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***Africa: terra incognita ?***

**This special issue devoted to the African continent intends to shed some light on this part of the world, which is increasingly approached in relation to intercountry adoption, even though the realities that make it up remain, in fact, little known.**

*The numbers prove it: countries of the African continent are increasingly present among the receiving countries' annual statistics relating to intercountry adoption. At the time of our latest analysis of numbers (2009 statistics, presented in the Monthly Review of October 2010), it appeared that, when compiling the data of the top-12 receiving countries, a third of 'their' countries of origin were African (17 out of 50), thus representing 20% of the total number of adopted children. However, one must call for extreme caution, and keep in mind the experiences faced by other regions in the world when they have had to confront an uncontrolled increase in adoption requests. Even though this may seem obvious, the fact that a country may not process any intercountry adoption does not necessarily mean that it needs it. The Western perception of 'Africa' is often still distorted by the pictures provided by the media at times of crisis and disasters. We sometimes forget a little too fast that societies have their own responses to the problems they face, in particular in relation to family and children. To approach this continent, with its wealth and extreme diversity requires considerable respect and an effort of understanding. Through this special issue's articles, we have intended to illustrate the variety of contexts, cultures and initiatives, which emanate from several African countries, and to highlight the increasing importance of 'ownership' of social policy issues across this continent. Whether with regards to the review of domestic legal frameworks (see article p. x), or in relation to more political positions taken and aimed at restricting the 'demand for adoptable children', the African child protection actors give tongue. It is essential for them to be heard. Even though this Review merely offers a limited insight into what is happening in Africa, we hope, on our modest scale, to contribute to improving the understanding of the issues at stake faced by numerous countries. Finally, we are very pleased, once again, to open our pages to those authors, who have been kind enough to participate in the undertaking of this project. We sincerely thank them and wish you a good reading*

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## Africa and intercountry adoption from an African point of view

*In the light of the receiving countries' increasing interest in Africa, countries of origin from this region are facing the need for legislative reforms aimed at tackling the risks related to illegal activities.*

**A**t present, there can be few who would quibble with the fact that African children are attracting increasing attention from prospective adoptive parents living in other parts of the world. As the latest figures and statements from a number of South American, Asian and Eastern European countries seem to support the notion that intercountry adoption from those quarters is waning, the African continent is getting more and more attention as a sending continent. While intercountry adoption from African countries is still quite modest compared to adoptions from the top four countries of origin<sup>1</sup> there are concrete reasons to believe that interest in adoption from African countries will continue to increase. Thus, Africa is “the new frontier” for intercountry adoption – but it is highly questionable if the continent is yet equipped with the necessary safeguards.

### The need for comprehensive child law reform

Law reform in African countries to domesticate the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), and to modernise and codify a myriad of outdated statutes affecting children, is, in many instances, still ongoing. In addition, many African countries come with diverse backgrounds that encompass additional hurdles to ensuring that the legacies of colonial, customary, and *sharia* laws are consistent with the principles and provisions of the CRC and the ACRWC.

Law reform should provide for provisions that regulate specific issues (e.g.: adoptability, subsidiarity, and illicit activities). For instance, it is difficult to find any domestic legislation that expressly provides that poverty cannot be a sufficient ground for declaring a child adoptable. Furthermore, there is hardly any provision in African child

laws that point out that unaccompanied or separated children must not be adopted in haste at the height of an emergency.

### The appropriate role of culture

Culture, and cultural identity, occupies an elevated place in the majority of African societies and therefore it is important to protect the identity rights of African children in child laws. In the context of intercountry adoption, the Africanisation of child law demands the domestication of provisions that support positive cultures and practices, and that contribute to alleviating children's deprivation of their family environment. These include recognising and supporting the role of the extended family; prioritising community based care as a form of alternative care; facilitating kinship care and, providing a legal basis for supporting so-called “informal adoptions” when they are in the best interests of the child. Therefore, it is recommended that, in their efforts to harmonise child laws, African States should make a concerted effort to consult all stakeholders, and capitalise on positive African cultures that have a bearing on child care. An appreciation of these related cultural realities on the African continent by receiving countries would indeed help to undertake intercountry adoptions in the best interests of the child.

However, it should also be noted that culture cannot, and should not, be used as a smokescreen to deny children their right to grow up in a family environment, when that family can only be found abroad. Therefore, if the best interests of the child mean anything at all, let alone being “the paramount consideration”, preserving cultural identity should be seen as a means, and not necessarily as an end in itself, in considering alternative care for children deprived of their family environment.<sup>2</sup>

### **Illicit activities in intercountry adoption**

Illicit activities in intercountry adoption in Africa are manifested in various forms and degrees, and place children's rights in great jeopardy. In recent times, countries such as, Chad, Egypt, Equatorial Guinea, Ethiopia, Ghana, Kenya, Liberia, Mauritius, and Rwanda have experienced instances of illicit activities in relation to intercountry adoption.

In this context, it should be underscored that most African countries do not even have the basic requirements in place such as trafficking legislation, which are still in draft form. Institutional frameworks to safeguard children's rights are either not present, or lack the necessary mandates and capacity to perform their tasks.

