

**INTERNATIONAL SOCIAL SERVICE
International Resource Centre
on the Protection of Children in Adoption**

**Information Note
June 2003**

**Transfer of the child
from country of origin
to receiving country**

Any reaction to this report can be forwarded to :

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I. INTRODUCTION

1. The International Resource Centre on the Protection of Children in Adoption/International Social Service (IRC/ISS) received similar enquiries from several bodies in receiving countries, accredited for international adoption. They concerned the terms and conditions for the transfer of children from the country of origin to the receiving country: *is it in principle preferable that **the (prospective) adoptive parents** accompany the child for the journey or are there circumstances which may justify that the child not be accompanied by the (prospective) adoptive parents but rather be **escorted** by a member or representative of the accredited adoption agency, or by another protagonist?*

2. *First of all, the field of reference* should be specifically defined :

- we are referring to international adoptions conducted by an accredited adoption body, not to independent adoptions (even though, according to the ISS Affiliated Bureau in New Zealand, there are cases of independent adoptions where, under some exceptional circumstances, the child is not accompanied by its (prospective) adoptive parents to the receiving country);
- the legal adoption decision can be taken before the transfer (either in the country of origin, the most common case) or after the transfer (in the receiving country).

The question is *closely related* to some other aspects of the international adoption process, but not necessarily coinciding :

- *the preparation* (to the meeting and to the adoption) *of the child and of the prospective adopters*;
- *the number (1 or 2) of stays in the country of origin, sometimes compulsory for prospective adopters*;
- *the meeting between the child and the prospective adoptive parents*, sometimes compulsory in the country of origin, before the decision on pre-adoptive placement or adoption is taken, *with or without professional support*. When the child is escorted to the receiving country, the meeting takes place in the latter country, following the decision of placement or adoption;
- *the pre-adoptive placement*, a probationary period sometimes compulsory during which the prospective adoptive parents and the child live together, on the basis of which the adoption decision is founded. This placement can take place in the country of origin and may immediately be followed by the child's transfer with the adoptive parents but this is not always so, when the administrative and legal adoption procedure takes time – sometimes up to several months. In the latter case, the prospective adoptive parents may have to leave the child in the institution following the probationary period, a traumatising experience for the child;
- *the administrative or legal adoption procedure, or even the issuance of civil-status documents, passport and/or visa for the child*, which the prospective adoptive parents have sometimes to undertake in person;
- *the gathering of non-identifying or identifying information on the child, its family of origin, the first months of its life, by the adoption agency and/or the parents*, with a view to future transmission to the child on its origin and background;
- *the follow-up of the pre-adoption placement or the adoption*;
- *coping with pre-adoption placements or adoptions which have failed*;
- *a possible return journey of the child, adolescent or adopted adult to his/her country of origin, with or without the adoptive parents.*

3. Following these enquiries, a questionnaire was forwarded to the IRC/ISS network as a whole (see appendix) with texts of reference extracted from the 1993 Hague Convention and its Explanatory Report and from the IRC/ISS Ethical Guide (see *below*, no 23).

Founded on the results of this enquiry (II), the analysis of the official legislation, the procedures (III) and the practices (IV) led to defining the issues at stake (V) and enabled IRC/ISS to draw conclusions (VI) and also collect a brief bibliography (VII).

The IRC/ISS is most grateful to all members of the network who participated in this enquiry as well as to the professionals who contributed to the perusal of the answers and research. They all greatly contributed to the quality of the results.

II. RESULTS OF THE ENQUIRY

4. The results of this enquiry are based on the answers to the questionnaire and on spontaneous research undertaken by IRC/ISS.

- Number of answers to the questionnaire : **46**

Origin of the answers according to type of actors in the field of adoption :

- Central Authorities in receiving countries : **12**
- Central Authorities in countries of origin : **4**
- Accredited bodies in receiving countries : **20**
- Accredited bodies in countries of origin : **1**
- Adoptive parents associations : **0**
- ISS Branches : **7**
- Experts : **2** (one common answer from two psychologists and a research institute)

*Origin of answers according to countries: **22 countries***

- Receiving countries : Australia, Belgium, Canada (federal and 3 provinces), Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, New Zealand, Portugal, Sweden, Switzerland, United Kingdom, United-States,
- Countries of origin : Ecuador, Lithuania, Peru, Poland, Uruguay, Venezuela

- Number of spontaneous searches undertaken by IRC/ISS : **29**¹

Countries involved in the search : Armenia, Belarus, Bolivia, Burkina Faso, Cambodia, China, Colombia, Costa Rica, Djibouti, Ethiopia, Georgia, Guatemala, Haiti, Honduras,

¹ Not taking into consideration possible measures suspending international adoption in certain countries.

India, Ivory Coast, Lebanon, Mauritius, Moldavia, Nepal, Peru, the Philippines, Russia, Slovakia, South Korea, Sri Lanka, Taiwan, Thailand, Ukraine.

III. LEGISLATION AND OFFICIAL PROCEDURES

5. The first question to consider is whether or not there is a legislation or any legally binding texts governing the transfer of the child from its country of origin to the receiving country (A). If so, the terms and conditions for the transfer should be studied (B).

