MANIFESTO FOR ETHICAL INTERCOUNTRY ADOPTION

International Reference Centre for the Rights of Children Deprived of their Family

International Social Service
Service Social International
Servicio Social International

TFB00004 ISS Manifesto English PRINT.indd 1 18/05/2015 12:25

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We would like to thank **Nigel Cantwell, Stéphanie Romanens-Pythoud, Christina Baglietto** and **Cristina Tango** for their valuable contributions.

We would like to warmly thank the Intercountry Adoption Services from the Department of Citizenship and Immigration Canada, who have generously financed and supported the translation of this document (original in French) into English.

The International Reference Centre for the rights of children deprived of their family (IRC) is a division of the General Secretariat of the International Social Service (ISS), which is based in Geneva. Since 1997, the ISS/IRC has been actively developing and implementing international standards relating to the alternative care of children deprived of their family or at risk of being so and adoption. It promotes the exchange of knowledge, experience and dialogue between professionals of governmental and non-governmental agencies throughout the world. The ISS/IRC's principle goal is to equip alternative care and adoption professionals on the ground by developing resources and highlighting promising practices. Likewise we aim to raise awareness of the need to protect children's rights within the analytical framework of international standards in an ever-changing environment. More than 5000 professionals in countries of origin and receiving countries directly benefit from our services.

Based on the UN Convention on the Rights of the Child 1989 (CRC) and The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption of 1993 (THC-1993), the ISS/IRC has developed a specific competence in the area of adoption and in the broader context, the prevention of abandonment, support to families of origin (nuclear and extended) and the respect of children placed in care environments such as foster care and in residential care.

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INTRODUCTION

Intercountry adoption is the subject of infinite debate with regard to its meaning and relevance. The fundamental issues that it raises pertain to the very essence of this quite particular method of creating new filiation ties, affecting the most intimate emotions of biological and adoptive parents, and involving the responsibility of numerous other stakeholders tasked with ensuring the necessity, legality and proper implementation of the adoption. Above all, adoption remains a protection measure that must adequately meet the needs of the children concerned.

Although fundamental international texts such as the United Nations Convention on the Rights of the Child of 1989 (CRC) and The Hague Convention of 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption (THC-1993) set out an essential legal framework for the respect of the rights of the children concerned, the practice of adoption shows that, at each step of the adoption process, difficult choices and decisions must be made without the support of pre-existing mechanisms. The profoundly human nature of this specific child protection measure requires ongoing reflection as to the rationale behind each decision given that these decisions will always involve an individual child and individual parents.

Ambitious in title, the Manifesto seeks primarily to highlight the considerations that, in one way or another, appeal to the practitioner's sense of ethics. Long considered a private matter, then a mainly legal process, intercountry adoption has always raised moral issues. Although it is utopic to give a universal definition of ethical intercountry adoption in light of divergent cultures and opinions around the world, the fact remains that contemporary intercountry adoption has always needed and continues to need ethics. This is reflected, for example, in the tensions resulting from a much higher number of prospective adoptive parents (PAPs) than the number of children declared adoptable, or even in the frequent inadequacy between the needs of adoptable children whose profiles are developing, and the desires of these PAPs. Today, adoption is no longer a private matter. It is a social project. Therefore, it is essential that all stakeholders concerned and involved are given the best training and information so that the decisions made respect the rights of children in need of protection.

ISS/IRC Team
May 2015

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GLOSSARY

SIMPLE ADOPTION: Adoption that establishes filiation ties between the adopters and adoptee while preserving ties with the family of origin. As a result, there is no complete severance of the legal filiation ties. This type of adoption is revocable.

FULL ADOPTION: Full adoption allows for the full integration of the child into the extended adoptive family, giving the child equal status with biological children. This type of adoption severs filiation ties with the family of origin, including the forfeiture of rights, responsibilities and obligations of the biological parents or guardian(s), which are then exercised exclusively by the adopters. There is nevertheless the possibility of exceptions with regard to adopting the child of a spouse. This type of adoption is generally irrevocable.

OPEN ADOPTION: Open adoption is a full adoption that allows for an informal relationship between the child, adoptive family and family of origin. The objective of open adoption is to allow the mother and father of origin to pursue a relationship with the child, both during the adoption process and after the adoption decision is made by the competent authority.

INDEPENDENT ADOPTION: 'Independent adoptions are those in which the prospective adoptive parents, after being approved by their Central Authority or accredited body, are permitted to go to the State of origin and find a child to adopt, without the assistance of the Central Authority or an accredited body or approved (non-accredited) person in the State of origin.'[1]

PRIVATE ADOPTION: A privately organised adoption between the parents of origin and PAPs. This adoption process is conducted without the support or supervision of a Central Authority or an AAB. Private adoption should be prohibited in light of the numerous risks that it raises with regard to the use of non-accredited and unsupervised intermediaries, financial abuse, and so on.[2]

KAFALA: The legal patronage of a minor ('Makfoul') by an individual or organisation ('Kafil') without severing ties with the family of origin or creating filiation ties with the Kafil. Kafala is revocable at any time and no reason is required. This type of care requires the Kafil to take responsibility for the care, education and protection of the minor. It is a voluntary measure that is very different from adoption, which is prohibited in Muslim countries inspired by sharia law or that apply it directly. Internationally, article 20 of the CRC and articles 3 and 33 of THC-1996 explicitly recognise kafala as an alternative measure of protection for the child, while THC-1993 does not mention kafala.

[1] Definition from GGP1, §191.

[2] Definition from GGP1, §520 to §525.

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ABBREVIATIONS

CA: Central Authority

CRC: United Nations Convention on the Rights of the Child adopted on November 20, 1989

THC-1993: The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

THC-1996: The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

GGP1: The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice No.1

GGP2: Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No. 2

ISS: International Social Service

AAB: Adoption accredited body

PAP(s): Prospective adoptive parent(s)

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ETHICS AND ADOPTION

Adoption is a multi-faceted act with social, psychological, legal and human implications, and for which ethics must be taken into account. Although this term has been increasingly linked to intercountry adoption, it is rare to find a definition for it, though some publications outline this concept, as can be seen below.[3]

Without dabbling too much in philosophical considerations, it should be noted that the concept of ethics has never been given a unanimous definition. Among the trends that are developing, there are two that are particularly of interest. On one hand, ethics can be associated with an individual's making free choices in accordance with his or her own concept of good and bad. Here, the concept of individual responsibility comes into play. On the other hand, ethics changes in line with social evolution and, thus, depends on a given society's level of tolerance. Therefore, it differs with time, but also from one country or region to the next. This perspective adds a collective dimension to ethics.

Although the Manifesto is aimed at all adoption stakeholders, both individually and collectively, it does not claim to be a timeless and absolute tool. It was developed on the basis of contemporary rules governing intercountry adoption and on practices identified in recent years around the world.

Returning to the topic at hand, ethics seems to have been incorporated into the concept of 'adoption ethics'. Various works and experts have been referring to this concept for a number of years. As a result, we can claim the existence of 'adoption ethics', which would be made up of all guiding principles, established by the applicable international texts, for intercountry adoption: the best interests of the child, non-discrimination, the harmonious development of the child in a supportive environment, the principle of subsidiarity, the protection of children against trafficking and abuse, inter-state cooperation, the prohibition of undue material gain, and so on.

Consequently, it can be stated that certain procedural safeguards, both national and international, established by the instruments are intrinsic to the very ethics of adoption. One can cite, among other things, the declaration of adoptability of the child, the issuance of the PAPs qualification certificate, and the preparation and monitoring of the adoptive family.

It is in this spirit that the Manifesto invites intercountry adoption stakeholders to reflect on the fundamental issues involved in adoption ethics. Accordingly, the considerations proposed are based, on one hand, on applicable international standards and, on the other, on missions completed by members of the ISS/IRC in countries of origin.

[3] **Committee on the Rights of the Child recommendation, Day of general discussion, children without parental care**, 2005, http://www2.ohchr.org/english/; **GGP1**, http://www.hcch.net/index_en.php?act=publications.listing&sub=4; Cantwell N, **Adoption and children: a human rights perspective**, Council of Europe Issue Paper, 2011, https://wcd.coe.int/wcd/ViewDoc.jsp?id=1780157; **Intercountry adoption**, UNICEF, 2010, http://www.unicef.org/media/media_41918.html; Euradopt, **Ethical Rules**, 1993, http://portal.euradopt.org/index.php?option=com_content&view=article&id=6&Itemid=15&lang=fr; Graff E.J, **The lie we love**, http://www.rhrealitycheck.org/blog/2008/12/11/the-lie-we-love; Ethica, **An independent voice for ethical adoption**, http://ethicanet.sitesteaders.com/; Gouzes G, **Pour une éthique de l'adoption (adoption ethics)**, 2001, http://lesrapports.ladocumentationfrancaise.fr/BRP/014000210/0000.pdf.

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ADOPTION AND CHILD PROTECTION

01 BEST INTERESTS OF THE CHILD

The best interests of the child undoubtedly covers the ethics aspect of all adoption, and must guide all decisions made in this regard. However, one can observe straight away that the analysis of this fundamental principle stirs up controversy in terms of its definition, as is reflected in the numerous studies and publications that have focused on this topic.[4]

At an individual level, the best interests of the child consists of placing the child at the centre of the adoption process, ensuring that the child's rights, interests and specific needs are respected at each step of the adoption process, starting with the declaration of adoptability. Therefore, the first question to ask is whether adoption is the measure that best fits the situation and the needs of the child concerned.

