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EDITORIAL

Adoption and illegal practices: A sign of hope in the face of these tragic situations?

Since its creation, the ISS/IRC, together with other actors, has fought illegal practices carried out in the context of adoption, through the implementation of an adequate international legal framework and the development of training and information tools aimed at preventing these practices and at remedying what may be irreparable.

Behind the words 'intercountry adoption', there are thousands of destinies, tragic fates with happy endings, or less happy endings... Illegal practices have been part of the history of adoption, with each country having had its set of grey zones, which, whilst buried in the past, often end up coming to light, sometimes in a brutal manner for those affected: adoptees and their biological and adoptive families. In the face of these scandals, which the future will not stop, the international community has been mobilising itself, for example, through the establishment of a working group on this issue at the Permanent Bureau of the Hague Conference on Private International Law (see p. 9) or the development of studies, such as the one currently being drafted by the Special Rapporteur on the sale of children, child prostitution and child pornography for 2017. This is also the case of ISS, which, through recent publications, has recorded and documented the various forms of abuse, and provided tools to professionals faced with these situations. The latest one, presented below, intends to offer signs of hope by giving a voice to the victims and other actors involved, in order to open the way ahead to potential solutions (see p. 9).

Providing justice, yes but how?

Without going into the details of the numerous scandals linked to intercountry adoption, we may agree on one issue: their management remains extremely complex and deficient, domestically and internationally. Indeed, there are many aspects that must be taken into account: the anger and deep suffering of the adoptees and their families, sometimes the responsibility and unbearable silence of governments, the helplessness of the professionals, who lack the needed tools, the outrage of society when faced with the messages conveyed by the media. In the face of these challenges, judicial bodies try to reestablish some form of balance through the development of case-law in terms of compensation of the victims at regional level (decisions of the European Court of Human Rights and

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the Inter-American Court of Human Rights) and domestic level (in the Netherlands, for example), as well as through the comprehensive reform of the adoption system (Argentina, Chile, Spain, etc.). Whilst it is unrealistic to believe that justice will be fully restored, such efforts, which have been detailed in ISS's new publication, are promising.

Daring to talk, yes but how?

Beyond the personal development of each victim, a common right unites and sometimes reunites them: the right to know the truth about their origins and their story, to be recognised as victims, and to be legally, psychologically, socially and politically compensated. Whilst it is not difficult to obtain moral consensus on this element, what about the latter in practice? Are specific mechanisms available, as diverse as possible, and able to support the victims in each step that they may take, from the discovery to the reporting of the abuse and its authors until its reparation? These are questions that bother those governments, whose responsibility is sometimes at stake. Courage is required and the official apologies expressed by countries, such as Australia or Belgium, are a decisive first step that must be followed up with concrete actions, such as evidence-based studies on these practices and their recording on national archives, in order to ensure the right to memory (Switzerland, Australia, etc.).

Moving forward, yes but how?

In the face of the devastating effect of these irregularities, personal experiences become a lever to act, for everyone one at their own level. The despair then opens the door to hope, as demonstrated through the various personal testimonies and promising practices developed in several countries. In addition to the above-mentioned legal route, associations of adoptees have been created (South Korea, France, India, Lebanon and Switzerland), awareness-raising campaigns aimed at prevention have been launched, and other experiences, which are all very enriching, have been born (book-writing, film-making, theatre performances, etc.). As stated by the President of the Committee on the Rights of the Child and the Special Special Rapporteur on the sale of children, child prostitution and child pornography, '*[o]ur hope is that we can learn from our past, to ensure that adoption is truly used as a child protection measure*'.

The ISS/IRC's new publication intends to offer signs of hope – hope for the unique experiences of adoptees, families or professionals to inspire those who, today or in the future, may or will face this harsh reality.

The ISS/IRC team
March 2016

Erratum: In *Monthly Review* No. 199, the name of the author of the article 'Period between the matching process and the acceptance/rejection by the prospective adoptive parents: A diversity of practices' was written incorrectly. It should be Sandrine Pepit.

ACTORS

- **Armenia:** This country has published its annual statistics on adoptions undertaken in 2015.
- **Belarus:** The contact details of the Central and Competent Authorities have been updated.

Source: The Hague Conference on Private International Law,
http://www.hcch.net/index_en.php?act=conventions.publications&dtid=43&cid=69.