The illicit activities mentioned above should be viewed as the tip of the iceberg. However these issues are not only about the cases we know of, but also about those of which we do not know. Additional investigation by governmental and international bodies would further the knowledge of the extent to which these situations prevail, and how to eliminate them through precise targeted legal means.

### **Co-operation from receiving countries**

Co-operation is central to make the intercountry adoption regime in Africa work for the best interests of children. It is submitted that there is a need for recognition on the part of receiving countries that it is their demand for adoptable children that drives the intercountry adoption process in the main. Therefore, receiving countries should abstain from putting the authorities and organisations of countries of origin under unnecessary pressure to provide adoptable children.

Receiving countries also have an important role to prevent and address illicit activities in adoption. For instance, the role of receiving countries in placing moratoria (restrictions) on adoption from countries where adoption irregularities have become rampant is crucial. It is also recommended that receiving countries should assist in holding foreign adoption agencies registered in their State accountable for the working methods of their representatives and partners in Africa. This should be the case especially when these representatives and/or partners were involved in illicit activities in Africa with the knowledge

of the foreign adoption agency (and no preventive or curative measure is taken by the agency).

It is also recommended that receiving countries should assist, and where necessary put due pressure on, countries of origin in making their laws compliant with international standards including the Hague Convention. The role of foreign adoption agencies to ensure safeguards in the adoption processes in Africa is important, too. In practical terms, this might mean, for instance, a better preparation of the prospective adoptive parents by foreign adoption agencies about the potential risks of illicit activities and other important issues in Africa, which can contribute towards countering illegal adoptions and also promote better bonding.

### **(Some) concluding remarks**

Outdated legislation, ongoing law reform efforts that are sometimes unduly prolonged, and inadequate institutional structures for coordinating and monitoring child law implementation are some of the characteristics of a number of African countries. Requesting and receiving technical assistance from the Permanent Bureau of the Hague Conference on Private International Law by African countries that are undertaking child law reforms needs to be accorded the importance it calls for. Awareness raising efforts to minimise the deprivation of children of their family environments, and to promote domestic permanent family based solutions also need to be undertaken.

Many African governments' attitudes to sexual orientation in Africa are generally negative. Apart from South Africa, there is no African country that allows for adoption by homosexuals. Thus, there is a substantial amount of concern by African countries that homosexual applicants might continue to try to evade the system by posing as heterosexual and/or single prospective adoptive parents. In this respect, receiving countries have a duty to duly inform sending countries of this situation, in order to minimise the potential of putting future adoptions from these sending countries at risk. The need for receiving countries to be sensitive towards the position of *Sharia* on adoption in African countries is also apposite.

After all, a sound and effective alternative care option, including intercountry adoption,

must be grounded firmly in an African context, taking African realities into account. This fact is relevant for both countries of origin and receiving countries that are genuinely concerned to promote the best interests of children that are deprived of their family environments.

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<sup>1</sup> Namely China, Russia, Guatemala, and South Korea.

<sup>2</sup> See Art 25(3) of the ACRWC

## ACTORS

Source: Bureau Permanent de la Conférence de La Haye: [http://hcch.e-ision.nl/index\\_en.php?act=conventions.authorities&cid=69](http://hcch.e-ision.nl/index_en.php?act=conventions.authorities&cid=69)

- Italy : this county has updated the list of its Adoption Accredited bodies.
- Switzerland: this country has updated the contact details of its Cantonal Central Authorities

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## LEGISLATION

### **New children's law in Africa and intercountry adoption: an update on some recent legislative developments**

*Several African countries have recently revised their child protection laws. This article provides a panorama of latest reforms.*

**L**ate 2009 and 2010 saw a raft of new children's laws coming into effect in southern African countries. Most have been a decade or more in development, and comprehensively address different dimensions of child care and protection.

#### **South Africa's Children's Act 38 of 2005**

The South African legislation was developed in two successive processes (for constitutional reasons); parts came into operation on 1 July 2007, but the bulk of the provisions, including the chapter on intercountry adoption and the chapter on children's courts (these are the courts which must effect such an adoption order) were operationalised on 1 April 2010. There are also a substantial set of Regulations which give practical content to the Act, and there are in addition several Forms accompanying the Regulations which relate to intercountry adoption. The Act and Regulations have been developed largely in conformity with the THC-93 which South African ratified in 2003. The entire text of the Convention is in appendix to the principal Act as Schedule 1, and section 256 of the Act provides that it shall have force of law in the Republic.

The Children's Act deals with the following main matters: entering into working agreements with foreign states who are parties to the THC-93; entering into working agreements with foreign countries that are not parties; the establishment and functions of the Central Authority, the accreditation process of agencies permitted to provide intercountry adoption services, and the prescribed fees (which are set in the Regulations); applications for intercountry adoptions from persons habitually resident in convention countries via their Central Authorities; applications for intercountry adoption by persons resident in non-convention countries (via their own 'competent authority'); and issuing of adoption compliance certificates. South Africans receiving children through intercountry adoption is regulated too, both from convention countries and from non-convention country. No persons may facilitate an intercountry adoption to or from South Africa otherwise than in accordance with the provisions of this chapter of the Act (see the text of section 273), and contravention of this provision constitutes a criminal offence.