A. Existence of a legislation or any legally binding texts ?

6. As far as we can differentiate – on the basis of the information available to us – between law, regulation or official directives on one hand and practice on the other (see IV *below*) there should also be a distinction between countries of origin (1) and receiving countries (2). It should be underlined too that laws, regulations and practices do not always distinguish between the organisation of the child's transfer and that of the prospective adopters' possible stay in the country. Moreover the practice and even the interpretation of the regulations of countries of origin may vary according to the receiving countries. All these difficulties must be taken into account when perusing this information note.

1. In countries of origin

7. *Most countries of origin have a regulation governing the departure of the child from the country.* Such is the case for the following countries : Armenia, Belarus, Bolivia, Burkina Faso, Cambodia, China, Colombia, Costa Rica, Ecuador, Georgia, Haiti, Honduras, India, Lebanon, Mauritius, Moldavia, Peru, the Philippines, Russia, Slovakia, Sri Lanka, Thailand, Ukraine, Venezuela.

When it ratified the 1993 Hague Convention, Bolivia even made a formal declaration stipulating : "article 19 : it is to be noted that the transfer of the child should take place in the company of the adoptive parents..." (<http://www.hcch.net/e/status/stat33e.html#bo>).

On the other hand, some countries of origin such as Djibouti, Ethiopia, Guatemala, Lithuania, Paraguay, Poland, Portugal and Uruguay *do not have any legally binding texts nor regulations* in this field (see IV *below*).

Finally, for some countries, procedure is well known, but we have been unable to determine whether it arises from legislation or practice. Such is the case for the Ivory Coast, Nepal, South Korea and Taiwan. These countries will be arbitrarily dealt with *below*, under B.

2. In receiving countries

8. *Most receiving countries do not make any specific provision* in their legislation or regulations regarding the question of the child's transfer (for practice see IV *below*). The implicit or explicit reasoning is that *it is basically the responsibility of the country of origin*.

Icelandic law for example, states that the Ministry of Justice authorises organisms to act as intermediaries in the field of international adoption and the accreditation document includes the necessary instructions: “the organism shall see that the necessary arrangements are made in the child’s country of origin, including consent to the adoption and the departure of the child from the country, according to the laws of the child’s country of origin and Icelandic rules for adoption.”

In France however, the Central Authority together with accredited bodies and family associations reflected on the terms and conditions of the transfer of adopted children from their country of origin to the receiving country. According to article 20-10 of the decree dated 18 April 2002 relating to authorised and accredited adoption bodies, the adoption agency has “to provide information on the organisation of the transfer of children to the French territory” in order to be authorised to deal with international adoptions.

9. On the other hand, the Italian law (article 31, paragraph 3, item I, law no 476 dated 31 December 1998), the New Zealand law (Intercountry Adoption Act of 1998), the Ontario law (Canada : section 3.4. of Regulation 200/99 of the Intercountry Adoption Act and Ontario’s Standard and Guidelines for Licensed International Adoption Agencies under the Intercountry Adoption Act and its Regulation) *govern the transfer of the child, on the basis of article 19.2 of the 1993 Hague Convention*; according to which “the Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents”. In the United States, the draft regulation on licensed agencies with a view to ratifying the Hague Convention, also refers to article 19 of the Convention (<http://www.haquereqs.org/>). The restrictive mention “if possible” included in the Convention appears in the majority of these laws, although not in Italian law.

As to the *Swiss law* dated 22nd June 2001, it deals with a closely related question, stipulating in article 9.2 regarding the recognition, by operation of law, of adoptions finalised in the country of origin, within the frame of the 1993 Hague Convention : “when the State of origin does not require the adoption to be preceded by a probationary period and there has not yet been any personal contact between the adoptive parents and the child, the central cantonal authority agrees to the adoption only if the adoptive parents meet the child beforehand.” The recognition in Switzerland of the adoption passed abroad therefore often implies in fact that the adoptive parents have gone abroad to meet the child before the pronouncement of the adoption.

B. Legal modes of transfer

10. When a legislation or regulation provides for the child’s transfer, there are various alternatives in countries of origin and receiving countries : transfer in the company of the adoptive parent or parents; transfer with at least one parent; transfer with both parents or escorting by a person chosen by the parents. *No country does stipulate the obligation of an escort as such.*

1. In countries of origin

11.- Transfer with the parent or parents :