Strengthening compliance with the Guidelines for the Alternative Care of Children
International Alternative Care Conference, 3 to 5 Oct 2016, Geneva



UNIVERSITÉ DE GENÈVE

CENTRE INTERFACULTAIRE EN DROITS DE L'ENFANT

SAVE THE DATE: 3 to 5 October 2016, Geneva

How we respond to children without, or at risk of losing, parental care affects millions of children globally, for a wide variety of reasons. Getting it wrong can result in long-term – even permanent – damage for a child when alternative care is provided unnecessarily or in an unsuitable setting. Getting it right prevents unwarranted family separation and ensures that a child requiring alternative care is looked after in ways that protect their human rights and meet their individual needs.

Join a worldwide group of committed experts, academics, researchers, government delegates, practitioners and young people with experience of alternative care to make sure we get it right for these children.

The Guidelines for the Alternative Care of Children, welcomed by the UN General Assembly in 2009, have already inspired and underpinned a growing number of initiatives on all continents to secure improved policy and practice in the sphere of alternative care. Now is the time to build on that momentum.

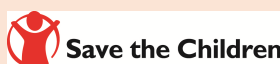
This International Alternative Care Conference will make a key contribution to doing so, acting as a bridge between research, policy and practice in the overall sphere of alternative care, from prevention and family strengthening to gatekeeping and providing quality forms of alternative care. 'Building on the momentum' will enable professionals, whose work concerns alternative care, to participate in an exceptional exercise in mutual learning and networking – helping us to move forward with the needed reforms.

This is the 2016 edition of the annual conferences hosted jointly by the International Institute for the Rights of the Child (IIRC) and the Centre for Children's Rights Studies at the University of Geneva (CCRS). For this conference, the two hosts are partnering with a Steering Group of concerned international agencies*. We all look forward to welcoming you to Geneva in October.

IDE, CIDE and Steering Group

Registration and further information: <http://www.alternativecareGeneva2016.com>

*** Steering Group members include:**



LEGISLATION

Ukraine (East): The protection of children abandoned or separated from their family in the context of armed conflict

Child protection in Ukraine has been put to the test, from both the legislative and executive perspective, following the outbreak of armed conflict in the east of the country in 2014, and the displacement of the civilian population. The public authorities are currently expanding measures to reinforce the right of every child to grow up in a family environment, a complex situation, which Olha Mykytyn-Gazziero, Doctor of Development Studies and Lecturer at the Graduate Institute of International and Development Studies, University of Geneva, describes below.

The political events that took place on Ukrainian territory in 2014 took the child protection authorities by surprise, and have brought into question the functioning of principles of the rule of law. In March 2014, the region of Crimea was annexed *de facto* to the Russian Federation despite opposition from the international community. In April 2014, military groups seized government agencies within two regions in the east of Ukraine – Donetsk and Lougansk – proclaiming the creation of territories outside the control of the Ukrainian authorities. Since 1 December 2014, the Ukrainian government has suspended payment of public funds in these two regions, including the financing of State structures, benefits and pensions¹.

Difficulties relating to registering and monitoring children deprived of parental care

The situation described above has provoked the displacement of some 873,816 persons, including nearly 150,000 (17%), who have fled the conflict zones². According to the UNHCR, about 800,000 persons are still living on both sides of the front line in dangerous conditions³. Under the state of emergency, local officials organised the evacuation of orphanages and foster families, resulting in the departure of some children without papers proving their status. Furthermore, a large number of children have left the occupied territory with members of their extended family or with acquaintances. However, Ukrainian legislation does not have provisions for an unaccompanied child status.

In addition, the conflict has disrupted the civil registration of births and deaths and the functioning of courts in the regions concerned, while also causing forced separations of families.

Guardianship authorities are also confronted with the difficulties in attributing orphan status to children, who have lost their parents as a result of death or disappearance in conflict zones. Furthermore, requests for adopting a 'war orphan' are increasing. The situation is all the more alarming as, irrespectively of the conflict, high numbers of Ukrainian children are abandoned or placed by mothers, who are in distress and faced with unwanted pregnancies, without any income or housing. Such a context, according to the ISS/IRC, renders the protection of children against potential abuses, such as those linked to the resort to surrogate mothers, more complex.

Protection measures available

In accordance with the 2014 Order of the Ukrainian President, children, who have lost their parents in the conflict zones, take priority regarding measures of foster care, adoption or institutional placement⁴. Thus, despite the political tensions, 2,000 children were adopted in 2014, which includes 1,591 by Ukrainian citizens (65% of whom were under two years old) and 524 by foreign citizens (75% of whom were over six years of age)⁵. Among them, 238 children were adopted in the same region of Donetsk (192 domestic adoptions and 46 intercountry adoptions) and 64 children in the region of Lougansk (53 domestic adoptions and 11 intercountry adoptions)⁶. For this reason, the ISS/IRC underlines the need to respect international principles and standards applicable to emergency situations, and advises not to undertake premature adoptions, which are hurried and irregular, but rather to focus on and give priority to family reunification (see Monthly Review No. 08/2010, a special edition on

intercountry adoptions and emergency situations). It is therefore of concern that adoption, both domestic and intercountry, could take place so quickly within these conflict zones; a situation that questions the application of guarantees essential to any adoption proceedings, such as respect for the principle of subsidiarity, under which priority must be given to locating and potentially reunifying the child with their nuclear or extended family of origin.