South African legislation requires only that the adoptive parent be found by his or her or

their Central Authority to be a fit and proper person to adopt the child, and that the South African Central Authority and the foreign Central Authority agree to the adoption of a particular child. The new law requires that an intercountry adoption order may not be granted unless the child's name has been placed on the National Register for Adoptable Children and Prospective Adoptive parents (RACAP) for at least 60 days, and that no fit and proper adoptive parent for the child is available locally.

### **Southern Sudan Child Act 10 of 2008**

This Act, assented to in 2009, is rather more rigorous in setting criteria for prospective intercountry adopters. The adoption provisions apply in respect of all children residing in Southern Sudan, whether or not they were born there. Section 90 provides: 'In exceptional circumstances a person who is not Southern Sudanese may on application to the High Court adopt a Southern Sudanese child, if he or she has established residence in Southern Sudan for a minimum of three years; has fostered the child for at least one year; does not have a criminal record; has an accredited recommendation concerning his or her suitability to adopt a child from his or her country's authorized person; has satisfied the High Court that his or her country of origin will respect and recognize the adoption order; and has satisfied the High Court that the adopted child will be authorized to enter and reside permanently in that country.'

The Act prohibits adoption (domestic or otherwise, jointly or singly) by persons who are homosexual or lesbian (section 83(6)).

### **Tanzania Law of the Child of 2009**

The Tanzanian new law is similarly restrictive towards intercountry adoption. Section 56(2) provides that an adoption order shall not be made for a child unless the applicant and the child reside in Tanzania (or the applicant is a citizen of Tanzania residing abroad). Further, an adoption order can be made only where the child has been continuously in the care of the applicant for at least six months immediately preceding the date of the submission of the application.

### **Botswana's child law of 2009**

Botswana also passed new children's legislation in 2009. However, although the new Act deals with foster care and with the licensing of places of safety and other institutions, it does not deal with adoption, which is still regulated by a dedicated Adoption Act.

### **Namibian Child Care and Protection Bill, 2010**

This Bill, developed after an extensive consultation process, is due to be tabled in 2011. It is provided in clause 167(5) that 'a person who is habitually resident in Namibia but is not a citizen of Namibia may, be registered as a prospective adoptive parent if the Minister is satisfied (a) that the country of which that person has citizenship will recognise the adoption, and (b) that the child will be allowed to enter such country and remain there permanently. The full text of the ICA is in appendix as Schedule 3 to the Bill, and the Bill permits intercountry adoption. Clause 188 provides that Regulations to the Bill are to be drafted to provide: 'for the accreditation of bodies; the authorisation of an accredited body from another contracting state to act in Namibia; the procedures governing the giving of consent; the procedure for determining, after possibilities for the placement of the child within Namibia have been given due consideration, that an intercountry adoption is in the child's best interests; and such additional safeguards as are necessary to ensure that the fundamental rights of the child are respected in the adoption process.'

### **Malawi**

Interestingly, the Malawian child protection legislation, which was passed in July 2010 after a long gestation period of 5 years, does not replace the 1951 Adoption Act. This was the Act that was at the centre of litigation around the two Madonna adoptions. The 2010 law deals only with other child protection issues, such as the reporting of child abuse and neglect, fostering and institutional care.

### **Mozambique**

Mozambique is considering ratification of the Hague Convention. This comes after a series of five adoption applications were turned down in 2009. The applicants were all foreign nationals with permanent residence in

the country. The applications were refused on the grounds that the Tribunaux des Menores (children's court) held that if the adoption orders were granted, it would not be possible to ensure any 'follow up' of the adopted children until they attained the age of majority, in the absence of any mechanisms or agreements between Mozambique and the countries of origin of the respective applicants. Periodic monitoring post-adoption is a requirement of the regional children's rights treaty, the African Charter on the Rights and Welfare of the Child (article 24(f))<sup>1</sup>.

The above summarises a selection of recent developments in a selection of countries in the African region; a useful

resource for tracking African legislation (focussing on Eastern and Southern Africa) is the website [www.aclr.info](http://www.aclr.info), hosted by the Children's Rights Project of the Community Law Centre.

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<sup>1</sup> Summary of obtained from A Mandate, former legal counsel to the parties.

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## PRACTICE

### **ETHIOPIA: The challenges of a country that has experienced a too rapid increase in adoptions**

*As Ethiopia has become one of the main country of origin, the country is going through a transitional period where it needs to take decisions to address the challenges ahead.*

**W**ithin a few years, Ethiopia has become one of the countries of origin, which offers the highest number of children for intercountry adoption: just over 4,000 in 2009 and even more in 2010 (probably over 6,000). These increasing numbers have gradually raised questions and then concern.

#### **The evolution in the numbers**

From 1986 and until the end of the 1990s, intercountry adoption was limited to approximately 200 adoptions a year, undertaken by a limited number of receiving countries, France accounting for half of these and countries from Northern Europe and Italy for the other half. At the time, the adoption of a black child was often considered as an adoption of a child with 'special needs', and therefore only few applicants would turn straightaway towards the African continent.