- Armenia (source : http://www.diplomatie.fr/MAI/ind_pays.html);
- Belarus (source : <http://www.msss.gouv.qc.ca/adoption/fr/index.html>);
- Bolivia (idem);
- Burkina Faso (source: http://www.diplomatie.fr/MAI/ind_pays.html);
- Honduras (source : <http://www.msss.gouv.qc.ca/adoption/fr/index.html>);
- Lebanon : when they receive the passport of the adopted child, the adoptive parents are questioned by the Lebanese General Direction of Security on the terms and conditions of the finalisation of the adoption procedure. They also have to accompany personally the child during the transfer. No exception is possible. (sources : http://www.diplomatie.fr/MAI/ind_pays.html and http://www.travel.state.gov/adoption_lebanon.html);
- Mauritius : (source : <http://www.doh.gov.uk/adoption/intercountry/mauritius.pdf>);
- Moldova: “preferably both spouses” (source : <http://www.msss.gouv.qc.ca/adoption/fr/index.html>);
- Nepal: (source: <http://www.nconepal.org/adoption.htm>);
- Philippines : “preferably by both spouses (sources : <http://www.msss.gouv.qc.ca/adoption/fr/index.html>, http://www.travel.state.gov/adoption_philippines.html; <http://www.doh.gov.uk/adoption/intercountry/philippines.pdf>; http://www.diplomatie.fr/MAI/ind_pays.html and http://www.adoptionboard.ie/intercountry_phillippines.htm);
- Russia : “Escorting a child by third persons to the domicile of the parents is forbidden by Russian legislation” (sources : http://www.diplomatie.fr/MAI/ind_pays.html, <http://www.doh.gov.uk/adoption/intercountry/russia.htm>, http://www.travel.state.gov/adoption_russia.html and <http://www.msss.gouv.qc.ca/adoption/fr/index.html>);
- Slovakia : (sources : <http://www.cipc.sk/en/index2.php?subor=texty/en/uvod.txt&link=1&nadpis=Basic%0information%20about%20Centre> and <http://www.msss.gouv.qc.ca/adoption/fr/index.html>);
- Sri Lanka : “The presence of both spouses is required except for serious medical reasons; in that case a legalised power of attorney and medical certificate are necessary” (sources : http://www.diplomatie.fr/MAI/ind_pays.html and <http://www.doh.gov.uk/adoption/intercountry/srilanka.pdf>);
- Thailand: couples are requested to go the country of origin to be entrusted with the child on a temporary basis. According to the French and American Central Authorities, should one of the spouses be unable to go, his/her written consent is required; according to the Irish Central Authority however there is no exception to the rule of both spouses travelling. On the other hand, the Thai Commission can exempt (for exceptional reasons) the couple to be present for the adoption of a second child. In that case, the family can ask the child to be escorted by the Thai Central Authority, costs being covered by the adoptive family (sources : http://www.diplomatie.fr/MAI/ind_pays.html, http://www.adoptionboard.ie/intercountry_thailand.htm, <http://www.msss.gouv.qc.ca/adoption/fr/index.html>, <http://www.doh.gov.uk/adoption/intercountry/thailand.htm> and http://www.travel.state.gov/adoption_thailand.html);
- Ukraine : (source : <http://www.msss.gouv.qc.ca/adoption/fr/index.html>);
- Uruguay: (source: answer to the questionnaire).

- Transfer with at least one parent :

- Cambodia : “ The adoptive mother and/or adoptive father have to come in person to fetch the child in the presence of officials from the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation. The transfer of the child through a third person is not authorised” (Letter of the Cambodian Ministry of Foreign Affairs and International Cooperation to diplomatic foreign representations, relating to the new international adoption procedure, dated 23 March 2001: *other sources* : http://www.diplomatie.gouv.fr/MAI/ind_pays.html; but see also <http://www.doh.gov.uk/adoption/intercountry/cambodia.htm>, according to which adopters can appoint a lawyer to represent them);
- China : “When one of the adopters cannot come to China for a given reason, the other will receive a written power of attorney, notarised and authenticated by his/her country of residence (*sources* : art. 8 of “Measures for Registration of Adoption of Children by Foreigners in the People’s Republic of China; <http://www.china-ccaa.org/flfg/0112wgsy-english.htm> and http://www.diplomatie.gouv.fr/MAI/ind_pays.html);
- Colombia : Both parents have to appear personally in Court, but one of them only has to remain in the country until the end of the procedure (*sources* : http://www.travel.state.gov/adoption_colombia.html and <http://www.msss.gouv.qc.ca/adoption/fr/index.html>). However, according the French Central Authority “the presence of both parents is mandatory”: http://www.diplomatie.fr/MAI/ind_pays.html;
- Costa Rica : “The presence of both parents is not mandatory : the adopter needs to have a power of attorney from his/her spouse (the signature should be legalised)” (*source* : http://www.diplomatie.fr/MAI/ind_pays.html);
- Ecuador: art. 114 and 121 of the Code of Minors; no exception to the principle is allowed (*source* : answer to the questionnaire);
- Peru : “If the child travels with one of his adoptive parents only, the other having to leave before, the authorisation for departure from the Peruvian territory is issued by a notary” (*source* : http://www.diplomatie.fr/MAI/ind_pays.html);
- Venezuela : “at least one of the applicants... an official from the National Office for Adoptions must accompany them to the airport when they return to the receiving State of the adoptable child” (art. 447 of the law for the protection of the child and the adolescent and sections III.B.2n and IV, art.16b of the Decision of the National Council for the Rights of the Child and the Adolescent dated 3rd July 2001, called Instruction for the implementation of the Convention on protection of children and cooperation in respect of international adoption), in order to ascertain the actual departure of the child.