At 1 January 2015, 21,000 children were registered in the only Adoption Registry, 12,000 were temporarily placed in foster families and almost 1,700 couples (Ukrainian and foreign citizens) were registered as waiting for adoption, the majority wanting a young child. However, between 2014 and 2015, there were no placements in foster families, a situation related to changes in the majority of regional child protection authorities within the context of the reform of transparency in Ukrainian public services.

Challenges relating to intervention mechanisms

Whilst, today, the child protection authorities are concerned about the deficiencies in the monitoring and care of children within and displaced from conflict zones, they remain aware that they are not controlling the situation adequately, despite the improvement of intervention measures in place since 2009. Before these political events, the government had, in effect, passed two key instruments to reform the child protection system in Ukraine: the *National programme of measures to ensure the realisation of the Convention on the Rights of the Child in Ukraine until 2016*⁷ and the *National strategy for the prevention of the abandonment*

*of the child for social reasons up to 2020*⁸. This aims to give priority to the family in the face of the systematic institutionalisation of children. However changes are slow and the institutional system remains the most solicited method. Recent years have seen the progressive introduction of a universal birth allowance (from 2005), local social services, the easing of the secrecy of adoption, the opening of mother and baby homes (from 2005, see *Monthly Review* No. 06/2012), and the placing of ‘baby boxes’⁹ (from 2009) within a dozen maternity homes and hospitals, a practice condemned by the Committee on the Rights of the Child (see *Monthly Review* No. 09/2012). These provisions, however, only have a symbolic effect, the social support measures for families to prevent the abandonment of a child and the mechanisms allowing a prompt intervention of support remain inadequate.

At legal level, the procedures for the care of abandoned children have been standardised. Since 2013, a separate Act has been established relating to the circumstances of child placement (a child who is abandoned, found, placed on request of the parents or left at the maternity home). Following the 2015 Resolution of the Cabinet Ministers of Ukraine¹⁰, this procedure is mandatory to declare the adoptability of the child, including for children born in or displaced from conflict zones. In the latter case, it is the authorities of the reception area that are responsible for the placement of children deprived of their family, including for adoption. Finally, the government is now moving towards the reintegration of children into their biological families after their stay in institutions.

This article highlights the major challenges relating to the protection of children separated from their family in a country affected by war, even when its child protection system remains deficient – despite reforms undertaken – and the absence of adequate legal guarantees (the non-existence of the status of unaccompanied child). All countries are encouraged to support the efforts undertaken by Ukraine in favour of families separated as a result of armed conflict in order to enable their location and reunion.

References:

¹ Ministry of Social Policy of Ukraine, *Annual Report ‘Respect of the rights of children during armed conflict in accordance with 2014 data’*, p. 7.

² State Service for Extreme Situations, 2015 data.

³ UNHCR, ‘Survivre dans l’est de l’Ukraine avec l’arrivée de l’hiver’, 23 December 2015, <http://www.unhcr.fr/567aa145c.html>.

⁴ Order of the President of Ukraine No. 835/2014, 19 October 2014, ‘Urgent measures to ensure social guarantees to certain categories of the population’.

⁵ Ministry of Social Policy, 2014.

⁶ Ministry of Social Policy,

http://www.mlsp.gov.ua/labour/control/uk/publish/article;jsessionid=DF645D87C5088C5BD97A8EAEB327F398.app1?art_id=171174&cat_id=107177.

⁷ The Law of Ukraine 'On the National Program 'The National Plan of Action to Implement the United Nations Convention on the Rights of the Child' for the Period up to 2016', date of entry into force: 31 March 2009, https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/84593/94160/F962346414/UKR84593_English.pdf.

⁸ Government of Ukraine – Ministry of Social Policy, 'Government adopted an Action Plan to implement the National Strategy for the prevention of child abandonment until 2020 year', 27 May 2013, http://www.kmu.gov.ua/control/en/publish/article?art_id=246374318.

⁹ The 'baby boxes' exist in Lviv, Loutsk, Ternopil, Borispil, Rivne, Vinnitsia, Ivano-Frankivsk, Sniatin, Mukatchevo, Odessa, Pavlograd and Makiivka.