The very beginning of the years 2000 witnessed the appearance of new receiving countries, with the USA and Australia at the top, soon followed by most European countries; as a result, an increasing number of

agencies established themselves: in 2010, about 75 were authorised to work in the country, a few less in 2011.

Why this influx? The applicants, who would mainly opt for Eastern or Asian countries, were confronted with a gradual decrease in the number of young children offered by these countries and with the closure of some of them. Africa then became the continent of all hopes to 'find babies' for adoption. Over a short period, a stream of applicants headed there, in particular to Ethiopia, which was already organised for adoption, and where many children were renowned to have been abandoned, to be the victims of AIDS' terrible toll as well as of endemic poverty. In parallel, it might be possible that celebrity adoptions that were given publicity in the media, such as Madonna's in Malawi or Angelina Jolie's in Ethiopia, may have contributed to lifting the reticence relating to the care of a black child.

#### **The development of the legal framework**

However, Ethiopia was little prepared for such a considerable rise in agencies and adoption files; in 2002, it intended to better

control them and issued its first guidelines, which required adoption bodies to obtain a licence in order to undertake their activities, and granted a predominant role to the orphanages in ascertaining the children's adoptability and in the matching processes; on the other hand, children affected by adoption were no longer only orphans or abandoned children, but also those whose parents, ill or detained, were unable to care for them. In 2005, the brand new Ministry of Women's Affairs (MOWA) was granted, among its numerous responsibilities, that of confirming every child's adoptability, with the tribunal then validating the adoption contracts.

In 2009, an agency was created within the Ministry of Justice, designed to monitor the actual activities of over some 3,250 NGOs established in the country and, after assessment, proceed to the issuance of the now mandatory activity licence. New guidelines were enacted; one of their objectives was to make it an obligation – and no longer an action linked solely to the actors' good will – to provide development aid. This applied to all the entities, which worked for the protection of children, and therefore also to adoption bodies. Another important amendment: children, whose parents faced dire economic difficulties, could become adoptable, a situation ascertained by a competent authority as a form of loss of parental responsibility or validated by the parents' consent to the adoption.

Generally, the idea of a necessary expansion of adoption services due to the considerable number of children left to their own devices as a result of poverty or of the AIDS pandemic is accepted. Thus, intercountry adoption has gained an important position in the protection of children.

### **The abuses**

The development of the guidelines, one of the declared objectives of which was to better control intercountry adoption, has paradoxically created the conditions for abuse. By imposing development aid in return on orphanages and adoption bodies, escalating offers have slipped into the system; the number of small care centres spread all across the country has only increased and these have filled themselves up with children; the various requests for donations taking the form of contractual obligations (sponsorship

via the municipalities, funding of programmes for disabled children, repairing of schools, etc.) have seen the money filtering into all levels. Furthermore, the requirement relating to the adoptive parents' presence at the time of the judgement, under a commendable intention of commitment to a founding moment in the adoption, has caused, through an increase in trips, an increase in touristic services that generate a thriving business and an unhealthy relation between adoption and sources of financial gain.

The negative consequences of this explosion of adoption surface increasingly every day: some scandals, such as the one that led Australia to suspend its adoptions in 2009; gradually predominant questions about the constant increase in abandonment, the background of some children, the real nature of biological parents' consent; Ethiopian public opinion – rather favourable to adoption in the past – increasingly bothered by the plethora of foreign adopters travelling in the country; and growing mistrust of receiving countries when faced with adoption documents issued in a country with a civil registry system that still has gaps.

### **A pivotal moment**

This obnoxious context has led the MOWA (nowadays MOWCYA – Ministry of Women, Children and Youth's Affairs) to suddenly announce a decision on a quasi suspension of adoptions in order to carry out more drastic controls and to curb the tendency of abuses; however, given the number of institutionalised children and the insistence of the adoption agencies and their embassies involved, the Ministry has difficulties in holding this position; and therefore it is currently trying to find transitional measures and develop programmes that could make the situation healthier whilst protecting the children's interest.

It remains to be hoped that, within a reasonable period of time, Ethiopia will be able to ratify the Hague Convention and, above all, that the receiving countries will support it in its efforts to comply, in particular in its application of the essential principle of subsidiarity, without neglecting the fact that, in matters of adoption, 'too much' is often detrimental to the 'good'.

Christine Delepière  
Co-founder of an AAB in Ethiopia

## Relative adoption in the general African context, and in the Burkinabe one in particular

*The special features of relative adoption in the Burkinabe context raise questions when these adoptions go beyond the borders of Burkina Faso*

**R**elative adoption is a measure, which creates a filiation bond between two persons belonging to the same family, whether by blood or marriage ties. In order to better understand these implications, it is necessary to examine the socio-cultural context, in which it occurs.

In Burkina Faso, children affected by relative adoptions are usually orphans or children in need from the extended family (uncle, aunt, cousin, nephew, etc). Furthermore, the growing globalisation that marks our world has contributed to an increase in human displacement and, nowadays, it is not rare for Burkinabe citizens, who have gained French, Belgian, German, etc. nationality, or who live in these countries, to adopt their relatives' children; on average, five (5) children a year. As a reminder, in these cases, the procedure established by the HC-1993 is applicable on the same basis as for any other intercountry adoption.