In contemporary intercountry adoption, which is characterised by changes to the profile of children being proposed for adoption (older children, siblings, children with a mental or physical disability) – when young healthy children are declared adoptable – it is important to verify that their 'best interests' have been respected. This can be done by verifying that domestic family solutions do not exist for them and, conversely, that they were not declared adoptable to meet a general demand for young healthy children. Consequently, this analysis must also consider the context in which the child is declared adoptable to ensure that adoption is indeed a justified and appropriate individual protection measure.

The best interests of the child must also be taken into consideration at a more comprehensive level, particularly with regard to the relations between the country of origin and receiving country. As a result, when there is enough reliable information establishing that a country of origin is not able to meet its obligations for protecting children, the onus is on that country, as well as receiving countries and AABs, to react and take the appropriate restriction measures *(see points 47 and 48)*. The States may proceed with this type of decision by referring to article 3.1 of the CRC, which focuses on the best interests of the child.

The best interests of the child, which falls within the framework of respecting all the child's rights, is the primary consideration that must guide the entire adoption process, excluding all other forms of influence.

[4] **UNHCR Guidelines on Formal Determination of the Best Interests of the Child**, 2006, http://www.unhcr.org/4566b16b2.pdf; UNICEF, **Implementation Handbook for the Convention on the Rights of the Child**, 2007, http://www.unicef.org/publications/index_43110.html; ISS/IRC Review N°1/2013; UN CRC Committee, **General Comment No. 5 General measures of implementation of the Convention on the Rights of the Child**, 2003, http://www2.ohchr.org/english/; Cantwell N, **The Best Interests of the Child in Intercountry Adoption**, Innocenti Insight, Florence, UNICEF Office of Research Innocenti, 2013; Zermatten J, **L'intérêt supérieur de l'enfant, De l'analyse littérale à la portée philosophique (the best interests of the child, from literal analysis to philosophical scope)**, 2003, http://www.childsrights.org/documents/publications/wr/wr_interet-superieur-enfant2003.pdf; **Defence for Children International, L'intérêt supérieur de l'enfant en questions, leurre ou levier au service de ses droits** (the best interests of the child in questions, illusion or lever severing their rights), 2010, http://old.dei-france.org/journees-etude/je2010/documents-je-20nov2010.html; Cirello Bruñol M, **El interés superior del niño en el marco de la Convención internacional sobre los Derechos del niño**, Instituto Interamericano del Niño, http://www.iin.oea.org/el_interes_superior.pdf; Aguilar Cavallo G, **El principio del interés superior del niño y la Corte interamericana de derechos humanos** (The Best Interests of the Child Principle and the Interamerican Court of Human Rights), 2008, http://www.cecoch.cl/htm/revista/docs/estudiosconst/revistaano_6_1.htm/Elprincipio11.pdf.

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02 PARTICIPATION OF THE CHILD

The participation of the child is one of the fundamental principles of the CRC (article 12),[5] which involves, on one hand, that the child be heard and, on the other hand, that his or her views be given due weight in accordance with the child's age and maturity. Legally establishing the right of the child to consent to his or her adoption from a set age is an essential first step that must be reflected in the legislation of every country.

If there is no set criterion as to the age at which the child should be heard, practices developed in various countries tend to use a median age of 12 years. This means that, until this age, children must be heard, but their view does not bind the judge (or authority) in charge of the adoption decision. On the other hand, the views of children aged 12 and older must be obtained and in principle respected by the judge (or authority).

However, the onus is on the countries concerned to verify how this consent was obtained, that is, whether the child was informed of the consequences of his or her adoption, such as the complete severance of ties with his or her family and country of origin, whether any real alternatives were suggested to the child, and whether the child expressed his or her views in an environment conducive to speaking openly, free from all pressure.[6]

Moreover, the fact that the proportion of older children being adopted abroad is increasing means that this obligation must be implemented more rigorously. The same is true for situations involving accelerated procedures, which are implemented in or following emergency situations where this obligation is most often set aside *(see also point 46)*.

As the subject of the adoption, the child has the right to give his or her view during the process and to have this view given due consideration if his or her age and maturity justify it.

[5] CRC Committee, **General Comment No. 12: The right of the child to be heard**, 2009, http:// tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f12&Lang=en.

[6] IIS/IRC Bulletins N°4/2010, 5/2010 and 6-7/2010.

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03 ADOPTION AND THC-1993

According to the Explanatory Report on THC-1993,[7] the cooperation between the country of origin and the receiving country of the child set out by the Convention requires the establishment of an 'effective working relationship, based on mutual respect and on the observance of high professional and ethical standards, (which) would help to promote confidence between such countries'. Promoting THC-1993 and giving preference to the procedures covered therein is a first step, but is not in itself an absolute guarantee of a procedure that is exempt from all forms of abuse. In fact, THC-1993 is not mandated to cover all the issues relating to the protection of children of a ratifying country. As a result, it is not uncommon for abuse to occur, including in countries covered by the Convention, particularly prior to the adoption process (insufficient birth records, inadequate register of vital statistics, corrupt administration and judiciary, and so on).[8]

Therefore, it is the responsibility of the receiving country to ensure that the country of origin possesses adoption and child protection systems that are reliable, organised and supervised, and to support and encourage the country of origin to take on the appropriate reforms where needed. Once the adoption is finalised, receiving countries must also ensure that its child protection system guarantees the well-being and best interests of the child. Despite existing difficulties, a laissez-faire attitude is not acceptable in this field.

Although the promotion and ratification of THC-1993 remains essential, THC-1993 alone does not guarantee a strictly ethical practice of intercountry adoption.

Furthermore, the Special Commission of 2000 stressed in its recommendations that:

Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children, the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States.[9]

Regardless of whether the country of origin has ratified THC-1993, the onus is on the receiving country to guarantee that the intercountry adoptions that it carries out comply with the relevant international norms and standards.

[7] Parra-Aranguren M.G, **Explanatory Report on the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption**, 1994, http://www.hcch.net/upload/expl33e.pdf.

[8] Boéchat H and Fuentes F, **Investigating the grey zones of Intercountry adoption,** ISS, 2012, http://www.iss-ssi.org/venteonline/product.php?id_product=14.

[9] **'Report and Conclusions of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 . . .'** Recommendation No. 11, Proceedings of the Nineteenth Session, Tome I, Miscellaneous 'matters, p. 480 et seq. Also available on the website of the Hague Conference at < www.hcch.net >, under 'Intercountry Adoption Section'.

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04 COMPREHENSIVE POLICY ON CHILD PROTECTION IN THE COUNTRY OF ORIGIN

To safeguard the best interests of the child, intercountry adoption must be part of a comprehensive child protection system based on the child's right to grow up in a family environment, ideally with his or her family in his or her country of origin.[10] Specifically, this involves each country having a domestic child protection policy in effect to ensure, on one hand, that priority is given to preventing children from being abandoned, fighting against poverty and developing support programs for vulnerable families[11] and, on the other hand, the ability to guarantee that all domestic family solutions (kinship care, domestic adoption) have been exhausted before proposing the child for intercountry adoption. Receiving States must also ensure that this type of policy is in place in the countries with which they are cooperating.

Statistics on the origin and age of the children proposed for adoption is a good way of verifying whether these principles are being implemented effectively. It is actually possible, using this as a basis, to determine whether certain categories of children (very young children, over-represented region or ethnicity) are being declared adoptable more often than the national average, and to thereby detect possible abuses.

In all countries of origin, taking into account the child protection system and its relations with intercountry adoption is mandatory for all foreign stakeholders who want to establish intercountry adoptions there.

Poverty on its own cannot justify the removal of a child from his or her biological family[12], let alone act as a ground for adoptability.

05 RESPECT OF THE DOUBLE PRINCIPLE OF SUBSIDIARITY

The first level of the principle of subsidiarity requires that priority be given to keeping the child in his or her environment of origin. In practice, this involves the implementation of a system based on the development of domestic family-type solutions for children separated from the family, making it possible to decrease the need for intercountry adoption. Specifically, such a system should set out family support programs so that they can raise their children, family reintegration programs for situations involving temporary separation, and alternative family placement in cases of permanent separation.[13] The second level of the principle of subsidiarity focuses on the subsidiarity of intercountry adoption with regard to family-type domestic protection measures. Consequently, intercountry adoption should only take place after a long term family solution has been actively sought in the child's country of origin, particularly with domestic PAPs.

The effective implementation of this double principle is often difficult to assess, particularly when the situation involves the adoption of children with certain characteristics. Regardless, it involves being attentive to the indicators gleaned from statistics (not only from the country of origin, but also from the receiving country), gathering information from non-government stakeholders, and even taking more comprehensive steps, such as having an independent outside body assess the adoption system, with national authorities and international organisations as required.

Assessing the efforts of a country of origin in terms of the implementation of the double principle of subsidiarity remains an essential element for understanding a child protection system and the safeguards that it may offer.

[10] A strict right to a family does not exist in international law however, the CRC preamble states 'recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding'.

[11] United Nations **Guidelines for the Alternative Care of Children,** 2009, §32 ff.

[12] United Nations **Guidelines for the Alternative Care of Children,** 2009, §15 ff.

[13] United Nations **Guidelines for the Alternative Care of Children,** 2009, §49 ff.

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06 THE TIME PARADOX

The issue of time raises a number of dilemmas. First, claiming that the adoption of very young children must be promoted because they integrate better into a family, presents the risk of setting aside older children, who represent a high proportion of children in need of adoption.[14]

Second, a balance must be struck with regard to the adoption process. Accelerating adoption proceedings can lead to fundamental steps – such as the verification of the child's adoptability and attainment of the parents of origin's consent – being botched or even missed. The same is true with regard to the assessment of the PAPs' ability to care for a child with a traumatic past. But letting years pass while children live in temporary foster homes without being declared adoptable, hoping that they may one day reintegrate into their family, results in depriving them of the possibility of growing up in a stable family environment, conducive to their sound development.