- Choice of the parents (transfer in the company of the parents or through escort) :

- Georgia : (source : <http://www.msss.gouv.qc.ca/adoption/fr/index.html>);
- Haiti : Please note the difference between the legal terms used by the various Central Authorities in receiving states as well as the practice (see below, no 16, regarding escorts in Haiti) : “it is to be noted that adoptive families are invited to come in person to the country to fetch the child. *Escorting a child by a person other than the parents is not authorised, except for members of French adoption accredited bodies who can exceptionally escort the child but have to apply at the Social Welfare and Research Institute of the Haitian Ministry for Social Affairs*” (IBESR) (source : http://www.diplomatie.gouv.fr/MAI/ind_pays.html); “prospective adoptive parent(s) will be required to travel to Haiti before the adoption is finalised” (source : <http://www.doh.gov.uk/adoption/intercountry/haiti.pdf>); “Haitian courts and/or the IBESR may require American prospective adoptive parents to travel to Haiti before the adoption is finalized” (source : http://www.travel.state.gov/adoption_haiti.html); “travel to the country not mandatory; in case the adopters travel, one or both spouses can come” (source : <http://www.msss.gouv.qc.ca/adoption/fr/index.html>);
- India: In India the presence of adoptive applicants is not necessary... The children will be escorted during the travel to France by a member of the accredited body or of the Indian agency” (sources : para 4.38(iii), RGAIC, http://www.diplomatie.gouv.fr/MAI/ind_pays.html and K.B. AGRAWAL, “Internal and Intercountry Adoption Laws- India”, International Social Service (ed.), *Internal and Intercountry Adoption Laws*, Kluwer Law International, The Hague, 03/2000). However according to a Belgian accredited body, since the beginning of 2002, the (several?) Indian Authorities (Calcutta) insist for the parents themselves to come and fetch the child. According to a French accredited body, the Indian Authorities would forbid the escorting by Indian officials but would authorise it by representatives of accredited bodies of receiving countries;
- Ivory Coast (simple adoption; source : http://www.diplomatie.gouv.fr/MAI/ind_pays.html);
- South Korea: “The presence of the adopters is not necessary. The child is accompanied for the travel by a representative from Holt Children Service (the only licensed intermediary on the spot)” (sources : http://www.diplomatie.gouv.fr/MAI/ind_pays.html, <http://www.msss.gouv.qc.ca/adoption/fr/index.html> and http://www.travel.state.gov/adoption_korea.html);
- Taiwan : (source : <http://www.msss.gouv.qc.ca/adoption/fr/index.html>).

2. In receiving countries

12. Only those receiving countries legally governing the transfer of children in international adoptions conducted by an *accredited adoption body* provide for the following procedure :

- ***Transfer in the company of the parent or parents*** : Italy.
- ***Transfer in the company of the parent or parents, if possible*** : New Zealand (however so far no agency has been accredited in New Zealand as a result of this law).
- ***Choice of the parents (transfer with the parents or through escorting)*** :
 - Iceland : “The accredited body shall assist applicants who intend themselves to bring a child to Iceland, regarding arrangements for their travel to and from the child’s country of origin, provided that the applicants and the child are sufficiently insured in the opinion of the organism, or to see to it that the child has by other means sufficient escort on the journey to Iceland” (accreditation document for accredited bodies).
 - Ontario (Canada): If the parents are unable to accompany the child, the licensed agency must make appropriate travel arrangements, including an adult escort, for the child (Ontario’s Standard and Guidelines for Licensed International Adoption agencies under the Intercountry Adoption Act and its Regulation). The licensed agency should determine that safe and appropriate arrangements have been made for the child’s travel and that the information about the travel arrangements is documented in the applicants’ file (escort by the parents or name(s) and address(es) of persons escorting the child).

IV. PRACTICES

13. It is also necessary to examine the actual practices relating to the transfer of children, as reported by the authorities, organisations or individuals who answered the questionnaire, in situations where there is no legal provision or with regard to the implementation of the regulation. We use the following analysis grid :

Terms and conditions for the child transfer : transfer with one, the parent or parents, or with an escort ? (n° 14)

Modes for the transfer with one, the parent or parents ? (n° 15)

Modes for an escort if the case arises ? (n° 16)

14. Terms and conditions for the transfer of the child

Most answers to the questionnaire, i.e. the majority of answers received from receiving countries, besides those received from countries of origin not having any specific legal provision (Lithuania, Paraguay, Poland, Portugal, Uruguay, and - according to information from the French Central Authority - *Ethiopia*), declare they have a *policy or recommendations relating to the transfer of the child with the parent/parents*, or at least with one of the parents.

Some receiving countries, such as Greece, and some countries of origin, such as Lithuania, do not have any experience with escorts.

Several answers however indicate that, when the law of the country of origin allows it, *prospective adoptive parents have the freedom of choice* (three French accredited bodies) or report *a majority of escorting cases* (four French accredited bodies and one in Quebec). The Central Authority in Luxembourg even states that some adoption agencies “prevent the parents from making the journey”.

On the other hand Djibouti seems to be a particular case. According to the French Central Authority, because of the country’s context and in agreement with the Djibouti authorities, the child is “entrusted for the journey to a third person known to the orphanage or the consulate (member of the accredited body) and is met at the airport by the adoptive family” (source : http://www.diplomatie.gouv.fr/MAI/ind_pays.html).

