



**Monthly Review N° 10/2010
October 2010**

EDITORIAL

Figuring out the child's future when s/he is sold for adoption

This editorial examines the complicated issue of determining the child's future placement when an independent body finds that s/he has been bought by his/her adoptive parents, who on the one hand can offer a stable and loving family but on the other hand have committed a crime against the child.

When children are sold for exploitative purposes (the definition of trafficking) such as prostitution or domestic slavery, child victims are automatically removed from the care of the purchasers as perpetrators of the crime. When children are sold for the purpose of providing them with a loving and caring adoptive family, the response is not so unequivocal.

The degree of culpability can vary widely. Some prospective adoptive parents (PAPs) can unwittingly adopt children who have fraudulently been declared 'adoptable' whereas others have full knowledge that they are paying for a child. In general an independent body will have to make a finding about the degree of PAPs responsibility. Based on this finding and other factors discussed below, a decision will have to be made about the child's future. In this context an examination of international standards and multifaceted deliberations are necessary to determine the best interests of the child.

Legislative considerations

If the authorities make a finding that a child was bought by adoptive parents (ie: payment over and above regular expenses which are permissible), then this would not only be against the principles embedded in THC-93 but also the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC). Article 2(a) OPSC defines the sale of children as 'any act or transaction whereby a child is transferred by any person or group of

persons to another for remuneration or any other consideration'.

To counter such acts countries such as Belarus, Burkina Faso, Ecuador, Fiji, Georgia, Ireland, Kenya, Poland etc have introduced legislation. However, the UN Committee on the Rights of the Child has raised concerns that the sale of children in adoption practices as required by article 4 OPSC has not been adequately addressed in the national laws of countries such as Bulgaria, China, USA, Korea and Ukraine etc. ISS/IRC believes that it is essential that countries not only have laws prohibiting the sale of children for the purpose of adoption but also that the latter are well implemented to ensure the maximum protection of children. Appropriate sanctions for such behaviour should also exist.

Whilst defining the sale of children as a crime, international law does not however expressly treat the issue of the child's future, during and after the finalisation of the criminal proceedings. International law simply states that whatever alternative care is identified for the child, his/her best interests must be the paramount consideration. In this context ISS/IRC stresses the importance of dealing with each child as an individual and the use of a multi-disciplinary team to make an assessment about suitable alternatives having regard to the impact on the child of being a victim of a crime and maybe having a compensation claim in the future.

Suitable alternatives

It is vital that an evaluation is made about the likely impact of altering the child's

placement from the adoptive parents. The necessity of change will depend on the length of time that the child has been with the parents, the strength of ties that have been forged, time needed to find another placement etc.

Rules should not be in place to say that once a child has been with a family for a certain period, say 2 to 3 years, the child should automatically remain with the family. Such rules can be used by adoptive parents to bring cases as a 'fait accompli' to authorities who have no other option but to rubber stamp the adoption, even when the standard regulations have not been followed.

For intercountry adoptions, a decision may also have to be made about whether the child should be returned to his/her country of origin or matched with another family. The country of origin should ideally be consulted at this point.

Of course the outcome of criminal proceedings on the prospective adoptive parents' future capacity to care for the child must also be taken into account. In a recent case where a Spanish couple was imprisoned for 1 ½ years for paying a Romanian family 1 500 euros for a child, the possibilities for the parents continued care for the child are clearly impossible. However in other situations, such as the Bulgarian baby case in France, the parents were sanctioned and permitted to continue to care for the children as authorities decided that strong ties had been built and it was in the best interests of the child to remain with the adoptive parents.

Child as a victim

A multi-disciplinary team will further have to gauge the consequences for the child growing up as a victim of being sold. This should take into account the child's resilience in response to this truth. Victims of this crime sometimes mention physical symptoms such as sleeping or eating disorders whilst others cite mental conditions such as fear and anxiety, depression, mood changes, guilt and shame and cultural shock from finding themselves in a strange country etc. Organisations such as La Voix des Adoptés have been set up to provide adoptees with the opportunity to discuss such experiences and more (see Review 5/09).

The team will have to assess the future capacity of the parents to nurture a child who may exhibit such symptoms, with the knowledge that they may have contributed to the child's suffering.

It is essential that the team also consider the child's development process. At some point in the future, it is probable that the child will question his/her parents about the adoption circumstances. What would be the impact on the child discovering that s/he was bought for a certain sum? How will the parents explain the child's origins?

The multidisciplinary team will also have to consider the impact of the child's immediate social environment on him/her (eg: within kinship family, school and among neighbours) of being identified as a bought child. This depends on how much attention the media has paid to the case and whether the local community is aware of the identity of the child and adults involved.

Possible award for damages

Another consideration of whether a child should remain with adoptive parents is the likelihood of an eventual civil or administrative suit against the parents. Article 9(4) OPSC states that 'states parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible'. If in the future the adoptive child is likely to undertake legal proceedings against their adoptive parents who paid for them, then there may be a conflict of interest for the child to remain in their care.

Complicated and compound considerations

Whether a child who has been bought for the purpose of adoption should remain in the care of the adoptive parents is not clear cut. All decisions must be made with the child's best interests as the paramount consideration. A careful assessment must be made of the long term future impact of the crime and parent's capacity to care for the child.

In this situation the Central Adoption Authorities of receiving countries must also find a balance between respecting the private life of adoptive family and the needs of countries of origin to know the outcomes of their children. In a spirit of co-operation and respect of biological parents, it is important that some information about the bought child is communicated to the central adoption authority of the country of origin as a minimum.

ISS/IRC team
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