The concept of time for children is important and is measured on a scale different to that of adults. Every month counts with regard to the child's development process. A balance must be sought out and put into practice through provisions establishing reasonable time frames for the declarations of abandonment and adoptability.[15]

The issue of time must be taken into consideration by the professionals in charge of the child, particularly with regard to decisions affecting the child. However, the issue of time must not be an argument for accelerating adoption procedures or increasing their volume.

[14] See the statistics presented in the ISS/IRC Reviews N°10/2010 and N°9/2011; Jeannin C, **A l'international, quels freins ou quelle absence de freins à l'adoption des enfants grands? Procédures mises en place par certains pays d'origine pour l'accompagnement et la préparation des enfants grands (International help and hindrances in the adoption of older children. Procedures implemented by some countries of origin to support and prepare older children)**, Colloque EFA 'Construire un projet d'adoption pour les enfants grands (Building an adoption project for older children)', February 2014.

[15] ISS/IRC Review N°2/2010 op cit; Jeannin C, op cit.

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THE CHILD IN THE ADOPTION PROCESS

07 PREPARATION OF THE CHILD

For the child, adoption will represent a severance: a severance from his or her friends and from the familiar faces at the institution where he or she was living or from the foster family with which he or she was living, a severance from his or her native country and a sometimes abrupt severance from his or her family of origin. As a result, adoption can be brutal for the child. However, this can be prevented with proper preparation, calming the child with the understanding of what is happening to him or her. This phase is essential for all children, including younger ones.

However, when the country of origin clearly does not possess the necessary resources, this fundamental step is frequently absent, particularly in cases involving older children. This step is all the more important in these cases so that the child can embrace the proposed adoption project and so that possible family and social adaptation difficulties can be addressed beforehand. An attentive reading of the child's file (if it is complete) will make it possible to assess the time periods between the various steps of the process, and thereby verify whether the child underwent any preparation, or could have undertaken preparation under good conditions. If the child is mature enough, this issue must be discussed with him or her *(see point 2)*.

The systematic use of the 'life story book' must be encouraged as a recognised tool that may accompany the child in his or her adoption process.[16]

The child to be adopted must be properly prepared, based on his or her age and abilities, for the new life that awaits.

[16] 'To promote the child's sense of self-identity, a life story book comprising appropriate information, pictures, personal objects and mementoes regarding each step of the child's life should be maintained with the child's participation and made available to the child throughout his/her life', United Nations **Guidelines for the Alternative Care of Children**, §100.

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08 MEDICO-PSYCHO-SOCIAL AND LEGAL ADOPTABILITY OF THE CHILD

Declaring a child adoptable begins with a comprehensive evaluation of the child's social and medical situation, physical and psychological conditions, and legal status. However, the process does not stop there: once complete, this evaluation is a basis for an assessment of the child's ability to benefit from intercountry adoption. This evaluation indicates the ability to integrate into a radically different family, and cultural and social environment; ability to create attachment ties with new parental figures; and so on. Although it cannot be disputed that all children should be able to grow up as part of a family, adoption is not always the right solution. This is the case for certain children who have been declared adoptable, despite the fact that their profile cites difficulties in terms of their ability to integrate into a family environment or exceeds the capacities of the PAPs.

To avoid these pitfalls and prevent adoption failures, the process of declaring the child adoptable must be given to a multi-disciplinary team based on the resources of each country. A call must be made to government-accredited professionals and there must be exchanges of professional skills between the institutions receiving the children, and so on. In situations where the child will not benefit from an adoption, alternative protection measures must be considered.[17]

The adoptability of the child is not limited to legal criteria; the absence of a medico-psycho-social assessment of the child contravenes international standards and also presents major risks that the adoption will fail.

09 ADOPTABILITY OF CHILDREN WITH 'SPECIAL NEEDS' AND NON DISCRIMINATION

In numerous countries, children with 'special needs' (older children, siblings, children living with a disability or illness) face discrimination linked, for example, with social stigmatisation or the fact that the staff who are responsible for the child do not foresee any family-type protection measure for him or her. These children often grow up in institutions without a long term life plan. As a result, there is reason to establish a system to systematically assess the situation and needs of each child, regardless of his or her profile, based on objective and professional criteria, with a view to seeking out the most appropriate life plan for him or her. The application of the principle of subsidiarity must guide this search, among other things.

Various targeted programs have been developed to promote, where appropriate, the adoption of these children and adapt this type of procedure.[18] For the PAPs, this ensures that they do not consider children with 'special needs' by default. If the discrepancy between the child desired and the child adopted is too big, this creates a known risk of difficulties in terms of the establishment of future filiation ties. Likewise the PAPs capacity and the ability of society as a whole to ensure the care of children with 'special needs' must be questioned.

The 'special needs' of children must not be considered as an obstacle to adoption. On the contrary, they must be considered as the manifestation of the need of the child to live in a family environment that is suited to him or her.

[17] United Nations **Guidelines for the Alternative Care of Children**, 2009.

[18] ISS/IRC Review N°02-03/2012.

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ENVIRONMENT OF ORIGIN OF THE ADOPTABLE CHILD

10 CONSENT OF THE PARENTS OF ORIGIN: GRANTING CONDITIONS AND ALTERNATIVES

Producing an authentic consent certificate for adoption from the parents of origin (or from another person who is responsible for the child) is not in itself sufficient to consider that this document is valid. The onus is on the receiving country to cooperate with the country of origin to guarantee that the consent was obtained freely and that it is the result of an actual conscious choice by the parents of origin, compared to other viable solutions that were proposed. In addition, it must be obtained by a duly trained independent person or authority. However, in at-risk countries of origin, the precarious situation of certain families of origin, their poor grasp of the official language, the social stigmatisation of single mothers, for example, results in decisions being made without any real understanding and under the pressure of corrupt intermediaries.

The cultural concepts of adoption, which are sometimes very different, are also a factor to consider given that the complete severance of blood ties is unthinkable in numerous countries. As a result, there is reason to ensure that the parents were aware of the scope of their decision when the document was signed. Finally, there are also situations where the parents of origin are given no/inadequate time to think about or retract their decision. These points must be carefully analysed to guarantee that the adoption is in the best interests of the child.

The production of official certificates giving consent to the abandonment and/or adoption of the child is not enough to guarantee that the consent was obtained under proper conditions. It is imperative that this step is accompanied by a social investigation and detailed information.

11 DECISION-MAKING ABILITIES OF THE PEOPLE IN CHARGE OF THE CHILD

Although it is important that, prior to the child's adoption, the people in charge of the child take part in the adoptability decision and, more generally, that they are actively involved in the adoption process, a question arises when they are the first, and sometimes only, individuals making this decision. Their skills in this area may be questioned in light of, for example, the existence of prejudices regarding the choice of PAPs or the absence of sufficient knowledge to conduct the necessary assessments.

Furthermore, their impartiality may be called into question when, for example, there is an interest in completing a sufficient number of adoptions (in exchange for grants, donations or other types of undue gains), as this may be the case for the director of an institution that assumes temporary care of the child.

The States of origin are responsible for clarifying the role of these individuals, seeing to their training and informing them of the realities of intercountry adoption. Granting an independent and impartial authority the exclusive jurisdiction to decide on the adoptability of the child is an additional safeguard.

The role and skills of the individuals caring for the child must be closely monitored by both the authorities in the country of origin and those in the receiving country.

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12 ADOPTION AND CULTURAL SPECIFICITIES

Intercountry adoption is likewise an inter-cultural meeting between individuals and between States. As a result, the cultural element plays a leading role in the framework of this intercountry care measure, and calls for an inter-cultural dialogue at all levels. Although the concept of adoption under Roman law – that is, a method of filiation involving a severance of the legal and affective ties with the family of origin and the creation of new exclusive ties with the adoptive family – is the concept that is mainly practised internationally, it is not the only adoption model that exists. In certain African and Asian countries, for example, adoption consists of informally and sometimes temporarily giving a child to a member of one's extended family or to a member of the community.

Applying such a meaning to intercountry adoption may lead to misunderstandings with severe consequences for the child, particularly when the child's parents of origin are counting on his or her eventual return. It is not uncommon for unscrupulous individuals to exploit the confusion between the customary concept and the western concept of adoption to conduct illicit activities.[19] Therefore, in addition to the content of legal texts, adoption stakeholders must clarify these cultural issues, which are likely to call into question the merits of the adoption.

The practice of full adoption remains a western phenomenon, and care must be taken not to impose it without considering the legal and customary cultures of certain countries of origin.

[19] See, for example, the documentary by Terre des Hommes au Népal **Paper orphans**, 2010 and Boéchat H and Fuentes F, **Investigating the grey zones of intercountry adoption**, ISS/IRC, 2012.

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PROSPECTIVE ADOPTIVE PARENTS IN THE ADOPTION PROCESS

13 MEDICO-PSYCHO-SOCIAL AND LEGAL ASSESSMENT OF THE PAPs AND SELECTION

In numerous receiving countries, the statistics for the last ten years show that PAPs are almost always approved. Without calling into question the abilities of individuals to adopt a child, there is reason to wonder about the adequacy of their assessment, both qualitatively and quantitatively, in relation to the needs of the children involved in intercountry adoption. In countries where the number of approvals granted is much higher than the number of adoptions carried out, an ethical question is raised.

Similarly, granting approval for the adoption of young healthy children in a context of intercountry adoption is questionable in the sense that it creates unrealistic expectations, similar to opening up intercountry adoption to same-sex couples *(see point 16)*.

The establishment of a courageous and often unpopular policy for the management of approvals remains a challenge in numerous receiving countries. The political challenge of this issue may result in a certain inertia by the executive bodies concerned, to the detriment of the PAPs, as well as the children.

