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EDITORIAL

Bringing moratoriums in line with international standards

Given the frequency of moratoriums in intercountry adoption procedures, and irrespective of the context of why and how one is instigated, international law demands that certain minimum standards are evoked to ensure the best protection of children in their application.

Moratoriums are suspensions of intercountry procedures and in the majority of cases instigated by a country of origin. Moratoriums are rarely a simple matter, because they originate from diverse motives, vary in form and can have acute consequences on the parties involved in the intercountry adoption process, especially for those linked with 'pipeline' cases. Given the frequency of such decisions, one has to keep in mind the context of international law and the need for the latter to be respected.

Diverse motivations for instigating moratoriums

Moratoriums can be initiated for a variety of reasons including the need to overhaul the child protection framework, as a response to pressure from receiving countries as well as to address widespread abuses and corruption etc. Such justifications can polarise actors involved in intercountry adoptions, with one group viewing moratoriums as a knee jerk reaction being the unnecessary prolongation of finding a solution for the permanent placement of children, whilst others considering them to be a necessary step to combat a precarious situation. A delicate balance between competing interests must be found, keeping that of the child's as the priority.

Over the last years, some countries of origin have made a wide use of moratoriums, resulting in a "stop and go" situation, which is particularly difficult to handle. They have resulted in endless pending cases, with unnecessary suffering for both children and prospective adoptive parents. These experiences have shown that moratoriums should not only be based on

political arguments, but they are temporary measures that can be used for solving a specific problem. Moratoriums should not be relied upon in the long term as other measures such as changes in national law are better suited for the definitive prohibition of intercountry adoptions.

Diverse forms of moratoriums

Once a country decides that a moratorium is necessary, it then must determine its form. Some countries will opt for making an official statement (eg: Belarus, Romania, Guatemala, Cambodia, Nepal, Liberia, Moldova etc) and others, particularly those in the Latin American region (eg: Argentina, Paraguay and Venezuela etc) have implemented 'defacto' moratoriums where an official statement is not made, but in practice intercountry adoptions are limited and has the same effect of suspending adoptions.

Countries must also choose who the moratorium will apply to, that is whether it will apply equally to all countries and/or all children. For example in 2009, Peru decided that it would no longer accept dossiers from countries that are not party to THC-93 and the Philippines instigated a moratorium for all children under 2 years.

Whatever form is adopted as per the prerogative of each country, international standards simply demands that concerned countries keep communication lines open. The country implementing the moratorium should cooperate fully with relevant receiving countries by communicating clearly and regularly its position. This can include the length and scope of the

moratorium, timeline of expected activities and treatment of pipeline cases etc.

The 'pipeline cases'

When a moratorium is declared, the particular question arises of how to deal with 'pipeline' cases where the intercountry adoption process is underway but not yet finalised. International standards stipulate that the country clearly identify the particular circumstances of each child and the progress of their adoption dossier as a first priority. As a result of this assessment, two categories of children can be identified.

For children in the first group, where a matching has occurred and the prospective adoptive parent 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 prospective adoptive parents 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. Any unnecessary delay in the child's placement is likely to be contrary to his interests, assuming all the required safeguards are in place (see Review 1/2010).

To facilitate the international principle of open communication, the country could establish an 'email contact' where concerned families can receive information about their particular case. To avoid being overburdened by emails, this 'contact' perhaps, should only be accessible by central authorities or accredited bodies acting on behalf of concerned prospective adoptive families. To help facilitate such a decision, it should be made clear that this contact will only respond to emails from central authorities or accredited bodies with questions about a specific case.

For children in the second group where a matching has not occurred, 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 given considerations, including, inter alia:

- quality and number of proofs that domestic solutions for the child have been clearly exhausted (eg: potential of finding domestic solutions)

- time the child has been waiting for a permanent family solution
- likely time the child may potentially have to wait for a permanent family solution
- psycho-social needs of the child
- health conditions of the child
- age of the child (eg: if the child is of a school age etc)
- possible bonding of the child with prospective adoptive parents
- other special needs of the child (eg: to be placed with other siblings etc)
- characteristics of the prospective adoptive parents (eg: family related adoptions or families temporarily living in the country)

The above list of issues shows that a strict black and white approach to moratoriums will not always lead to a respect of international standards. It is therefore of utmost importance that the above-mentioned questions are seriously taken into consideration by the authorities in charge before a moratorium decision is taken.

International law demands a clear and flexible approach in the application of moratoriums

A flexible but consistent approach must be adopted for pipeline cases and necessary safeguards must be in place before such cases can be processed. For all other cases, intercountry adoptions should not be processed and the country of origin's prerogative should be respected. It may be also prudent for the prospective adoptive parents who fall in the latter category to be redirected to another country of origin to avoid an uncertain time of waiting for them. This could also minimise pressure on the country, so that it does not have to deal with old files as well as new files should it decide to re-open intercountry adoptions. Such an approach is altogether consistent with international law, so long as the best interests of each individual child are kept as the priority.

ISS/IRC Team
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Sources: Guide to Good Practice, Hague Conference and UNICEF Guidance Note on Intercountry Adoptions in CEE/CIS