¹⁰ Resolution of the Ukrainian Cabinet of Ministers No. 580/2015 'Amendment to adoption procedures and monitoring of the rights of adopted childre '.

PRACTICE

Building a secure route for children in care and choosing the most appropriate status: Real challenges for the French child protection authorities

Annick Tordjeman, Head of the Adoption Service for the French Department of Haute-Garonne, presents the system implemented by the Department of Haute-Garonne to help prevent situations of parental abandonment.

Protection measures fall under the UNCRC, according to which, in accordance with the best interests of the child, when the latter 'is temporarily or permanently deprived of his or her family environment (...) [or] cannot be allowed to remain in this environment (...) [he or she] shall be entitled to special protection and assistance provided by the State'. State parties shall, in accordance with their domestic laws, ensure alternative care for such a child (Article 20). Since 2009, the Guidelines have effectively supplemented these measures. In France, it is the Departments who, through their Child Welfare Services (*Aide sociale à l'enfance*, ASE), are responsible for the protection of children, who are temporarily or permanently separated from their family. In order to take preventative action, the mechanisms, which are aimed at preventing parental abandonment, are starting to develop at departmental level.

Concept of parental abandonment

Parental abandonment is a broader concept than the disinterest, which is characterised by:

- Intentional neglect by the parent(s) towards the child;
- Lack of contribution from the parent(s) to the needs of the child, in relation to educational, psychological, moral and health requirements;
- The parent(s) have not maintained the necessary relationship to sustain emotional bonds with their child.

Example 1 (of cases submitted to the monitoring mechanism):

The mechanism was called upon in the situation of a child, who was not recognised by her father. Her mother had not had any physical contact with her for several years even though she wanted her daughter to write to her and the mother sent cards every now and then. The professionals were questioning themselves as to how to qualify this situation: Can we speak of abandonment from the mother's point of view? And for the child? In accordance with current French case-law, the fact of sending postcards could go against the definition of abandonment. The judges were divided in this respect. The members of the group proposed a judicial declaration of abandonment in the interests of the child, who had developed significant behavioural problems. **Given the concerns about the mother's behaviour, the act of abandonment, established by the judicial system, enables the child to feel secure. The concept of abandonment is very real for the child, in accordance with the above criteria. The process is currently before the Court.**

This concept has been included in several reform proposals and enshrined in the *Dini Meunier Law* on child protection, which was published in the Official Journal on 15 March 2016. This legislation provides for the creation of a multidisciplinary and multi-institutional committee responsible for examining the situation of children placed with ASE for over a year, who are in a situation of

abandonment or whose legal status is not suitable for their needs and must be questioned with a view to, for example, envisaging a delegation or withdrawal of parental authority, guardianship, or a judicial declaration of abandonment, etc.

Creation of a monitoring mechanism for abandoned children

In the Department of Haute-Garonne, the Adoption Service has become a genuine resource service with regards to the different statuses of the child. As the Service is regularly called upon on the status of a ward of the state¹, it has progressively reflected in more depth on the above-mentioned other statuses, which children could benefit from. It is within this context that the Service initiated a multi-stakeholder working group in late 2012, in order to create a monitoring mechanism for abandoned children or those in the process of being abandoned. This group was composed of professionals working in the field of child protection, including a member of the *Conseil supérieur de l'adoption* and ISS Adviser, Magistrates and the Office of the Public Prosecutor, who participated in the application of the various statuses suggested by the ASE, the President of the *Conseil de famille des pupilles de l'Etat*, a Lawyer and a Professor specialising in Family Law. The objective of this reflexion was to establish a monitoring body and a follow-up

Promoting a true common culture amongst professionals with regards to abandonment means reflecting on the most suitable status for the child to ensure a genuine project for the future and to support their integration into adult life. The above-presented mechanism seems to meet the recommendations of the *Dini Meunier* Law and puts emphasis on the multidisciplinary aspect, which is essential in the assessment of situations of children. It also meets the concerns of ISS/IRC as regards prevention and establishing a clear and permanent family life plan for each child.

process of the situations of abandoned children or those at risk of being abandoned, and it has been in operation since 2015.

Multi-disciplinary approach in the conception and implementation of the mechanism

This advisory body met twice in 2015, at the request of the Directors of ASE or their teams, not only to examine the situations submitted to them but also to ensure their follow-up. This examination is carried out from a legal, social and psychological perspective in the interests of the child. The aim is not to review the whole situation, which will fall within the annual revision, but to assess and submit proposals to the Director of ASE.