In addition to the individual assessments of the PAPs, the management of candidacies for adoption must take into account adoption realities and the chances of completing an adoption process within a reasonable time frame and under reasonable conditions.

14 AGE OF THE PAPs

There are numerous countries that set a minimum age and/or minimum age difference between the adopter and the adoptee with a view to guaranteeing a situation similar to that of a biological family. The same cannot be said with respect to maximum age and/or age difference between the adopter and the adoptee. However, respecting the best interests of the child is largely called into question when older PAPs claim they have a right to adopt or when the age gap with the adoptee is too great. Legally setting such a limit is necessary to prioritise the best interests of the child and not the wishes of the PAPs. Among other things, this involves taking into account the age of the PAPs when the child will enter adolescence. There is always some leeway for specific situations, such as intra-family adoptions, adoptions by foster families or adoption of children with 'special needs' (e.g. older children) on the condition that a case-by-case approach based on the best interests of the child and his or her particular needs is taken.

Restrictive legal criteria must deal with the issue of the maximum age and age difference between the PAPs and the child, with a view to the child's well-being.

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15 SINGLE PEOPLE

Accepting applications from single people raises some debate as to the false expectations that it creates. These individuals are added to the already very long queues of PAPs, even though a large proportion of countries of origin deny these files or systematically give priority to couples. Authorising single people to participate in an adoption process can thus be perceived as a purely administrative decision that does not really take into account reality. Without calling into question the sincerity of an individual application, the fact remains that there should also be some reflection in this regard concerning the expectations that a positive decision will create for a single applicant, compared to the real chances that he or she will have to follow through on the project. Furthermore, and in light of the elements cited above, single people are increasingly being given children with 'special needs', who are more difficult to place. As a result, the children who are in need of the most attention are given to PAPs who are naturally less available because they are taking on the parental role on their own.

The assessment of the receiving ability of single candidates must be conducted while taking into account the legal conditions of the receiving country, the actual chances of adoption and the profile of the children that will likely be proposed.

16 SAME-SEX COUPLES

Although an increasing number of receiving countries are authorising adoption by same-sex couples, the vast majority of countries of origin prohibit this practice. As a reminder, some of these countries still condemn homosexuality.[20] In addition to considerations regarding the ability of same-sex couples to raise a child, the ISS pleads, above all, for the respect of the wishes of and criteria set out by countries of origin. A number of these countries are currently concerned by the fact that western same-sex couples are fooling their system by filing intercountry adoption applications as single PAPs, which can then create tension between States, and even lead to suspension of the adoption procedures.

This situation also generates unrealistic expectations for same-sex PAPs: opening intercountry adoption to them when it is in fact not possible will create frustrations that are difficult to bear. The receiving countries must have a clear and realistic discourse in this regard: In addition to all the philosophical considerations, in practice, these projects are rarely or not at all feasible on an international scale.[21]

Although opening adoption to same-sex couples makes sense domestically where these relationships are recognised and, in particular, in situations involving the adoption of a spouse's child, not only does it remain unrealistic internationally, but it also creates tension and suspicions between receiving States and States of origin.

[20] Dambach M, **International legal context governing intercountry adoptions by gay men and lesbians**, Adoption & Fostering Volume 35, N°1, 2011.

[21] When this manifesto was finalised (early 2015), the United States was a notable exception in this regard: European same-sex couples could adopt children from certain American states. However, this practice raises a second issue, that is, the respect of the principle of subsidiarity by the country of origin (the USA), even though this same country is the largest adopter in the world.

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17 PREPARATION OF THE PAPs

The importance of preparation is widely accepted, with certain countries making it mandatory, and other countries strongly recommending it. In addition to it being available, emphasis should be placed on its content and continuity: Does the content reflect the reality of intercountry adoption today? Does the preparation guide the PAPs, as it should, to adjust their adoption project to the profile of the children who are truly in need of intercountry adoption, in other words, does it allow for possible openness to the idea of adopting children with 'special needs'? An ethical preparation should encourage the PAPs to adjust their abilities to the needs of the children or to renounce the adoption if they are unable to do so. Moreover, the preparation should lead the PAPs towards ethical choices regarding, for example, the designation of the country of origin of their child (for example, a member country of THC-1993, a country practicing the reversal of the flow *(see point 18)*, a country that is not exposed to trafficking and abuse), proceeding with an adoption accredited body (AAB) and the choice of AAB, and so on.

Finally, this key moment during the adoption process is when PAPs can reflect on the future difficulties and challenges that they will have to overcome in their family life with the adopted child (revelation of the adoption, adolescence, cultural issues, researching the child's origins, and so on). Preparation courses can help the PAPs become aware of these challenges and equip them with the needed tools to one day deal with these challenges.

Preparing the PAPs is an essential step in the adoption process and, accordingly, must be made mandatory. Professionals must prepare and supervise content, which should be updated regularly, and its cost must remain reasonable for the participants.

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THE PARENT-CHILD MEETING

18 MATCHING

A good matching can only occur when the information on the child and the PAPs is sufficiently detailed, accurate and established. First, countries of origin should be able to provide files for the children that contain comprehensive information on their history; the circumstances of their abandonment or separation from their biological family and their placement with a foster family or in an institution; and their current legal, psychological, social and medical situation; as well as the official documents required. The more complete the child's file, the greater the child's capacity of integration and attachment since the PAPs will have the essential information they need to better understand the child and his or her history. The same is true for the files of PAPs proposed by the receiving country.

Second, is the issue of who does the matching. In order to respect the child's basic rights, this key step of the adoption process must be given to an independent authority (for example, an authority different from the staff of the institution) with skills in varied areas (social, medical, legal, and so on). This body should serve the entire country so that it can best assess adoption needs and opportunities, both nationally and internationally.

Finally, the reversal of the flow of files of PAPs and children should be practiced to avoid a file overload for the country of origin. In practice, this means that the files of children in need of adoption are sent by the country of origin to the receiving country, putting the latter in charge of conducting matching with the most suitable family. In particular, this prevents the country of origin from spending a significant amount of its resources processing the files of PAPs, to the detriment of the files of the children.[22]

Only an independent professional body can ensure quality matching. The reversal of the flow practice must be encouraged, particularly in receiving countries.

19 TRAVEL BY THE PROSPECTIVE PARENTS

Although the majority of countries of origin and receiving countries agree on the importance of the arrival of the PAPs in the child's country of origin, it is important to ensure that these requirements, which are increasing in volume, are a positive experience for both the child and the PAPs. When the country of origin requires, for example, a long stay on site or multiple visits, one might wonder whether adoption is a privilege reserved solely for wealthier PAPs, and whether this is done to ensure regular earnings for the various local stakeholders. The child may become vulnerable as a result of this delicate period of transition, interspersed with periods of disruption of varying length.

Vigilance and control over these practices in the countries of origin is warranted, similar to priority consideration of the interests of the child in light of the terms and conditions required by the country of origin. In this regard, the professionals should be made aware of what the child is experiencing during the transition period, as well as of the importance of promoting channels of communication between the PAPs and the child. Specific support must be established to reassure the child as much as possible if the PAPs are required to make a number of trips *(see also point 21)*.[23]

The PAPs' travel expenses to the country of origin must be monitored by both the country of origin and the receiving country. The various costs must correspond to the usual prices and must not result in obvious profits.

[22] ISS/IRC Monthly Review N°06/2005.
[23] ISS/IRC Monthly Review N°12/2011.

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20 PROBATIONARY PERIOD FOR COHABITATION

When matching is completed and the chosen family has consented to adopt the child, a probationary period of variable duration may be required by the country of origin before making a decision regarding the adoption. This period generally lasts one month, but may go as long as one year in certain countries. In this regard, the stay should be realistic and feasible for the PAPs.

These initial moments of cohabitation are not to be considered a test for the adopters, but rather, an opportunity to get to know the child in an environment that he or she is familiar with, and with the support of local professionals who know the child. Although this period may be inconvenient for the adopters, this measure is part of an effective adoption process, and cannot be deleted because it is not convenient.

Although the benefit of this period is indisputable and it must be respected, it is important to understand its raison d'être and its true objective. This period should have professional support, which serves to foster the progressive creation of affective bonds and to prevent adoption failures as much as possible. Its purpose is not to allow the PAPs to renounce the child when it expires.

In addition, this crucial period must meet certain standards, such as a sufficient minimum duration so that a decision on the merits of the adoption can be made, supervision by a competent multi-disciplinary team, and regular and transparent exchanges of information between the country of origin and the receiving country in accordance with the provisions of article 20 of THC-1993.

When the probationary period ends in failure, it is imperative that the child is given psycho-affective support, especially in situations where the cohabitation period lasted a number of months during which time ties were created. Finally, in situations where the PAPs reject the child, they are not to be given another child at that time. It is in everyone's best interests that a new assessment be conducted.

The probationary period for cohabitation must be of reasonable length, professionally supervised and logistically facilitated (accommodation, travel, and so on).

21 RELOCATION OF THE CHILD: DEPARTURE FROM THE COUNTRY OF ORIGIN

For the child to leave in the best possible conditions, support for the child is a key part of the adoption process *(see point 7)*. The presence of PAPs at the child's side and their involvement in the child's environment of origin are essential and will constitute an important point of reference for the child. On that note, the intercountry adoption scene is leaning toward a standardised practice, and most countries of origin now require the PAPs to be present

Although this clearly shows significant progress, practices such as the requirement to take multiple trips to the country of origin could lead to repeated separations that the child may view as re-abandonment. A single trip of at least three weeks may be a satisfactory condition. It would provide the time required for a progressive introduction that promotes the gradual establishment of ties between the child and the new parents, and the chance for the parents to become familiar with their child's environment of origin.

