiana Esoavelomandroso

Place of residence and work: Faculty of Law, University of Antananarivo, Madagascar

Professional title / functions: Senior Lecturer at the Department of Law, Director of the Institute of Legal Studies

Has your State ratified the 1993 Hague Convention on Intercountry Adoption? Yes

Type of adoptions carried out in the country: Domestic and intercountry adoptions.

1. What are the conditions required to enhance the chances of success of adoption?

The essential condition is to ensure the child's adoptability. In the case of an abandoned child, to first ensure that he/she is effectively abandoned (that the search for his/her parents and family has failed). In the case of a child entrusted to a reception centre, to ensure that every possible measure has been taken within the family – nuclear and extended family, if known – to find a lasting solution for the child. Finally, to respect the principle of subsidiarity in the case of intercountry adoption.

N.B.: The concept of extended family (which is the equivalent of large African families) also exists in Madagascar in practice.

2. Intercountry adoption increasingly involves children with special needs (older children, unhealthy or disabled children, siblings...). Does the adoption of these children require special precautions? If so, which ones and why?

In general, intercountry adoption is more easily available to these children with special needs, given that the infrastructures in Madagascar cannot afford to care for sick and disabled children. In my opinion, the adoption of these children should be carried out as soon as possible, in order for the illness or disability to be better dealt with.

As for older children and sibling groups, these adoptions are the most difficult ones, given the child's awareness of the situation. The precautions are also those relating to the first question, namely to ensure that everything has been done within the family to reintegrate them. In this case, intercountry adoption is subsidiary to domestic adoption.

3. Would you have any recommendations relating to the support to adoptees, to adoptive parents and to the family of origin throughout the adoption process?

To inform the child – old enough to understand – of the adoption process and its consequences. In relation to adoptive parents, to ensure that they understand the environment in which the child was born and/or has grown up, so as to enhance their knowledge of the child's country and in order for them to be able to provide answers to the child's questions in the future. To allow the family of origin to better understand the implications of the adoption, not to systematically have them believe that the material aspect is fundamental for the child's welfare (even though it is necessary). To support and advise the mothers or illiterate parents on the implications of their consent (the

act of consent should largely be conducted in Malagasy).

4. What are the main challenges and difficulties, which you encounter in your daily practice?

The absence of a serious provision of care by the State, for families in difficulty, and thus for children deprived of their family. The absence of social protection, worthy of this name, and the absence of a genuine national family policy (the implementation of such a national policy is under way and will certainly take place in 2007).

However, it is still NGOs, responsible for reception centres, which care for children deprived of a family. As most of these NGOs do not benefit from state subsidy, bad practices have been reported, given that in order for these centres to operate, unscrupulous managers have begun to search for children, and, even worse, have made them adoptable (by extorting the parents' consent, by stealing the children, etc; practices denounced in 2004 and which resulted in the suspension of adoptions in Madagascar and led to the drafting of this new adoption legislation).

It seems to me that in order to provide an objective answer to this question, we must wait for the establishment of various structures, foreseen by the new texts, and assess the adoption practice on the basis of these reforms.

5. From your experience, what should be done to improve current adoption practice?

The implementation of a genuine national family policy seems to me to be the best solution for a better channelling of the institution of adoption, and for taking better care of families in difficulty, who believe that the only solution is to get rid of their children.

6. Does the ISS/IRC Review meet your needs? Do you have any suggestions for improvement?

The ISS/IRC Review responds to my needs in academia, teaching and research. Unfortunately, despite my efforts – since I first made contact with ISS in 1999 – to put the Malagasy authorities in touch with ISS, there has not been much change. The main reason is often linked to communication: the means allowing the relevant authorities to receive the Review is not always clear, and the Malagasy authorities' contribution, which should provide information to interested foreign bodies, is not done systematically. Nonetheless, I believe that this exchange of information is necessary in the framework of intercountry adoption. However, one must say that, even here locally, it is difficult to receive information from the competent authorities.

If, after reading this interview, some of our readers would also like to share their experiences, please do not hesitate to reply to the above seven questions, and to send us your answers to irc-cir@iss-ssi.org.

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES 

- **Argentina:** *IFCO-RELAF Training Regional Seminar 2007: "The right to live in a family: Foster care and other alternatives"*, 17-19 May 2007, Mar del Plata, Buenos Aires, Argentina. Organised jointly by Fundación Centro de Estudios Políticos, Económicos y Sociales (CEPES) and Grupo de Acompañamiento a Familias Adoptivas (GAFA). Addressed to all child care stakeholders in Latin America: families, youth, State, community, technicians and mass media. Themes: Policies and programmes in Latin America addressed at families at risk; Foster care as an alternative for the fulfilment of 'the right to live in a family'; and testimonies from those involved in out-of-home care. The deadline for the submission of papers is 20 April. For further information: Fundación Cepes, Moreno 3744, CP 7600 Mar del Plata; Tel: +54 (0) 223 4930341; Fax +54 (0) 223 4757177; E-mail seminarioifco2007mdq@gmail.com; <http://relaf.ifco.info/mardel/index.html>.

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

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