In this new context, in which a traditional concept and a Western legal concept abut, it is worth reflecting on the child's best interests. Is relative adoption systematically the best solution for the latter?

### **Relative adoption in the continuity of traditional social practices**

In Africa in general, and in Burkina Faso in particular, the child is community inheritance. He or she first belongs to the wider family (extended family) before being his biological parent's child. This belonging covers a social reality, with causes and implies a duty of protection and education of the child, in terms of satisfaction of his basic needs (socialisation need, maintenance need, etc), which is incumbent on the members of the community. This rule is immutable and is perpetuated from one generation to the next

one. Given the establishment of this rule, every member of the community, at his own level, plays the role of an educator (uncle, aunt, nephew, grandfather, grandmother, etc). Thus, it is not unusual to see relatives within the country (living in the cities or in other villages in the countryside) or living abroad (in Europe, for example), who take children from the wider family with them to secure their needs. This is even more noticeable when the relative has better living conditions. Everyone has the duty to help others. Everyone is brought up to know this culture, and nobody must ignore it, at the risk of being excluded or self-excluding oneself from the group, from the line of descent.

It is worth knowing that this practice is also underpinned by the concept, according to which the child is better educated by a third person. Education includes all those aspects linked to the capacity to endure suffering, pain, hunger, aimed at preparing the child to confront the difficulties of life, etc. This is why it is common to see families entrusting their children's education to relatives within the extended family.

Based on all these factors, the concept of filiation is very wide in the socio-cultural context of Africa and Burkina Faso in particular. This is why there are neither 'sterile women' nor couples without children. A woman will always be entrusted with her aunt's, her brother's, etc. child. In polygamous families, the first woman without a child recovers, by right, the first child of her co-spouse; he or she will become hers with all the pertaining rights and duties. There also exists the practice of a matriarchal system, which is still in force in some societies, and according to which the child takes the mother's name and inherits from his or her maternal uncles. A nephew has more rights on your children and decides on everything.



This explains why he is often used as a mediator in the resolution of family conflicts.

### **Traditional concepts and Western legal concepts**

All these practices predispose people to practice relative adoption, given that in their subconscious, the legal notion of adoption as it is understood by receiving (European, American, etc) countries is merely secondary. The child's filiation is established in relation to his or her biological parents by law, but from a socio-cultural perspective, in practice, the child belongs to a third person (uncle, aunt, co-spouse, grandmother, etc). Filiation is naturally accepted and consummated. To take up François Ansermet's terms, Professor of Child and Adolescent Psychiatry at the University of Geneva and Head of the division of Child and Adolescent Psychiatry at the University Hospital at Geneva (HUG), this is a 'psychic filiation'. The filiation bonds are already pre-established and accepted by all the family members.

Relative adoption is an obligation in our socio-cultural context, whether within or beyond society. Resorting to adoption, in its modern meaning, is merely making the approach (procedure) comply with the instruments that govern adoption in the receiving countries.

### **Intercountry relative adoption: the best solution for the child?**

The adoption of a child by members of his or her family, who live abroad, means that the child must learn to live in a new society with a different culture to his or hers; will he or she be able to understand the implications (living far away from his biological parents and

considering his adoptive parents, whatever their family ties, as his or her own parents?). Worse, is the receiving country's legislation in favour of these types of practices? What shall be done?

- ✓ Determine the profile of those children, who must be admitted to relative adoption (given that, for example, someone's direct younger brother or sister cannot become his or her son or daughter. This would be contrary to the social order from an ethical perspective);
- ✓ Prepare the families and the children to relative adoption, even though this still causes some concerns, given that the parents, whatever their ability to adopt, are under the obligation to care for the child. Preparation will always have to be adapted by putting the emphasis on the rules and regulations and on the influence of the social environment;
- ✓ Review or make provision for specific rules and regulations in matters of relative adoption;
- ✓ Raise the awareness of the various interested parties (adoptive families, judges, social workers) with regards to the issues at stake in relation to relative adoption, etc.

These are some ideas for reflection that must be further detailed, given that relative adoption is one type of adoption in general, and it will be necessary to consider its specific characteristics in order to better deal with it in the interests of the children.'

Alphonsine Sawadogo,  
Director of Alternative Care and Adoption in  
Burkina Faso

## **The role of ISS/IRC in West Africa**

*In October 2010, ISS/IRC carried out a training course in Burkina Faso while in Mali it was invited to take part in the first national seminary on intercountry adoption. ISS/IRC's role was to strengthen the local professionals' knowledge and understanding of international standards guiding adoption*

**I**SS/IRC was highly active in the West African region in 2010: following the assessment mission in Ivory Coast (March 2010), it went to Burkina Faso and Mali to facilitate the understanding of THC-93 in October 2010. The two training missions

were made possible thanks to the financial support of the French Central Authority, Service de l'adoption internationale. The ISS/IRC intervention comes within the framework of two different projects with a common aim: enlightening the situation concerning the protection of children deprived

of family in the aforementioned countries as well as implications deriving from the implementation of THC-93. As a result of the missions, the ISS/IRC was able to identify weaknesses which countries have to face as well suggest improvements to address the latter.