Once the child has established a relationship with the adoptive parents, it is essential to avoid any new separations by finalising the procedure within a reasonable time and by providing professional support during that period.

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22 RELOCATION OF THE CHILD: ARRIVAL IN THE RECEIVING COUNTRY

For the child, arriving in the receiving country does not mean that he or she automatically becomes the new child of the adoptive family. In addition to the legal and administrative processes, there is a family-building and social integration process that requires not only time but sometimes also adapted professional support.

By taking action when preparing to adopt, inadvisable behaviour that may hamper the success of the process can be avoided, such as the parents returning to work early, the child being enrolled in daycare or school too quickly, or even the child's name being changed suddenly. The parents must therefore be equipped and informed beforehand of these issues and of the various types of assistance (such as parental leave and financial support) and services available if they experience difficulties.

PAPs must prepare properly to receive the child and start living together; a support service must be available, if possible one that is nearby and free.

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INSTITUTIONAL ADOPTION STAKEHOLDERS

23 INVOLVEMENT OF MULTI-DISCIPLINARY PROFESSIONAL TEAMS

The declaration of the child's adoptability, assessment of the PAPs, matching, and post-adoption follow-up are all fundamental steps that should fall under the responsibility of a professional and multi-disciplinary team involving the psychological, social, medical and legal fields.[24] For example, given the variety of needs of adoptive families after the adoption, the importance of having a multi-disciplinary network is clear (individualised psychological follow-up, advice on health or the family dynamic, discussion groups, etc).

States should also ensure proper coordination and cooperation among the professional teams from the different institutions and authorities involved in the adoption process (such as the administrative, legal, health and education authorities). This cooperation is essential for the adoption process to run smoothly, especially in the case of disagreement between the different stakeholders.

The implementation of 'networks' among the various professionals involved in the adoption must enable quick and effective responses to be provided when adoptive families face difficulties.

24 CENTRAL AUTHORITY

A key stakeholder involved in the cooperation system organised by THC-1993 and in making adoption procedures secure, the Central Authority (hereafter the CA) must fulfil a certain number of criteria to successfully complete its mission. It must therefore have adequate material resources and have access to a sufficient number of multi-disciplinary employees, and internal regulations to ensure that the interests of the children and families are safeguarded and that intercountry adoption standards are respected. It must ensure in particular that all stakeholders involved in the adoption are checked/supervised and that they cooperate and engage in dialogue, in order for information to be transmitted. It should also ensure comprehensive preparation for both the PAPs and children. Starting a cooperative process with another country to carry out all intercountry adoptions requires that the CAs engage in dialogue, respect and safeguard the rights of the children and PAPs.

If the basic criteria above are not met, the receiving countries must help strengthen the CA in the country of origin before starting any intercountry adoption program. In order to do so, experience also shows the importance of developing cooperation among countries of origin.

The CA must be completely in place when THC-1993 comes into effect. Cooperation among States must be encouraged to overcome possible difficulties and share acquired experiences.

[24] ISS/IRC Monthly Review N°03/2010.

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25 AAB AUTHORISATION/ACCREDITATION AND SUPERVISION SYSTEM

There is no doubt that an AAB's mediation in all adoption procedures brings added value, in particular with regard to supporting PAPs and preventing potential irregular practices. However, this statement applies only if the AAB accreditation, authorisation and supervision system implemented by the countries of origin and receiving countries is sufficiently effective. To that end, specific regulations must be in place and set clear criteria regarding the nature of the organisation, its mission and objectives, how it operates *(see point 26)* and its financial transparency, in addition to its regular supervision by an independent authority. The messages posted by AABs on their websites must be read regularly to avoid any form of 'call for adoption' and other client based incentives.

In addition, the system must enable the number and profile of AABs to be adapted based on the adoption needs of children. Without such a system, competition between AABs within countries and between countries runs the risk of driving up adoptions and placing pressure on the countries of origin, a ripe situation for the development of fraudulent practices. Cooperation with a receiving country or country of origin whose AAB system is weak or non-existent therefore raises significant ethical concerns that could affect the rights of both children and PAPs.[25]

Receiving countries and countries of origin must strictly and systematically supervise the activities of AABs, not only when they are accredited/authorised, but also throughout the period when the accreditation/authorisation is valid. Limiting their number helps avoid any form of competition.

26 INTERNAL OPERATIONS OF ACCREDITED ADOPTION BODIES

Despite the clear rules for the accreditation/authorisation and supervision of AABs, their internal operations are sometimes vague.[26] The AABs' responsibility for the selection of their representatives in the countries of origin is too often an ongoing challenge. In addition to their competencies in child protection, and more specifically, in adoption, AABs must above all be able to demonstrate their independence with respect to their integrity, professional ethics and compensation. An AAB must never depend on the number of adoptions that it carries out for its durability. An AAB also cannot be funded exclusively by PAPs, at the risk of having to carry out a minimum number of adoptions each year to ensure its income stream. The compensation system for representatives and the costs for the AABs' internal operations must therefore be transparent, independent and predictable. Moreover, the AAB tasks delegated by a CA under section 9 of THC-1993 (such as the preparation and support of PAPs) should be funded through public grants *(see point 35)*.

The competent authorities in the country of origin and the receiving country must cooperate to ensure that a system is implemented to withdraw accreditation/authorisation in cases of suspected fraud and abuse (and, *a fortiori*, if the abuse is proved) and to periodically review the AAB's accreditation/authorisation. In addition, criminal sanctions should be considered in addition to the withdrawal of the accreditation/authorisation when the actions of the AAB or its representatives were very serious (for example, the PAPs were swindled).

Relations between the AAB and its contacts in the country of origin must be closely monitored by the two countries concerned. The AAB must be able to take responsibility for the actions of its local partners.

[25] See GGP2, General Principles.

[26] Some AABs, however, share their work and experience. See, for the example, the article **'An accredited body shares the experience of its representatives in countries of origin'** in the ISS/IRC Monthly Review N°5/2011.

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27 ROLE OF ADOPTEES AND ADOPTERS AMONG ADOPTION STAKEHOLDERS

Some thought should be given to the role of adoptees and adoptive families among the different stakeholders considered by adoption policy and legislation decision-makers. This type of consultation process would help to take into account the real needs of these people and adapt to the evolving world of modern adoption. Adult adoptees, for example, can offer practical guidance to prevent certain errors from recurring and to shed new light on adoption based on their own life experiences. The development of adoptee and adopter associations should be encouraged, in order to support the creation of discussion and testimony groups, in particular when preparing PAPs to adopt and when making legislative and practical reforms.

The experience of adoptees and adoptive families must be valued in the process of determining intercountry adoption policies.

28 DIPLOMATIC REPRESENTATIVES

Diplomatic representatives of receiving countries in countries of origin are mainly involved in the last step of the intercountry adoption procedure, namely, when the visa is issued to the adopted child in order for the child to enter and stay in the receiving country. Although this step is an administrative one, the issuance of the visa concludes the procedure and ensures its legality. However, in the case of doubts arising, for example, the veracity of documents sent to consular officers (such as acts of civil status and consents) or the child's legal status (such as the declaration of abandonment or adoptability), it is certainly not within the jurisdiction of these services to investigate the child's file. Ideally, the study should have taken place beforehand under the responsibility of the competent local authorities. Nevertheless, too often, the doubts raised by the consular services carry only very little weight and are rarely taken into consideration by the authorities in the receiving country.

Although in principle they cannot conduct investigations, consulates should be able to abstain from issuing visas if serious doubts are raised and while waiting for verifications to be carried out in the country of origin. In this case, receiving countries must not place pressure on consular stakeholders, since cooperation in this area is likewise fundamental.

Information provided by diplomatic representatives in countries of origin must be better understood by the authorities in receiving countries. The authorities must give the information more weight when assessing the content of the adoption files submitted to them.

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POST ADOPTION FOLLOW-UP

29 POST-ADOPTION SUPPORT SERVICES IN RECEIVING COUNTRIES

The issue of post-adoption services in the process of intercountry adoption is being considered increasingly important. The presence of specific support services to respond to the very diverse requests of adoptive families is a key factor in the success of adoptions. From a simple paediatric consultation to long-term therapy to family mediation services, to name but a few, these tools are ways to resolve crises and sometimes to avoid family breakdowns. Receiving countries must now ensure that there is adequate allocation of resources to these programs, train professionals on the specific nature of adoption, inform PAPs that the programs exist and encourage PAPs to use them. In addition, these services should be economically and geographically accessible and should be able to resolve the future challenges of adoption, such as the *a posteriori* discovery by adoptees that their adoption was fraudulent. Post-adoption services are also important for countries of origin, since such services vouch for the proper care of the adopted child.

Post-adoption services must be integrated into broader social policies and must receive enough resources to run properly.

30 POST-ADOPTION FOLLOW-UP REPORTS

Post-adoption follow-up reports are one means of monitoring intercountry adoptions. Since THC-93 does not specify the terms for producing these reports, their content is defined by States of origin and receiving States must comply with them. However, the Special Commission of 2005[27] recommended that the practical terms for the number and frequency of these reports be reasonable. Although most countries of origin require reports for no more than two years after the adoption, other countries have found it necessary to extend this requirement until the child reaches the age of majority, at the risk of infringing on the private life of the adoptive family and making the child's proper integration into the family more complicated. In addition, there is the issue of the State of origin's ability to react if the reports reveal a difficulty, such as a situation of abuse. In these cases, cooperation between the CAs is even more crucial. Only real communication and mutual trust can make post-adoption follow-up reports genuinely useful.