15. Modes of transfer with one, the parent or parents :

- *transfer in the company of a member or experienced representative of the accredited body* (adopters being grouped as the case may be) : 7 answers;
- *professional support in country of origin* : 3 answers. Some answers indicate both these modes. According to a Swedish accredited body, the adopters’ courier, whether a member or representative of the accredited body or a representative of the competent authority in the field of adoption in the country of origin, must possess the following characteristics : experience in international adoption, knowledge of cultural differences and child development; ability to manage crisis situations; and fluency in the adopters’ language or a common language;
- *preparation of the child* : 3 answers
- *(thorough) preparation of the parents* : 4 answers

These safeguards however do not always exist, as shown by the following examples drawn from the questionnaire :

- Some Canadian prospective adoptive parents are accompanied by a person “acceptable to the country of origin” without any guarantee of professionalism or knowledge of the principles of child development, separation and attachment.
- Others are unaccompanied because their accredited body does not have the financial means for the accompaniment.
- Chinese children are often entrusted to adoptive families at the time of the meeting, without professional support and without enabling the parents to spend some time at the place of residence of the child.
- Greek prospective adoptive parents are unaccompanied by a representative of the accredited body.
- In Italy transfer in the company of the parents is the rule, excluding the legal mention “if possible” (see *above*, n° 12); however according to psychological experts, “the Italian adoptive parents are seldom accompanied to the child’s country of origin by a representative of the accredited body. When they arrive they generally make contact with the agency’s representative who deals mostly with administrative matters. The couple is generally alone to establish its first contact with the child.
- Peruvian children are often entrusted overnight to the adoptive parents without any professional support.

- In Uruguay prospective adoptive parents are not always accompanied by a representative of their accredited body.

16. Modes of escort if the case arises

The possibility of escorting is generally presented as *an exception*, in situations where “it is impossible” for the parents to personally accompany the child.

This concept of “impossibility” is seldom defined accurately (see *below*, n° 21).

On the other hand, escorting is sometimes left to the choice of the adoptive applicants, and for certain accredited bodies is even the solution in most cases (see *above*, n° 14).

The practice of escorting is indicated by the following countries : Central African Republic (1 answer), Ethiopia (3 answers), Georgia (1 answer), Haiti (3 answers), Hong Kong (1 answer), India (6 answers), Madagascar (1 answer), Niger (1 answer), South Korea (5 answers) and Taiwan (1 answer). It is to be noted however that adoptive parents do travel from some receiving countries to the above countries of origin. As an example, according to a Swedish accredited body, abiding by their policy to encourage adoptive applicants to take the trip, most families did travel to the countries of origin in the first half of 2002 including 89% of adopters in India and 97% in Korea.

Sometimes the guarantees relating to the escort are indicated as follows:

- *the professionalism or experience of the escort (4 answers)*, the latter being defined in one answer as a nurse or doctor; the escort could be either a member or representative of the accredited body (7 answers), specialised (2 answers) and supervised (1 answer) or an educator known by the child in the country of origin (7 answers), or adoptive families and adopted persons making the journey to discover their country of origin (1 answer). However according to a Swedish accredited body one should not entrust adoptive families or adopted people with the responsibility of acting as an escort and definitely not when they first visit their country of origin;
- *the preparation of the child : 4 answers;*
- *professional support provided by the accredited body at the time of the meeting between the child and the parents at the airport, in private premises and allowing the necessary time for the meeting : 4 answers;*
- *limitation in time for the escort, in order to avoid attachment between the child and the escort : 1 answer;*
- *limitation of the number of children (2) escorted by an adult : 1 answer.*

However these guarantees are not always available. In Luxembourg for example, “making contact upon arrival at the airport is often problematic. The escorts are not always the persons who were close to the child. It may facilitate the separation process, but they should be careful to monitor the details in a context which is unknown to them. Exchange of information is not always possible”. Moreover the IRC/ISS was informed of groups of adopted children meeting their adoptive families upon arrival at the airport, with the media’s spotlights on them in the absence of any personal support.

V. ISSUES AT STAKE

17. The great majority of answers recommend the transfer of the child to the receiving country in the company of the adoptive parents as a priority (n° 18). However it is necessary to thoroughly consider the various reasons given, supporting either the transfer of the child with the parents (n° 19) or the systematic or exceptional use of an escort (n° 21), as well as the guarantees deemed absolutely necessary for the first (n° 20) or second alternative (n° 22).

18. *Most answers to the questionnaire therefore recommend the transfer of the child in the company of the adoptive parents as a priority.*

In accordance with the age of the children? 4 answers underline the importance of the adoptive parents making the journey, at any rate when older children (over three years according to *one answer*) or children with specific needs are concerned. *Another answer* on the contrary states that this category of children should rather be escorted. On the other hand, *one answer* underlines the importance of the parents travelling, even when infants are concerned.

In accordance with the characteristics of the adoptive family?