Example 2 (of cases submitted to the monitoring mechanism):

The mechanism was called upon in relation to a child, who benefited from a delegation of parental authority to the ASE, the mother being, in view of her vulnerability, unable to care for the child and rarely requesting news of her son. The father had not been present for years. This decision was not meant to continue long-term, as it is not a protection measure, but a measure aimed at facilitating the child's daily life. The professionals were therefore called upon on the change of status of the child. The conditions for a legal declaration of abandonment seemed to be met, however, the psychological implications of the concept of abandonment for the child were raised. **The proposal to maintain the present status was therefore recommended by the group and is monitored by the Head of the ASE.**

These examples illustrate the complexity of some situations, and, sometimes, the gap between the legal reality (i.e. all the conditions are met for the implementation of a status) and the psychological reality.

Initial results of the mechanism

The activity of this body is quite new: it is intended for the most complex situations, which require a multidisciplinary approach (see attached boxes). Other situations come from specific requests from the Adoption Service, which are increasing, such as whether the status of ward of the state is conditional on the nationality of the child, or to what extent the status of ward of the state offers more protection than a guardianship measure granted to a Department when the child has no father or mother. Overall, these two requests reflect a greater sensitivity to the issue of the status of children in the care of ASE and the wish to offer a project that is more adapted to the needs of the child.

Reference:

¹ In France, a ward of the state is a child born anonymously ('born under X' or secretly) or found, an orphan, a child placed voluntarily at the ASE or placed following a legal decision by the ASE, and for whom parental authority is exercised by the Prefect of the Department as a guardian and by the *Conseil de famille des pupilles de l'Etat*.

Children 'out of control': Higher risks of separation and alternative care

The ISS/IRC welcomes this article by Pascal Rudin, Representative of the International Federation of Social Workers at the United Nations, on this often misunderstood group of children, and often over-represented in alternative care settings.

Children living in institutions are a particularly vulnerable group of youth, as their biographies are often shaped by violence. Different risk factors may affect their development, including dysfunctional families, early parental separation and periods in possibly overcrowded institutions with frequent caretaker replacements¹. Given these rather difficult circumstances, it might not be surprising that many of these children show frustration and anger, and become 'out of control'. Instead of taking into account these environmental triggers and addressing them, regrettably over-medication is the result. For example, the 'diagnosis and medication of children in foster homes is perhaps the best example of how, genes and biology aside, it is still an acceptable practice to medicate children whose behaviour is explained by the environment'². This article discusses existing research into the problem, breaches of international standards, and highlights potential responses that could address this situation.

Existing research shows over-medication of children

Literature clearly highlights that the prevalence of mental health diagnoses amongst children living in institutions is significantly higher than in the general population of children³. Bronsard *et al.* even hold that 'a prevalence rate of approximately 50% for at least one psychiatric disorder could be reasonably assumed'⁴.

In spite of the many controversial issues and uncertainties surrounding the medicalised management of children termed 'out of control', psychotropic drugs are increasingly being used to control the behaviour of these children. Singh argues that a mental health diagnosis 'modifies, regulates and eliminates deviant behaviour with a diagnostic label and a punishment in the form

of drug treatment'⁵. Although non-pharmacological treatments have been reported as being highly successful interventions, they remain rare exemptions.

Over-medication of children is a breach of international standards

In this context, all measures affecting these children have to be interpreted in the light of the UNCRC, particularly:

- is the enjoyment of the highest attainable standard of health (Art. 24) ensured when taking into account the various side effects of psychotropic drugs?
- is the right to participation (Art. 12) ensured, particularly if the child did not give their informed consent?
- are the best interests of the child (Art. 3) a primary consideration in the decision making process?

Furthermore, as put forward in the Guidelines for the Alternative Care of Children, 'all disciplinary measures and behaviour management [...] that are likely to compromise the physical or mental health of the child, must be strictly prohibited in conformity with international human rights law'.

Alternative rights-based solutions to address this very real challenge

Thus, children's rights advocates should challenge contemporary tendencies of medicalisation and pharmaceuticalisation⁶ that tend to ignore CRC principles. There is a need for a joint situation analysis, assistance and, where appropriate, multi-disciplinary treatment planning.

The following principles may guide practice in the field of foster care and mental health:

- **Taking into account the history of every child:** We need to take into account the history of

every individual child and carefully draw out a social biography before taking up any action;

- **Understanding ‘deviant behaviour’:** We should try to look behind the possible meanings of ‘deviant behaviour’ in order to understand and help these children, and to avoid simplified medical approaches that ignore the wider social and cultural environment;

- **Building solid relationships:** Acknowledging findings from attachment theory⁷, we should try to establish a ‘healing relationship’

in order to help these often ‘homeless’ foster children;

- **Taking into account the child’s view:** We should see ourselves as child advocates and side with the child, in order to prevent that the child becomes marginalised. Doing so will lead to respecting the right of the child to self-determination by acknowledging and promoting the right of the child to make their own choices and decisions.