The follow-up reports are genuinely useful only if countries of origin are able to process them. When too many reports are required, their accumulation makes any form of control unrealistic.

[27] Special Commission Report 2005, recommendation 18.

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31 ADOPTION AND SCHOOL

A successful adoption is not limited to the adopted child's integration into the new family. It also includes the child's social and educational integration. Education warrants special attention not only because of the importance of learning for the adopted child, but also because of specific education needs that may arise. Therefore, post-adoption services should enable adoptive parents and professionals to work together and equip certain school staff in order for the school environment to become a means for the child to build social ties and improve his or her resilience.

This is the responsibility of both individuals and State institutions, which should adapt their policies and practices to the needs of this specific population.

The development of tools to help the teacher address the specific needs of the adopted child and the child's family should be encouraged, in addition to short-term initiatives, such as the promotion of adoption-friendly language in class to avoid any stigmatisation.[28]

The school must remain a way to integrate the adopted child and respect the child's individual characteristics.

32 PRESERVATION OF INFORMATION ON THE CHILD'S ORIGINS AND TERMS OF ACCESS

The preservation of information on the adopted child's past, in particular on the identity of the child's birth parents, is one of the prerequisites for ensuring the right of all people to access their origins (articles 7.1 and 8 CRC, and articles 9 and 30 of THC-1993). However, depending on the country, the systems for preserving the information, when they exist, are not particularly adequate.

The centralisation of data within a single authority and its archival for a sufficiently long period, ideally an indefinite period, is still a challenge in some parts of the world. Moreover, the right of access to origins, which is recognised by international instruments and by a significant number of domestic laws, requires great care when being implemented in order to protect all people concerned (adoptee, birth parents and adoptive parents). When contact is desired by one of these people and to avoid sensitive situations, countries must plan to implement regulations whose aims include making it mandatory to provide support to all people who conduct a search for their origins and to ensure content quality.

In addition, at a time when irregular adoptions carried out in the past are increasingly being called into question, the need for professional support adapted to the specific needs of people is becoming urgent and warrants the attention of all adoption stakeholders.[29]

The issue of the search for origins must quickly become the subject of discussions among receiving countries and countries of origin, in order to identify ways to respond to the increasing number of sensitive issues/ situations that are likely to arise once the adoptees become adults.

[28] ISS/IRC Monthly Reviews N°02/2009 and N°09/2009.

[29] **Access to origins: the right and its terms of access**, ISS/IRC, November 2011. Document accessible in the ISS/IRC restricted area of www.iss-ssi.org.

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LEGAL NATURE OF THE ADOPTION

33 CONVERSION OF A SIMPLE ADOPTION INTO A FULL ADOPTION[30]

Children should arrive in the receiving country only when legal and administrative issues have already been resolved by the receiving country and country of origin, whether or not the adoption is granted in the country of origin (articles 16 and 18 of THC-1993). In specific cases in which the country of origin recognises only simple adoption, all conditions for simple adoption to be converted into full adoption in the receiving country (if necessary) must be met (in particular irrevocability and the consent of the birth parents to a complete severance of the parent-child relationship) before the child leaves the country of origin.

Under the system of cooperation stipulated by THC-1993, the country of origin must then be informed of the steps taken in the receiving country to finalise the adoption and transform it into full adoption. It is therefore the responsibility of the States to implement clear mechanisms for converting simple adoptions into full adoptions on the basis of the practical guidance proposed by the Guide to Good Practice N°1 of the Hague Conference on Private International Law[31] and in compliance with the rules stipulated by THC-1993 (articles 23-26 and 27) and the specific characteristics of each country.

The conversion of simple adoptions into full adoptions must comply with the legal and social framework in the country of origin concerned and must be based on a mutual agreement between the country of origin and the receiving country.

[30] See the definitions in the glossary.

[31] See chapters 8.8.3 and 8.8.8.

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34 OPEN ADOPTION[32]

Open adoption seems to be an appropriate response for children with certain profiles, in particular older children who are declared adoptable but whose ties with the family of origin have been maintained on the basis of a mutual agreement. The advantage of this practice is that the child is given the same legal safeguards as a full adoption, but is allowed to maintain certain ties with his or her family of origin. To ensure the rights of the child and of all the people concerned, this form of adoption must include the following safeguards:

- Proper oversight throughout the development of a prior agreement among the people concerned (adopted child, adoptive parents and birth parents). The agreement must be supervised by a professional, it must regulate the conditions of contact (such as frequency, follow-up and location), and it must be adjustable according to the development of the situation and the needs of the people concerned.
- In-depth preparation of each stakeholder involved. First, the adoptee may feel confused about his or her identity and family status. Second, the PAPs may sometimes view the situation as a challenge of their ability to be parents and a threat to the permanence of the adoption. The birth parents' current and future role and position with respect to the child must be clarified.
- An adapted professional follow-up, in particular if difficulties arise (psychological support, family mediation services).

The practice of open adoption requires a significant investment from professionals who oversee this specific type of adoption during the preparation, implementation and follow-up phases.

[32] See the definition in the glossary; ISS/IRC Monthly Reviews N°01/2006 and 0708/2006.

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35 PRIVATE ADOPTION, INDEPENDENT ADOPTION AND ADOPTION THROUGH AN AAB

Given the significant risks associated with private and independent adoptions[33] and their incompatibility with articles 4, 16 and 17 of THC-1993 to protect children, clearly all countries must prohibit these types of adoptions. To ensure the proper application of the provisions of THC-1993, such as the preparation of an in-depth study on the PAPs and the child, and the verification of the PAPs' aptitude, the child's adoptability, the required consents, and the match's suitability to the child's needs and interests, PAPs must be obliged to use an AAB. However, this recommendation does not concern countries that do not have an AAB but whose Central Authority alone fulfils the functions set out in THC-1993.

Moreover, if using an AAB clearly helps to counter the dangers associated with private or independent adoptions and to fully safeguard the adoption procedure, mechanisms for the selection, authorisation and supervision of AABs must be established *(see points 25 and 26)* and the States must give them sufficient resources. Without public grants enabling the AAB to operate, the AAB may become dependent on contributions from PAPs, and the AAB will need to carry out enough adoptions each year to ensure its financial stability.

Receiving countries and countries of origin must prohibit private and independent adoption. As a result, receiving countries must provide the mechanisms needed to run their AABs smoothly and/or to strengthen their Central Authority.

[33] See the definitions (and risks) in the glossary.

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SPECIFIC CASES

36 INTRA-FAMILY INTERCOUNTRY ADOPTIONS

These adoptions, which specifically involve a more or less direct family link between the child and the PAPs, must, like all intercountry adoptions, apply the rules set out in THC-1993. The best interests of the child must be sought, which may be sensitive in certain cases. The application of the principle of subsidiarity in particular is not always clear cut. Should the focus be on finding a family solution that enables the child to stay in the country of origin (domestic adoption by people who are strangers to the child) or should it be on carrying out an intra-family intercountry adoption that favours the child remaining in his or her extended family? To answer this question, a number of criteria must be analysed by receiving countries and countries of origin, such as the degree of relationship between the child and the receiving parents. If the receiving parents are strangers to the child, it may be in the child's interest to find an adoptive family in his or her own country.

Moreover, these adoptions require countries to adapt the different steps of the intercountry adoption process to their specific characteristics, in particular cultural characteristics. For example, in many African countries, intra-family adoption is a social and cultural obligation. In addition, the adoption of children of a certain profile may run counter to the social order (such as the adoption of a younger brother or sister). These factors must be taken into account when the PAPs are assessed and prepared. The post-adoption follow-up should also not be neglected on the grounds that the adoption is intra-family.

Intra-family intercountry adoptions must involve an in-depth consultation between the Central Authorities of the two countries concerned in both the preparation and follow-up phase.

37 INTERCOUNTRY KAFALA

The kafala applied at the international level raises difficulties when a child from a country that practices the kafala system is received through the system by strangers residing in a country that does not practice it. The recognition of the kafala in the receiving country is therefore an issue, especially when the kafala is converted into an adoption even though the domestic legislation of the country of origin prohibits adoption. A solution must therefore be found at the international level to protect the children who benefit from an intercountry kafala and to comply with the legislation and culture of the countries that practice this model of care. The ratification of THC-96 by all countries of origin and receiving countries concerned could be a first step in that direction, and would promote the implementation of mechanisms of mutual recognition of child protection measures. Another solution would involve the conclusion of bilateral inter-state agreements to ensure that the children concerned have legal security in the receiving country and that the countries of origin have complete information on the future of the children and on how the kafala is being respected.

The ratification of THC-1996 is strongly encouraged to better manage intercountry kafala situations. Failing that, intercountry cooperation must be ongoing to ensure that the children concerned are protected, in particular once they are placed abroad.

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38 ADOPTION AND VACATIONS ABROAD

Certain concerns are raised by vacation abroad programs designed to promote the adoption of children with 'special needs' and, more specifically, older children who have difficulty being adopted in their own country. Although the programs may enable the children to find a family, they must never be a way to bypass the adoption procedure steps in THC-1993. In the same way as all intercountry adoptions, the programs must comply with the principle of subsidiarity, the obligation for receiving parents to be pre-assessed, selected and declared fit to adopt if an adoption takes place, the declaration of the child's adoptability, and the professional and ethical matching process *(see point 18)*. The child must be prepared for this specific situation and supported before, during and after the trip. In the case of the trip not resulting in an adoption, the goal is to prevent the possible trauma caused by the feeling of being rejected and abandoned again. Countries with these types of vacation abroad programs must carefully ensure that the programs comply with all the principles and rules set out in THC-1993, and adequately address the best interest of the child.

Programs linking vacations and intercountry adoption must be run with great care to avoid any new trauma for the children concerned.