- 4 answers underline the necessity for *both spouses* to make the journey at the time of adoption. Failing that, the child makes connection, becomes attached and shares experiences only with the parent who came to bring it back, to the detriment of the other parent. A *Belgian accredited body* forbids travelling by one spouse only. *Another answer* considers that the journey, by one spouse only, and the subsequent failure of the adoption, are connected.

- *One answer* underlines too that spouses – *if they have other child/children* - *should not take the trip with them.*

Only four French accredited bodies claim freedom of choice for the prospective adoptive parents to accompany the child or use an escort. According to certain professionals (answer from two French accredited bodies), the return journey of the adopted child, adolescent or adult to his/her country of origin, with or without its adoptive family, would be more significant than the journey of the adoptive applicants at the time of the adoption procedure.

Furthermore a Swedish accredited body underlines that while it prefers the adoptive parents to accompany the child during the transfer, it cannot *select the prospective parents* – *legally speaking* – *according to their agreement or refusal to make the journey* to fetch the child.

19. *Reasons for preferring the parents to accompany the child* as shown in the answers to the questionnaire and described as follows in decreasing order of importance (one single answer may include several reasons).

- 19 answers: the meeting between the child and the adoptive parents takes place in a secure environment known to the child, with familiar adults close by to whom he can express his feelings about his experience with the adoptive applicants. A first link is established between the child and the adoptive parents before the journey. The number of changes endured by the child during the transfer is limited as compared to an experience with an escort.

- 13 answers: parents come to know the country and the culture of the child at the time of adoption; they discover the child's living conditions and become acquainted with the persons who took care of the child; they can collect information about the child's life experience.
- 6 answers: the parents' journey is in the child's best interest (without explanations given about that principle) if not in the interest of the parents themselves. In case of conflict of interests, that of the child is paramount.
- 5 answers (in particular from the Central Authorities of countries of origin) : once the adoption is finalised in the country of origin, the parents are legally responsible for the child. If they have been declared fit to adopt, they must take appropriate care of the child during the transfer.
- 3 answers: the authorities in countries of origin must have the opportunity to meet the adoptive parents and see how the meeting goes on and how they connect.
- 1 answer: the subsequent failure of the adoption can be connected to the way in which the child was escorted to the receiving country. *A contrario*, two answers underline that such a connection cannot be established.
- 1 answer: the parents' journey involves less work for the licensed agencies than the escorts.
- 1 answer: escorting opens the door to temptations of corruption when effected by people from the countries of origin.

20. Answers to the questionnaire are less detailed regarding ***the safeguards to be applied to ensure that the parents' journey serves the child's best interest*** (also compare with the legal procedure provided for in countries of origin and receiving countries, or regarding practice, above, n° 11, 12 and 15).

Safeguards concerning parents, 8 answers:

- 6 answers : the preparation of the parents;
- 1 answer : the travel of the parents in the company of a member or representative of the accredited body;
- 1 answer : satisfactory living conditions during the stay;

Safeguards concerning the child and the parents, 4 answers:

- 3 answers : psycho-emotional and administrative support during the meeting by the agency placing the child in the country of origin or by a member or representative of the accredited body;
- 1 answer : follow up of the adoptive family;

Safeguards concerning the child, 3 answers: the preparation of the child.

21. ***The reasons for using an escort***, exceptionally or systematically (on this point see above n° 11, 12, 14 and 18) are described at length in certain answers, some of them invoking several of the following reasons. 5 answers speak of "impossibility", for "justified reasons", if not "serious and justified problems for more than three months."

Reasons connected to the adoptive applicants, 48 answers :

- 8 answers: the shock (if not the trial) of the discovery of the child's country (example given : Haiti), of its difficult living conditions, a factor of stress when meeting the child, with even the risk of transmitting later on negative messages to the child about its origin;
- 7 answers: the costs for the parents' trip (certainly higher than those for an escort) which precludes covering the costs for the trip of a representative of the accredited body.
- 5 answers: political insecurity (crisis, armed conflict,...) in certain countries (example : Haiti);
- 5 answers: the lack of preparation of the parents, their impatience on the spot, their desire for "love at first sight";
- 4 answers (from 4 French accredited bodies): the freedom of choice for the parents, claimed as part of their parental rights;
- 4 answers: the existence of other children in the adoptive applicants' home;
- 3 answers: potential (serious) health problems or handicap of the adoptive applicants;
- 3 answers: the adoptive parents' fear of the journey;
- 3 answers: contingencies in terms of time and professional availability of the adoptive applicants, taking into account the administrative and legal delays occurring in countries of origin;
- 2 answers: conflicts and rivalry between parents travelling in the same group or between parents travelling and not travelling under the umbrella of the same accredited body;
- 1 answer: the strain entailed by the journey for the adoptive applicants.

Reasons connected to the risks entailed for child welfare systems in countries of origin, generated by the presence of the adoptive applicants, 9 answers:

- 4 answers: the danger of corruption of professionals in countries of origin by adoptive applicants or of financial pressure on the parents by professionals in countries of origin;
- 2 answers: the lack of proper support during the meeting between the child and the parents;
- 1 answer: the lack of respect by the parents for professionals in the countries of origin;
- 1 answer: the risk that people abandon their children because of the presence of numerous prospective adoptive parents;
- 1 answer: the risk that the presence of numerous adoptive applicants opens the door to a "parallel economy" and a financial dependence on international adoption.