### **Protection of children deprived of family in Burkina Faso and Mali**

Like other countries in the region, the extended family plays a key role within the system of child protection. Informal adoptions (also known as “confiage”) are still a widespread practice embedded in deep ancestral traditions. Children deprived of their biological parents are normally cared for by a member of the extended family, a type of adoption conceived as a form of mutual aid between the two families. Sometimes a child is “offered” to a friend family who cannot have children, or simply, to seal a friendship between the two parties.

Moreover, informal adoptions concern only healthy children and not those with special needs (e.g. albino children; disabled or children born from an adulterous relationship) because prejudices are still deeply rooted in those countries.

However this system is starting to erode as extended families can not take up their responsibilities based on high costs of children.

Cultural and religious taboos further explain the rareness of national adoptions. The few cases of national adoptions undertaken in BF mainly concern children under the age of one year<sup>i</sup>. In Mali, from 2003 to 2009, 600 children were adopted, of which 580 inter-country adoptions and 24 national adoptions<sup>ii</sup>.

At present, the only formal care alternative for abandoned or orphaned children are institutions or nurseries. However both countries are considering developing a system of foster families, as a measure of temporary protection. In Mali, in areas where child care centres do not exist, a system of nursing mothers has been already established. In BF, regulations to promote foster families as a substitute for institutions have been developed. For example a decree has recently been developed dealing with the movement of children from institutions to foster families and should be issued in 2011.

### **A glimpse on Burkina Faso and Mali**

Mali and Burkina Faso, both members to THC-93, are neighbouring countries with similar economic situations and customs. Nevertheless, the countries have installed different approaches to intercountry adoption which mainly concern:

- 1) different forms of adoption: both countries recognise full and simple adoption but in Mali intercountry adoption can only cover full adoption by law. Moreover in Mali, Kafala is a widespread protection measure which, for the Islamic religion concerns children orphaned of their father.
- 2) regime of intercountry adoption: unlike BF, Mali has opted for a centralised adoption system in the capital, where all involved authorities are located in Bamako.
- 3) The age of children adopted internationally: whereas a burkinabé child may be adopted until his/her majority, in Mali only children under the age of five “having neither father, nor mother, or ancestors to whom may turn to or who have been totally abandoned by their parents or ancestors”<sup>iii</sup> or who have been abandoned by their families since one year, may be declared adoptable<sup>i</sup>. Statistics from the principal receiving countries show that in BF the age of children adopted abroad is rising and in Mali almost all adopted children are less than one year<sup>iv</sup>, which raises some concerns about the respect of the principle of subsidiarity and whether adequate attempts to find permanent national solutions have been made.
- 4) The concept of relinquishment: in BF, relinquishment is not a crime where young women usually go to orphanages to relinquish their child. BF regulations also recognise the legal action of “legal surrender” (“remise légale”). This consists in a written statement by biological parents, before a notary or a clerk, expressing their intention to give up their parental authority. In Mali, on the contrary, the relinquishment of children is prohibited by law. No family may consent to the relinquishment of a child.

## Results of missions

ISS/IRC welcomes the recommendations that both countries took at the end of missions, especially those concerning the intensification of prevention initiatives of abandonment; promotion of domestic adoptions and raising awareness of the general public to ensure that the procedures of national adoptions are more accessible and therefore a better respect for the principle of subsidiarity.

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- i Children aged of one year and more are considered by Burkinabés as "already older".
  - ii Statistics given by the Mali Central Authority during the national seminary on inter-country adoption (26-28 Octobre 2010).
  - iii Art. 19, Order n. 02-062/ P-RM, of Juin 5<sup>th</sup>, 2002 concerning the Code of children protection.
  - iv Abandoned or orphaned children older than five years who have not been adopted are placed in the SOS villages.
- Source: Agence française de l'Adoption; Commissione per le adozioni internazionali; www.hcch.net

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## SPECIAL SERIES – CHILDREN WITH DISABILITIES

### Figures reveal alarming augmentation in children adopted from Africa, whilst the number of those with disabilities remains disappointingly low

*The available statistics from Africa show that adoption is still rarely envisaged as a form of alternative care when it comes to children with special needs.*

**S**ince 2004 Africa has been the only continent which has sent progressively more children for intercountry adoption worldwide and this at a time when global numbers have been falling sharply. This article discusses this general trend and the proportion of children with special needs that are adopted. The last section attempts to determine the evolution potential of adoption in Africa based on the demographic data from different countries.

#### General figures from the 23 receiving countries

The estimated minimum number of children sent to 23 receiving states rose from 2,950 in 2004 to 6,372 in 2009 (table 1), while global numbers fell from over 45,000 in 2004 to about 30,000 in 2009 (Selman 2011). As a consequence the proportion of children from Africa has risen from 7 per cent to 22 per cent. Despite this, the number of African countries which are a party to THC-93 remains low – only 5 of the 13 in table 1.