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39 ADOPTION BREAKDOWN

This issue, which long remained taboo, over time has been the subject of studies and various publications urging receiving countries and countries of origin to become aware of certain challenges in the adoption process. These challenges include inadequate preparation, assessments or follow-up that are not adapted to the specific needs of adoptive families, a failure to respect the wishes of PAPs, and a lack of post-adoption support.

The first step is to discuss the failures. The second step is to determine the best interests of the child in decisions resulting from these unfortunate situations. Therefore, a number of elements come into play, such as the quality of alternative care provided by the social services in the receiving country, the briefing of and possible consultation with the country of origin on whether the child needs to return to the country of origin or be matched with another family as well as the child's opinion if he or she can express it. The focus must again be placed on the importance of using a case-by-case approach and putting together a multi-disciplinary team to assess the alternative solutions available, the impact of each solution on the child's development, and the child's capacity for resiliency when faced with re-abandonment.

Adoption breakdowns are neither inevitable nor taboo. Proper support and cooperation with the country of origin must help identify the solution that bests suits the situation of the child concerned.

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HEALTH AND ADOPTION

40 CHILD'S MEDICAL FILE

The issue of the child's health is central to the adoption process, especially since a considerable number of prospective adoptees have physical or psychological health problems. In such a situation, the more detailed the child's medical file, PAPs will be better informed to consider and plan for appropriate care. In practice, the content of files is often incomplete, as a result in particular of a lack of resources in certain countries of origin, and the child's medical assessment is carried out late, that is, after the matching process. In addition, it may be difficult to interpret the child's medical file since medical terms may vary from country to country. Lastly, adopting a child with 'special needs' in terms of healthcare involves ensuring that medical and psychosocial facilities in the receiving countries are available and able to adequately support the adoptive families concerned. It should also be noted that medical files may fraudulently include an exaggerated report on the child's health to facilitate the child's intercountry adoption.

It is therefore desirable to include the issue of the child's health in the mechanisms for cooperation implemented by receiving countries and countries of origin, in order in particular to improve the content of the files and their planning, standardise the terms and models used,[34] and ensure proper care for the child in the country of adoption.

The expertise of health professionals in the adoption must be better used to improve the quality of the child's medical information and thus reduce risks.

41 HEALTH AND SUPPORT OF PROSPECTIVE ADOPTERS

The central issue of the child's health must be handled by the professionals who support the PAPs throughout the adoption process.

First, this issue must be addressed in information sessions held for PAPs to give them general details about the health of the children in need of adoption around the world and about the exact situation in some countries where children are more exposed to a certain type of disease.

Secondly, during the preparation phase before meeting with the child, this issue must be explored further to give PAPs the chance to adjust their plans, know the proper steps to take once the child is in their family, and consider the arrangements to be made for the child's possible treatment. Moreover, if the treatment is not covered by the receiving country's health insurance system, it must be verified whether the PAPs have sufficient financial resources.

Networks of skilled and specialised professionals should then be developed in receiving countries and countries of origin a well as be properly funded in order to be able to help PAPs with the steps that they must take when they travel to the country of origin (such as additional exams) and when they arrive in the receiving country (such as the implementation of a medical follow-up and responsible organisations.)

Given the changing profile of prospective intercountry adoptees, receiving countries should discuss at length the issue of their healthcare.

[34] GGP1, annexes 76 and 77.

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MONEY AND ADOPTION

42 ADOPTION FEES

THC-1993 authorises the payment of fees and honoraria for services rendered and the various costs incurred by intercountry adoption. The fees can be divided into four categories:

1) Direct services provided in the receiving country (registration and processing of the application for the home study, and post-adoption reports and support).
2) Official fees for the procedure in the receiving country (for the required documentation);
3) Services provided in the country of origin (interpreter/intermediary, lawyer, alternative care for the child, etc);
4) Official fees for the procedure in the country of origin (issuance of the required documentation and passport, legal fees, etc).

However, these various fees and honoraria must be reasonable, transparent and subject to control. The Special Commission of the Hague 2000 therefore strongly advised that PAPs should be provided in advance with 'an itemised list of the costs and expenses likely to arise from the adoption process itself' and that 'information concerning the costs and expenses and fees charged for the provision of intercountry adoption services by different agencies should be made available to the public.'[35] Regarding control, the Commission specified that 'accreditation requirements for agencies providing intercountry adoption services should include evidence of a sound financial basis and an effective internal system of financial control, as well as external auditing. Accredited bodies should be required to maintain accounts, submitted to the supervising authority, including an itemised statement of the average costs and charges associated with different categories of adoptions.'[36]

The Commission also emphasised that 'decisions concerning the placement of children for intercountry adoption should not be influenced by levels of payment or contribution. These should have no bearing on the possibility of a child being made available, nor on the age, health or any characteristic of the child to be adopted.'[37]

It is the responsibility of all AABs working in a country of origin to report abnormally high costs compared to the average for a region, or any other questionable practice.

Effective monitoring of the costs of intercountry adoption is the only way to prevent excesses and abuse. Receiving countries and countries of origin must establish firm policies and coordinate their efforts.

[35] Special Commission 2000, recommendations 41.b. and 41.c.
[36] Special Commission 2000, recommendation 6, and Special Commission 2005, recommendation 5.
[37] Op cit.

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43 PRIVATE DONATIONS

PAPs are often asked, and even required, to make a donation to the facility that is taking care of or that took care of their child. Some PAPs offer a donation themselves, generally motivated by the desire to help the children 'left behind.' Whether the donations are required and/or given before, during or after the matching and adoption process, they raise major concerns in that they may encourage care facilities to make as many children as possible 'available' for PAPs. To prevent and combat such abuse, these donations should be prohibited before the adoption, as recommended by the Hague Conference.[38] Donations given once the adoption has been finalised should be transparent and subject to control. On that note, the Hague Conference suggested that the States impose certain safeguards:

- 'donations should not be in cash but through a bank transfer and paid directly into a bank account;
- the Central Authorities in the State of origin and in the receiving State should be notified when a donation has been made;
- bodies receiving donations should have appropriate accounting mechanisms, and scrutiny of accounts should occur as part of the supervision of accredited bodies in accordance with Article 11.'[39]

All donations must be reported, registered and analysed to avoid any poor practices.

44 ADOPTION AND INTER/ INTRA-STATE COOPERATION

In many ways, cooperation on intercountry adoption must exist not only between States of origin and receiving States, but also within each THC-1993 signatory State. From an internal point of view, this cooperation must start at the steps taken before THC-93 is ratified and implemented, in the form of an exchange of information between the various authorities that will be involved in the adoption process, the clarification of their respective roles and the establishment of consultation and cooperation mechanisms between them.

At the intercountry level, inter-state cooperation leads specifically to an exchange of information that is as clear and detailed as possible regarding both the profile of children in need of adoption and the profile of PAPs. To that end, various forms of cooperation can be developed formally and/or informally, for example, through meetings between delegations. This cooperation can also take the form of assistance given to States of origin to help them improve their child protection system and assess their actual intercountry adoption needs. However, this type of cooperation must be clearly distinguished from the intercountry adoption program in order not to be viewed as a form of pressure on the country of origin.[40]

Cooperation, a foundational element of THC-1993, must be better integrated into the practices of signatory States and must lead to the implementation of policy positions and efforts that are accepted by each State.

[38] Op cit, recommendation 42.
[39] GGP1, §246.
[40] Regarding the issue of AAB involvement, see GGP2, Chapter 2 'General Principles of Accreditation'.

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45 DEVELOPMENT AID

Limiting the need for intercountry adoption shows tangible progress in terms of child protection systems (both preventive and reactive). To that end, many countries of origin depend on outside assistance to strengthen their domestic organisations. However, it is important for the assistance to be completely separate from intercountry adoption. In that regard, while encouraging receiving countries 'to support efforts in countries of origin to improve national child protection services, including programmes for the prevention of abandonment,'[41] the Special Commission of The Hague 2000 called for this type of assistance to be completely separate from intercountry adoption. It stated first and foremost that 'this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, or creates a dependency on income deriving from intercountry adoption.'[42]

Development aid programs must be run by professionals in the field, without the intervention of stakeholders in charge of intercountry adoption issues.

46 EMERGENCY SITUATIONS AND CHILD PROTECTION

Following natural or man-made disasters (such as earthquakes, floods and wars), children are sometimes separated from their parents. Before considering the adoption of these children, priority must be given to meeting their basic needs, registering them and reuniting them with their family of origin or extended family. Adoption abroad must be considered only when a professional decision has been made that there is no opportunity for the child to live with his or her parents or extended family, and no satisfactory solution that enables the child to stay in his or her country. To that end, the country concerned must be able to ensure the child's true identity and adoptability, and to have the resources to obtain and/or verify the official documents required,[43] a process that takes time.

Regarding pipeline cases, although it is generally in the child's best interest to finalise the files in which there is an adoption judgment, the fast-track procedures should still be applied according to international standards *(see point 48)*. Other cases in which an adoption judgment has not been rendered should be expedited only when 'compelling health, medical or safety reasons' require the urgent evacuation of the child.[44]

Emergency situations are not compatible with launching intercountry adoption procedures. 'Fast-track adoptions' must be carried out carefully and must concern only a clearly identified number of children and special situations.

[41] Special Commission 2000, recommendation 47.

[42] Op cit.

[43] See also the 'Report of the Working Group of April 1994 to study the application to refugee children of the Intercountry Adoption Convention' from the Permanent Bureau of the Hague, http://www.hcch.net/index_en.php?act=publications.details&pid=932&dtid=2.

[44] See United Nations, **Guidelines for the Alternative Care of Children**, 2009, §160.