ISS encourages practitioners to take on board these principles in working with so-called children ‘out of control’ – who are often misunderstood and in need of better protection of their rights.

References:

¹ Abrines, N *et al.* (2012). ‘Comparing ADHD symptom levels in children adopted from Eastern Europe and from other regions: Discussing possible factors involved’, in *Children and Youth Services Review*, 34(9), pp. 1903 – 1908.

² Leo, J and Lacasse, J (2009). ‘The Manipulation of Data and Attitudes about ADHD’, in Timimi, S and Leo, J (Eds.). *Rethinking ADHD: From Brain to Culture*. Basingstoke, Hampshire, United Kingdom; New York, NY, USA: Palgrave Macmillan.

³ McMillen, J C *et al.* (2005). ‘Prevalence of psychiatric disorders among older youths in the foster care system’, in *Journal of the American Academy of Child and Adolescent Psychiatry*, 44(1), pp. 88–95; and Schmid, M *et al.* (2008). ‘Prevalence of mental disorders among adolescents in German youth welfare institutions’, in *Child and Adolescent Psychiatry and Mental Health*, 2, p. 2.

⁴ Bronsard, G *et al.* (2011). ‘Prevalence rate of DSM mental disorders among adolescents living in residential group homes of the French Child Welfare System’, in *Children and Youth Services Review*, 33(10), pp. 1886 – 1890, p. 1887.

⁵ Singh, I (2002). ‘Biology in context: social and cultural perspectives on ADHD’, in *Children & Society*, 16(5), pp. 360 – 367, p. 362.

⁶ Abraham, J (2010). ‘Pharmaceuticalization of Society in Context: Theoretical, Empirical and Health Dimensions’, in *Sociology*, 44(4), pp. 603 – 622.

⁷ Hazelton, R and Stalker, C (2007). ‘Attachment Theory’, in Lehmann, P and Coady, N (Eds.). *Theoretical Perspectives for Direct Social Work Practice: A Generalist-Eclectic Approach*. New York, USA: Springer Publishing Company, Second Edition, pp. 109 – 127.

For further information, please contact Pascal Rudin at: <http://www.rudinweb.com>.

INTERDISCIPLINARY RESOURCES

Responding to illegal adoptions: A professional handbook

ISS, with a group of experts, launches this resource for professionals working with individuals affected by an illegal adoption, offering hope from an otherwise gloomy reality.

Worldwide, more than half a million children have been adopted abroad and have become adults. Today, many of them are searching for their origins, history, biological parents or extended family. At times, these searches can lead to findings of illegal practices. As a result of the increasing visibility of illegal adoption cases, ISS published the study *Investigating the grey zones of intercountry adoption*¹ in 2012, which

demonstrates that the development of intercountry adoption was – and still is – marred by multiple forms of abuses and poor practices.

Need for resources

Not surprisingly, how one responds to concerns about the way, in which an adoption took place, has become an increasing preoccupation of adoption professionals, as well as of those personally affected. A special working group of

States parties to the 1993 Hague Convention, and coordinated by the Permanent Bureau of the Hague Conference on Private International Law, was set up in 2010 to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases². In parallel to these efforts, ISS is now regularly receiving requests for support from adoptees, adoption associations and professionals looking for effective responses and tools in the face of this complex situation. To address this gap, ISS decided that a practical handbook covering the array of key responses and potential remedies for professionals should be developed.

Handbook outline

The professional handbook *Responding to illegal adoptions: A professional handbook*³ is structured around four main Chapters, each focusing on the potential responses available to a finding of an illegal adoption from a specific standpoint: legal, psychosocial, social and political. Personal testimonies are woven into the Chapters, highlighting the harsh reality, challenges and achievements of those most affected. In some instances, case studies are also provided to give additional guidance and jurisprudence reasoning for undertaking other possible litigation. Likewise, multiple promising practices illustrating initiatives to address potential difficulties successfully, creatively and sustainably, are provided.

- **Legal considerations** – This Chapter examines whether international and regional law offer answers concerning rights to search for information and possible legal actions, including compensation, if a finding of illegal practice comes to light. Selected national experiences are showcased that may be helpful for others in similar situations.

- **Psychosocial considerations** – This Chapter explores the potential ramifications – including trauma and disillusionment – of undertaking searches for roots and discovering illicit practices. Testimonies are provided about the anguish and anxiety involved in conducting a search, the frustrations of finding incomplete

answers as well as the courage needed to face the fact of an illegal adoption.