Table 1 Adoptions from Africa 2004-2009: the 13 Countries of origin with the highest number of intercountry adoptions in the period 2005-2009, ranked by number of adoptions carried out in 2004 - peak year in bold (\* Hague contracting states)

	2004	2005	2006	2007	2008	2009	2005-2009	Peak Year Ratio
Ethiopia	1,524	1,768	2,172	3,033	3,896	<b>4,564</b>	<b>15,433</b>	<b>1.46</b>
Madagascar *	<b>335</b>	287	133	71	15	36	<b>546</b>	<b>0.47</b>
South Africa *	242	227	206	202	230	<b>283</b>	<b>1,148</b>	<b>0.26</b>
Nigeria	94	101	104	81	<b>223</b>	184	<b>693</b>	<b>0.04</b>
Burkina Faso *	93	78	<b>106</b>	97	82	54	<b>418</b>	<b>0.18</b>
Liberia <sup>b</sup>	87	193	<b>369</b>	334	249	36	<b>1,181</b>	<b>2.01</b>
Mali *	82	93	125	158	107	<b>191</b>	<b>675</b>	<b>0.35</b>
Morocco	65	38	53	34	59	<b>70</b>	<b>260</b>	<b>0.11</b>
Cameroon	58	45	58	42	47	<b>87</b>	<b>281</b>	<b>0.12</b>

<b>Ghana</b>	32	46	29	57	<b>116</b>	<b>116</b>	<b>369</b>	<b>0.15</b>
<b>Ivory Coast</b>	26	35	36	65	75	<b>100</b>	<b>315</b>	<b>0.14</b>
<b>Kenya *</b>	26	47	23	30	49	<b>62</b>	<b>219</b>	<b>0.06</b>
<b>Congo D. R.</b>	12	42	62	68	62	<b>149</b>	<b>383</b>	<b>0.05</b>

Much of the rise is attributable to Ethiopia where the number of children sent rose from 620 in 2000 to 1,528 in 2004 and 4,543 in 2009, when Ethiopia accounted for over 70 % of children sent from Africa. In the five years from 2005-2009 Ethiopia sent over 15,000 children for adoption, but five other countries – Liberia, Madagascar, Mali, Nigeria and South Africa – sent over 500. Two of these – Mali and South Africa - sent more children in 2009 than in any previous year and similar recent increases have been noted in the Democratic Republic of the Congo (Kinshasa), Ghana, Kenya and Ivory Coast. Full data are not available for 2010, but the Congo has sent more children in 2010 to France, Italy and the USA than to all countries in the previous year and a similar pattern can be seen in Ghana and Nigeria, where most children have gone to the US.

#### **Children with special needs in Africa**

There is an unfortunate scarce availability of disaggregated statistics regarding the number of children with special needs adopted abroad, let alone specifically for the African region. Even when statistics are available, such as those submitted by a few State parties at the 3rd Special Commission in 2010, they usually group all children with special needs together (e.g.: older than four years, part of sibling groups and with disabilities etc). From the Commission statistic tables, France showed that in 2009, 101 out of 445 children with special needs were adopted from Ethiopia, whereas in 2008, 65 out of 484 children were adopted. In Italy, in 2009, 126 out of 348 children with special needs were adopted from Ethiopia and 19 out of 67 children with special needs were adopted from the Democratic Republic of Congo.

#### **Adoption of older children in Africa**

A few countries did provide information about the age of children adopted at the 3rd Special Commission. Some figures show a disturbingly high number of babies being adopted abroad which begs the question of

whether the principle of subsidiarity is being respected. For example, Canada revealed that in 2009 and 2008 approximately 50% of the children adopted from Ethiopia were less than one. The figures provided by the USA show similar proportions where in 2009, 906 out of 2446 children adopted from Ethiopia were less than one. Moreover, France stated that for the same period in Mali, 99 out of the 117 children adopted were less than one.

Other figures are more promising, demonstrating that older children are being adopted. For example, France showed that in Ethiopia, 161 out of 445 children adopted in 2009 were over age 5 and 156 out of 484 children adopted in 2008. For the same period, in Cameroon, 72 out of 79 children were adopted were over age 5 and in the Ivory Coast 37 children out of 68 adopted. For Italy, in 2009, 36 out of 348 children adopted in Ethiopia were less than one and 134 over five and from the Democratic Republic of Congo, 21 out of 67 children were over five. In 2009, the USA revealed that in Ghana, 61 out of 106 children adopted were over five and in Kenya, 27 out of 44 children were over five.

#### **Children with disabilities in Africa**

There are almost no statistics available regarding the number of children with disabilities adopted abroad. Italy is the rare exception and through its comprehensive annual statistics report provides some insight. In 2009, 12 out of 498 children adopted in Africa had a “light and reversible” disability (4 were from Ethiopia). In 2008, 3 out of 233 children adopted had a disability and in 2007, the ratio was 4 out of 175. Whilst these numbers are extremely small, this is more indicative of low numbers of children with disabilities in Africa benefiting from an intercountry adoption rather than the lack of willingness/capacity of Italians to adopt children with disabilities. In 2009, out of the 1,937 children adopted in Europe, 438 children had a “light and reversible” disability. This idea is confirmed by the ISS/IRC experiences in the African region, where most

actors unfortunately indicate that adoption, both at a national or intercountry level is rarely considered for this group.