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47 MORATORIUM AND SUSPENSION OF INTERCOUNTRY ADOPTIONS

Moratoriums are suspensions of intercountry procedures, usually originating from diverse motives, varying in form and therefore can have acute consequences on the parties involved. Once a country decides that a moratorium is necessary, it then must determine its form such as who it will apply to, that is whether it will apply equally to all countries and/or all children. Whatever is chosen must be communicated clearly to relevant stakeholders. Furthermore, once declared, the particular question arises of how to deal with 'pipeline' cases where the intercountry adoption process is underway but not yet finalised. For children, where a matching has occurred and the PAP has agreed to the proposal, the Government should in principle, continue to finalise the adoption procedure after the following criteria are met. Firstly it has been determined that the PAPs are eligible and that the child is or will be authorised to enter and reside permanently in that State. Secondly, it is agreed by the concerned country and relevant receiving country that the adoption can proceed. For other children, in principle, intercountry adoption should not be processed. Exceptions for duly justified reasons could be envisaged depending on the urgency and necessity of finalising the adoption.

A receiving country may also impose a moratorium on a country of origin in the case of a lack of sufficient safeguards. In that situation, all receiving countries involved must establish a joint approach to avoid sending mixed messages to the country of origin in question. It is unfortunate that certain countries continue to carry out adoptions while others abstain from doing so. This type of attitude may appear to be a way of exploiting the vulnerable situation of the country of origin in question.

When a country of origin imposes a moratorium, it must find solutions that respect the rights of children and PAPs in transitional cases.

When a receiving country decides to impose a moratorium on a specific country of origin, it must also take into account transitional cases, and, if possible, coordinate its decision with partner receiving States.

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ABUSE IN ADOPTION

48 FIGHT AGAINST ABUSE IN ADOPTION

Intercountry adoption is tainted with many irregular adoption incidents whose causes are both diverse and difficult to combat. The main difficulty is the fact that most abuses are outside the scope of THC-93, whose pillars, however, include the fight against trafficking. For example, falsifying a child's civil documents to make the child adoptable is fraudulent and intervenes with the intercountry adoption steps set out in the Convention. States should therefore implement provisions to fight these abuses at the domestic level, while complying with international principles. There are, for example, criminal provisions to curb the falsification of civil documents for an adoption procedure. In addition, focusing on the obligation to register births and the ways to do so is essential, along with banning independent and private adoptions *(see point 35)*, having greater control over AABs, and promoting cooperation between receiving States and States of origin. Moreover, the systematic registration and strict and regular monitoring of all types of facilities that accommodate potentially adoptable children must be organised and its role in the adoption procedure must be clearly defined and supervised. Making fees for an intercountry adoption procedure as transparent as possible and regulating those fees is also a solution that already has a proven track record in the fight against corruption by public servants and various intermediaries. Lastly, it is obvious but necessary to remember that States of origin, with the support of receiving States, must develop a proactive policy to prevent abandonment and to address certain social phenomena, such as the stigmatisation of single mothers, who constitute easy prey for criminal networks.

The fight against abuse in intercountry adoption requires a significant effort from the countries concerned and is not limited to ratifying THC-1993. Receiving countries cannot consider the ratification as a general safeguard that absolves them of all responsibility *(see point 3)*.

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ADOPTION AND THE MEDIA

49 INTERCOUNTRY ADOPTION AND THE MEDIA

The media undeniably plays a major role in how intercountry adoption is perceived by the public in general and by PAPs in particular. However, it is regrettable that the images and discourse conveyed by the media on the subject is often simplistic and sometimes even incorrect, which contributes to a lack of understanding regarding the wait or the infamous 'obstacle course' inflicted on PAPs. Adoptions by celebrities portrayed as simple and quick love stories, images of institutions filled with sad-looking children, or discourse such as 'there are millions of orphans in the world waiting for a family' are not in line with the realities of the countries of origin and the specific needs of the children. In that regard, adoption professionals in both the private and public sectors must work with journalists to explain to them intercountry adoption issues, keep them informed of news on the subject, and give them studies and other useful material. This transmission of knowledge is essential in order for journalists to be properly equipped to give the public the appropriate information. Television spots, awareness campaigns or new methods of communication (such as fora and social networks) are also avenues to explore *(see point 50)*. These steps can help change the image of intercountry adoption and in particular the situation in countries of origin, thus providing PAPs the opportunity to adjust their plan even before initiating an adoption procedure.

The media must portray a more realistic view of modern intercountry adoption and its issues and constraints, and must avoid simplistic portrayals that help perpetuate a false image of intercountry adoption.

50 NEW TECHNOLOGIES AND ADOPTION

New technologies, which have a clear impact on the private and professional lives of people, are now among the contemporary players in intercountry adoption. In whatever form (such as the Internet, fora, blogs, search engines, discussion lists, social networks, photo-listing, DNA testing, and the use of video), these mediums available to all have modified the intercountry adoption landscape by facilitating, for example, communication between the different stakeholders and by accelerating the access to and transmission of information. The ethics and reliability of the information are still sometimes questionable. The authorities and AABs responsible for preparing, accompanying and follow up with adoptive families now have a role to play in raising awareness, providing education and preventing potential risks resulting from the use of new technology (such as direct contact between adoptees and their families of origin on Facebook, the transmission of incorrect information on certain procedures in countries of origin, and the violation of the privacy of adopted children). Moreover, training that enables professionals to better understand these situations and the development of tools such as guides for using new technologies must be encouraged.

Lastly, the States are responsible for implementing legal and practical control mechanisms to protect the rights of those at the centre of the adoption, namely, the children and families.[45]

Professionals in charge of intercountry adoption must be trained and informed on the role and impact of new technologies in intercountry adoption. Supervision and control mechanisms must be developed at the legal and practical level.

[45] ISS/IRC Monthly Review N°173, June 2013; 'Internet Advertising', GGP2, Chapter 3.8; **Impact of new technologies on the adoption process**, ISS/IRC, 2013.

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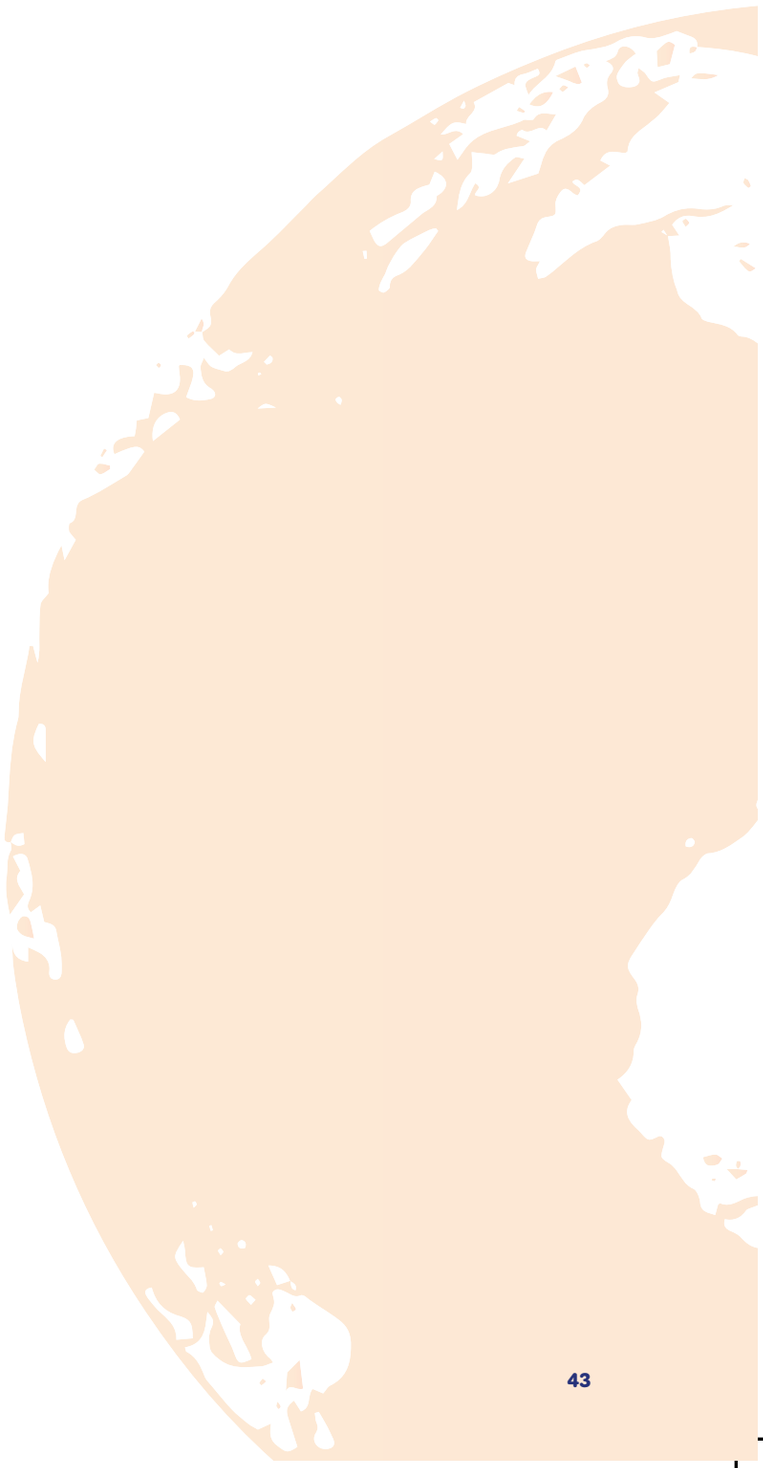

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Published by:
International Social Service
International Reference Centre for the
Rights of Children Deprived of their Family

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1201 Geneva, Switzerland
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