- **Social considerations** – Social responses are wide ranging, and this Chapter deals with the various behaviours, activities and interactions of individuals, as well as of society, in response to illegal adoptions.

- **Political considerations** – This Chapter identifies the responsibilities of various actors depending on the nature of the illegal adoption, who is undertaking the search, and who was potentially involved. The promising practices highlight ways in which receiving States and States of origin can cooperate to address this situation.

- **Future considerations** – This Chapter examines how the lessons learned in relation to adoptions might help to address some of the challenges faced by professionals working in international surrogacy arrangements.

- **Concluding considerations** - This Chapter seeks to draw together the various contributions, recommendations and lessons learned, providing professionals with closing thoughts on this delicate theme of responding to illegal adoptions.

Handbook objectives

The primary aim of the professional handbook is to demonstrate the need for professional support when facing and/or responding to an illegal adoption. Given the complexities of such a situation, adoptees, biological families and adoptive families are strongly encouraged to take inspiration from the handbook, always with professional support.

A second aim of the handbook is to equip professionals working with adoptees, biological families and adoptive families with a range of resources for responding to an illegal adoption. Specifically, the handbook is designed for use by governmental authorities, accredited adoption bodies and adoption associations. It likewise targets concerned international agencies, such as UNICEF, civil society and policy-makers. It is also

Definition of “illegal adoption”

Where the term ‘illegal adoption’ is used in this publication, it is intended to signify ‘an adoption resulting from abuses, such as abduction, the sale of, traffic in, and other illegal or illicit activities against children’, as defined in the Hague Conference’s Guide to Good Practice No. 1. In other words, it will always imply illegal acts prior to the adoption order being made, but may or may not imply illegality in the granting of the order itself.

intended for journalists, advocacy groups, as well as national networks.

The third aim of the handbook is to provide tools and inspiration for moving forward in such a challenging context.

The professional handbook does not, of course, purport to have an answer to every situation, but it does provide numerous avenues for dealing with feelings such as anger, grief, regret, disappointment and disillusionment when facing an illegal adoption – ideally providing some hope. Whilst the past cannot be changed, we live in the present with an opportunity to make the future brighter.

References:

¹ Available at: http://www.iss-ssi.org/venteonline/product.php?id_product=14.

² See: HCCH, Adoption Section, Expert and Working Groups, Working Group to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases, <https://www.hcch.net/en/publications-and-studies/details4/?pid=6309>.

² Baglietto, C, Cantwell, N and Dambach, M (Eds.) (2016). *Responding to illegal adoptions: A professional handbook*. Geneva, Switzerland: International Social Service. This publications will be available upon request from the ISS/IRC mid-April; for further information about its launch, please see: <http://www.iss-ssi.org> - 'News'.

Recruiting, assessing and supporting lesbian and gay adopters

This good practice guide, published by the Adoption and Fostering Academy – CoramBAAF¹ gives guidance to all those involved with recruitment, assessment and support of lesbian and gay adopters, based on research findings, reviews of existing literature and the authors' experience.

The number of lesbians and gay men, who have successfully adopted children in the past years, has increased. However, all agencies do not assess gay and lesbian parents often. This practice guide focuses on many issues regarding recruitment, assessment and support, ensuring in particular that lesbian and gay adopters are equally treated by agencies; but this guide was also written to help prospective and current adopters and their social workers.

Historical and legal context (in the United Kingdom) and overview of research

The *Children Act 1989* stipulated that the welfare of the child was the essential consideration in all planning and decision-making in relation to children. Still most lesbians or gay men, who wanted to adopt or foster, did not mention it to the agencies. By the end of the 1990s, gay and lesbians wanted their ability to care for children recognised. Support groups appeared in North England. In 2002, the *Adoption and Children Act* allowed same-sex couples to adopt. Since the implementation of the 2002 Act, the number of adoptions by same-sex couples in England has globally increased.

It is worth mentioning that, in recent years, publications, training and information, as well as research projects relating to adoption and

fostering by same-sex couples - or single gay/lesbian persons – have increased both in England and in other countries. The key question raised by adoption by same-sex couples or single gay/lesbian persons is the potential effects on children. The most recent studies (mentioned in the guide) show that the children raised by lesbian/gay parents/carers were not affected, whether academically, emotionally or mentally.

Researches regarding the experiences of lesbian and gay adopters also show that those, who completed the adoption process, are very committed parents, but need to be given positive feedback from social workers about their ability to adopt. Surveys and research have also shown that lesbian and gay applicants feel often apprehensive at the start of the assessment and that social workers need to give a positive message since the recruitment.