### **The evolution potential of intercountry adoption in Africa based on demographic realities**

Ethiopia is one of the largest countries in Africa but its current importance is due to the fact that it not only sends most children but also currently has the highest adoption ratio - the number of adoptions per 1,000 live births - of all African countries. This was 1.45 in 2009, a level comparable to that found in Colombia (1.54), but lower than Russia (2.53) and much lower than Guatemala in 2007 when there were 11.7 adoptions per 1,000 live births, meaning that over one per cent of Guatemalan children were being adopted each year.

The only other African country with a similar level was Liberia in 2006 when it sent 369 children (2 per 1,000 live births) mainly to the USA. The two countries sending the next most children in 2009 were South Africa and Mali, with ratios 70-75% lower. If Mali had the same level as Ethiopia it would send nearly 1,000 children a year. However, the most striking numbers come from Nigeria and Congo, two of Africa's largest countries with ratios currently less than 0.1. Given that the DRC is even poorer than Ethiopia it may come under considerable pressure to send more children in the years ahead especially in the context of Ethiopia indicating it will be drastically reducing the number of files it processes, which would be rather unfortunate.

We would like to recall that intercountry adoption is a child protection measure and should be based on the needs of children, not on the demand of prospective adoptive parents. This said, we hope that more children with special needs in the African

region will be able to benefit from an intercountry adoption, when it is in their best interests.

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**References:** \* Selman P. (2009) "The rise and fall of intercountry adoption in the 21st century", *International Social Work*, 52 (5): pp. 575-594. Please note that table 1 is based on Table 10 from this article. The 23 countries are Andorra; Australia; Belgium; Canada; Cyprus; Denmark; Finland; France; Germany; Iceland; Ireland; Israel; Italy; Luxembourg; Malta; New Zealand; Netherlands; Norway; Spain; Sweden; Switzerland; United Kingdom; and United States. The updated statistics will be used in a revised version to be published in J. Gibbons & K. Rotabi K. (eds) *Intercountry adoption: Policies, practices, and outcomes* (Ashgate 2011)  
\* Selman P. (2011) Data prepared for Family Helper website [www.familyhelper.net/](http://www.familyhelper.net/)  
\* UNICEF State of the World's Children 2011  
\* 3rd Special Commission statistics [http://www.hcch.net/index\\_en.php?act=convention\\_s.publications&dtid=32&cid=69](http://www.hcch.net/index_en.php?act=convention_s.publications&dtid=32&cid=69)  
\* Italy annual statistics report <http://www.commissioneadozioni.it/media/58027/dati&prosp%202009.pdf> at page 34 and <http://new.commissioneadozioni.it/media/48288/dati&prosp%202008.pdf> at page 34

#### **Reading suggestions**

-*Thari Ya Bana: Reflections on Children in Botswana 2010*, University of Botswana and UNICEF Botswana, December 2010. Available in English: <http://www.crin.org/docs/Botswana.pdf>

-*L'adoption internationale en Afrique. Intérêt supérieur de l'enfant ou malentendu ?*, Blanchy S., *Revue Enfance* Majuscule N°106, May-June 2009, p.24-33

-*Adoption internationale : EFA en mission en République démocratique du Congo-Kinshasa et en Afrique du Sud*, revue *Accueil* n° 152, August/September 2009, p.47-54

- *An assessment of Intercountry adoption laws, policies and practices in Liberia*, Unicef, Holt International, Bettercare Network December 16, 2008

-*From Angelina (to Madonna) to Zoe's Arch: What Are The "A-Z" Lessons For Intercountry Adoptions in Africa?*, Benyam D. Mezmur, *International Journey of Law, Policy and the Family*, page 1 of 29, 2008, Oxford University Press.

-*Ethnicity in placement*, *Adoption & Fostering*, Spring 2000, Vol. 24, N° 1.

-*Le bébé face à l'abandon, le bébé face à l'adoption. Don et abandon des enfants en Afrique*, Fernand Ezembe, Albin Michel 2000, p. 225-246.

-*"Depression problems and coping mechanisms of parents who relinquished their children for intercountry adoption"*, dissertation published in 2009 by Wondwossen Teshome, University of Addis Ababa, Ethiopia (electronic version available at the ISS/IRC).

-« *Le péché des sauveurs* » (« *The Sins of Saviors* ») : La traite d'enfants dans le contexte de l'adoption internationale en Afrique, Dr. Benyam D. Mezmur, June 2010, [www.hcch.ne](http://www.hcch.ne)

#### FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **France** : 1) *L'agrément en vue d'adoption : évaluer et accompagner*, 23-24 June et 29-30 September, Paris, COPEs, info : [copes.formation@lecoles.org](mailto:copes.formation@lecoles.org) 2) *Le jeune enfant orphelin de l'un de ses parents*, 23-24 June 2011, Paris, info : [pickler-loczy@wandadoo.fr](mailto:pickler-loczy@wandadoo.fr)
- **Grande-Bretagne** : *Adoption and Fostering – what's the evidence on health and outcomes ?*, Birmingham, 27 June 2011, BAAF, info: [conferences@baaf.org.uk](mailto:conferences@baaf.org.uk)

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