Reason connected to the presence of other children in the institution where the child resides: 2 answers: to witness the departure of one's pals with a family and remain oneself in the institution.

Reason connected to the functioning of adoption agencies: 2 answers: to maintain contact via the escort with partners in countries of origin.

22. The safeguards required for the actual process of escorting a child in the respect of his/her best interest are described more briefly (compare with the safeguards provided by law in countries of origin and in receiving countries, as well as by practice, above, n° 11,12 and 16).

- 7 answers : the qualification of the child's escort (2 answers), preferably someone from the country of origin, familiar to the child, with whom he has a good relation (4 answers) or a member or representative of the accredited body (1 answer);
- 2 answers : the preparation of the child;
- 2 answers : the preparation of the parents;
- 1 answer: limitation in time of the escorting, to prevent attachment of the child to his/her escort.

VI. IRC/ISS CONCLUSIONS

23. The ethical reference texts are the following :

- Article 19.2 of *The Hague Convention of May 29th 1993* stipulates that “the Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents”.

According to *the Explanatory Report on the Convention* (paragraphs 349-351) at the Special Commission, a strong majority had agreed that the best manner to transfer the child is when accompanied by his or her adoptive parents... Nevertheless, the words “if possible” were added..., to take into account some cases where this requirement may be difficult to comply with, i.e. because it would be too expensive or for some other reason, factual or legal.

- The ethical Guide of the International Social Service (*The rights of the child in Internal and Intercountry Adoption – Ethics and Principles – Guidelines for Practice*, Geneva, 1999, para. 29) stresses that before matching is officially confirmed, it is desirable, both in the interests of the child and of the adoptive family, that the proposal be followed by a face-to-face meeting between the child and the future adoptive family, and wherever possible, by a brief period of getting to know each other.

- According to the “Guidelines for practice on national and intercountry adoption and foster family care” adopted in 1996 in Hong Kong under the auspices of the International Council on Social Care, appropriate preparation to the adoption placement shall include personal contact with the prospective adoptive parent/s if possible and appropriate support to facilitate adjustment (para 2.5).

- According to article 8 of the *Ethical Chart of Euradopt* the agency must ensure that the child's best interest is safeguarded during the journey to the receiving country. It encourages prospective adoptive parents to travel if possible to the child's country of origin and to bring the child home, in particular when the child is no longer a baby. An escort should not be travelling with more than two children. The agency should avoid organising escorts for large groups of children at the same time. A change of escort should also be avoided.

24. **The principle of international law**, drawn from The Hague Convention, is therefore clear: *the transfer in the company of the parents is the rule* and using an escort the exception. The exception should be possible in serious and rare cases. But as every exception, it should be applied sparingly to avoid depriving the law of any sense.

In general answers to the questionnaire also indicate that this rule is considered internationally as coinciding with *the psycho-social definition of the best interest of the child*.

On the other hand, the criterion for the implementation of the rule, the interpretation of the exception and the definition of the terms and conditions either for the transfer in the company of parents or of an escort is *the best interest of the child* (art. 1 of The 1993 Hague Convention and art. 3 and 21 of the Convention on the Rights of the Child).

25. However we are forced to note that the reasons given in the answers supporting the transfer in the company of parents (see *above*, n° 19) are expressed in a way which is more centred on the child, than those supporting the use of an escort (see *above*, n° 21). The preference for escorting is in fact expressed more in accordance with factors connected to the prospective adoptive parents and to child welfare systems in the countries of origin or even to accredited bodies.

One should certainly avoid making a dichotomous presentation of the issue not coinciding with reality. The preparation of the adoptive parents to a serene meeting with the child naturally contributes to the promotion of the best interest of the child. On the other hand, deviations and lack of professionalism may exist in the countries of origin as well as in the receiving countries. But wouldn't it be preferable for the adoptive parents to achieve peace of mind through proper information, due eligibility process and professional preparation and support, rather than by avoiding confrontation with the child's country of origin?

It should be stressed however that in case of diverging interests, the best interest of the child prevails over that of the adoptive parents and professionals.

On the other hand, the tone of the answers (in minority; see *above*, n° 14 and 18) which are in favour of the adoptive applicants' freedom of choice regarding the transfer of children seems to arise from *a concern to protect the prospective adoptive parents and the child welfare systems in the countries of origin* (see *above*, n° 21). One should certainly remain aware of the balance of power which exists in the international adoption process. However, should not professionals attempt to encourage the concerned people to become more responsible and participant in their situation?

Finally, one should underline that "the conveying activity (or escorting, *note of the editor*) of children is essentially illustrating our storks' role. Therefore one should also provide appropriate support to the protagonists involved around this question which is connected to very personal factors and should be brought to the fore for fear of reinforcing their feelings of confusion and anxiousness"². The supervision of/and ongoing reflection about the development of the work of accredited bodies are probably essential in this field.