Recruitment, preparation, assessment and support

The guide shows that recruitment strategies from adoption agencies should be regularly reviewed and welcome lesbian and gay applicants. It explains that learning from their adopters is also very important: experiences from gay/lesbian couples could be shown on the agency websites, for example. The enquiry stage

and the training should also be welcoming, have an inclusive approach and couples should be able to meet adopters.

Furthermore, according to the guide, the assessment must be reflective and rigorous, with a focus on relevant qualities. It also must be based on evidence – the welfare of the child remaining the key element. There are models for assessing lesbians and gay men. For example, the guide points that the reasons to adopt for gay/lesbians may differ from heterosexual couples. Infertility is not a reason, for example. Among other questions raised by the guide, it is interesting to note that the question of male and female role models continue to arise frequently in assessment. It insists on the importance of the strength and diversity of the applicants' social

network, as a part of the assessment. Additionally, the adoption assessment should also include the possible problems, which may occur due to the difference: children may be bullied, experience prejudice and feel different. Recent studies have shown that if parents are open and have a positive attitude, children will feel more confident.

Post-adoption support

Of course, support during linking and matching, and after adoption, is essential. For example, in some cases, families of gay/lesbian adopters will not support them because they do not agree with their choice to adopt. Birth parents, not always at ease with the placement of their child with lesbian or gay adopters, should also benefit from support from an appropriate practitioner.

Lesbian and gay adoption is no longer new in some countries. This guide will help social and adoption agencies workers in outlining when and how differences should be taken into account, or not, for successful recruitment and assessment.

Reference:

¹ De Jong A and Donnelly, S (2015). *Recruiting, assessing and supporting lesbians and gay adopters*. London, United Kingdom: Adoption and Fostering Academy – CoramBAAF. See: <http://corambaaf.org.uk/bookshp/book/Recruiting-Assessing-LG-Adopters>.

FORTHCOMING CONFERENCES AND TRAININGS

- **France:** **a)** *Les placements impossibles*, COPES, Paris, 30 – 31 May 2016 and 23 – 24 June 2016 (two modules); **b)** *L'adoption internationale aujourd'hui: quels parents pour quels enfants? Réalités, éthique et vécu psychique*, COPES, Paris, 11 – 13 May 2016 and 15 – 17 juin 2016 (two modules). For further information, see: <http://www.copes.fr/>; **c)** *L'adoption d'enfants à besoins spécifiques : de l'évaluation de l'adoptabilité à l'accompagnement post-adoption*, EFA, Paris, 26 – 27 May 2016. For further information, see: <http://adoptionefa.org/les-formations>.
- **The Netherlands:** *Relevance of adoption. Improving life for children who cannot live with their family*, 2016 EurAdopt Conference, Utrecht, 1 – 2 June 2016. For further information, see: http://www.portal.euradopt.org/index.php?option=com_content&view=article&id=27:euradopt-conference-2016&catid=11&Itemid=101.
- **United Kingdom:** **a)** *Learning from Disruptions in Adoption and Fostering*, CoramBAAF, London, 27 April 2016; **b)** *The future of special guardianship*, CoramBAAF, London, 19 May 2016; **c)** *Quality assurance of fostering and adoption assessments and reports*, CoramBAAF, London, 25 May 2016. For further information, see: <http://www.corambaaf.org.uk/training>.
- **United States of America:** **a)** *New Worlds of Adoption: Thriving on the Frontline*, Rudd Adoption Research Program and others, Amherst, 13 May 2016. For further information, see: <https://www.umass.edu/ruddchair/annualconference/contact-information>; **b)** *Making Extended Care Work for Foster Youth: The State of the Evidence*, New York University's Silver School of Social Work, New York, 18 – 19 April 2016. For further information, see: <http://www.bettercarenetwork.org/news-updates/events>.

EDITORIAL COORDINATION: Cécile Jeannin

EDITORIAL BOARD: Christina Baglietto, Cécile Jeannin

DRAFTING COMMITTEE: Cécile Jeannin, Mia Dambach, Jeannette Wöllenstein, Christina Baglietto, Vito Bumbaca. We are particularly grateful for the contributions drafted by Olha Mykytyn-Gazziero, Doctor in Development Studies and Lecturer at IHEID (Switzerland); Pascal Rudin, Representative at the United Nations of the International Federation of Social Workers, and Annick Tordjeman, Head of the Adoption Service in the French Department of Haute-Garonne.

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irc-cir@iss-ssi.org
www.iss-ssi.org

ISS
32 Quai du Seujet
1201 Geneva / Switzerland