26. **The IRC/ISS also wishes to complete its analysis with the following comments:**

- Enforcing the principle of non-discrimination means that the rules and safeguards with regards to the transfer of children from the countries of origin to the receiving countries should be ***the same for all children***, whatever the receiving country or the country of origin

² A.C. CRINE (Central authority of the French Belgian Community), answer to the questionnaire.

(subject to *objective* differences between countries) and whether the countries concerned are parties to The Hague Convention or the adoption is arranged by an accredited body or *independently*.

- As all aspects relating to the process of international adoption, the transfer of children from the State of origin to the receiving State is **a matter of responsibility for both States**, in particular for both Central Authorities, and also for the accredited bodies involved. The receiving country cannot in our opinion avoid its share of responsibility, putting forward the power of decision of the country of origin. The results of this enquiry show the extent to which the attitude of the authorities and agencies of the receiving countries influence the parents and the choice regarding the alternative to the children's transfer.

On the other hand, reinforced cooperation between the countries of origin and the receiving countries (dialogue, evaluation of experiences, common training...) seems necessary with regard to the question of modes to the transfer of children and the closely related questions which have a bearing on it, such as :

- the number and duration of stays required from adoptive applicants by the countries of origin;
- the administrative and legal delays in countries of origin, sometimes unjustified if not prejudicial to the child;
- the preparation of the child;
- the preparation of the parents;
- the professional support during the meeting;
- the pre-adoptive placement and its follow up;
- information to the adopted person about his/her origin.

Should States find this useful, the topic could be placed *on the agenda of a future special Commission of The Hague Conference of International Private Law* with regard to the practical implementation of the Convention.

Given the importance of the matter, the differences, and sometimes the emotional character of its approach, the matter of the child's transfer ought to be **governed by law** in countries of origin and receiving countries. This legislation should take into consideration not only the practical and administrative aspects of the transfer, *but also the psycho-emotional needs and the various modes relating to the necessary involvement of professionals*. The existing legal provisions are seldom that specific.

No solution - whether transfer in the company of the parents or using an escort - is worthwhile per se if it does not include guarantees of professionalism which, according to the answers received by ICR/ISS, ought to be developed along the following points :

- the need for professional support before, during and after the meeting and the transfer from the country of origin to the receiving country, which justifies resorting to accredited bodies, rather than arranging for an independent adoption;
- the qualification, ongoing training and supervision of professionals in the countries of origin;
- the qualification, ongoing training and supervision of professionals in the receiving countries;
- the systematic and qualitative preparation of the child to the adoption and the meeting;

- the qualitative information to prospective adoptive parents about the countries of origin of children in need of international adoption;
- the verification of the eligibility of the prospective adoptive parents taken into consideration, as a necessary condition, their abilities to cope with the realities of the countries of origin of the children in need of international adoption;
- the systematic and qualitative preparation of the parents to international adoption, (taking into account the concrete characteristics of the country of their future child) and to the meeting;
- the accompaniment of the parents to the country of origin;
- support for the meeting between the child and the parents, provided by specialists in child protection;
- follow up of the meeting.

In our opinion it is through improving the professionalism of all protagonists in the countries of origin and the receiving countries that it will be possible to ensure better protection to children, adopted persons, their companions in their original life environment, the adoptive parents' other children as the case arises, and to child welfare structures in countries of origin.

- Finally, the ***question of the costs entailed by such professionalism*** cannot be avoided. In our opinion it should not have a deterring effect on the level of guarantees offered to children and parents. It is up to the authorities in the receiving countries, which are anxious to create the conditions required to enable parents and children to establish a valuable adoptive relation, to think about providing economical support to the least favoured families, about financing accredited bodies, and reflect about international cooperation (including financial cooperation) with the countries of origin.

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Appendix. Questionnaire

We are essentially interested in your actual practices and your views on the following five spheres. The sample questions are asked to highlight certain areas and to spur reflection thereon.

1. *Legislation/regulation*

Are there any legally binding texts on the subject in your juridical system?

2. *Transfer practices of children to receiving States in the company of adoptive parents following the matching proposal?*

Is this practice known to you? Is it compulsory? If not, is it used as a matter of course or only in exceptional circumstances? For what reasons?

In this case, what guarantees do you think should be required to ensure the coming together of the child with the adoptive parents in a way that will respect the best interest of the child? Particularly, are the adoptive parents accompanied in the State of origin by a responsible member of the accredited body?

3. *Convoying practices of children by accredited bodies?*

Do you have any experience of this practice? If so with which State of origin or receiving State?

In this case, what guarantees do you think should be required to ensure the protection of the child during the journey and what conditions provided for the coming together of the child with the adoptive parents in a way that will respect the best interest of the child? Specifically, what will happen to the child if this coming together in the receiving country turns out to be problematic?

4. *Which practice (transfer accompanied by adoptive parents or convoying by accredited bodies) do you think will prove most respectful of the best interest of the child?*

In what circumstances (relating to the child/ the adoptive parents/ the State of origin?), if the case arises, do you think that convoying by an accredited body would be justifiable, nay preferable, in the best interest of the child?

5. *Useful documentation?*

Do you know of any articles, research reports, documents, etc. dealing specifically with this subject? If so could you please send us copies or tell us where we can get them, particularly if available on Internet.