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Special issue: International Forum on Intercountry Adoption & Global Surrogacy I Countries and Families of Origin in Intercountry Adoption

In August of 2014 the International Institute of Social Studies in The Hague (ISS) organized the [International Forum on Intercountry Adoption & Global Surrogacy](#), coordinated by Kristen Cheney.

The event brought together experts from several countries with the objective of analyzing norms, practices and problems related to these phenomena. The ultimate goal was to inform the decisions of the signatories to the Hague Convention on Intercountry Adoption and the Special Commission of the Hague Conference.

AFIN members Diana Marre and Beatriz San Román were invited to participate in the meeting, which was organized around five themes:

- [Intercountry Adoption, Countries of Origin, and Biological Families](#), coordinated by Riitta Högbäck
- [Force, Fraud, Coercion](#), coordinated by Karen S. Rotabi
- [Global Surrogacy Practices](#), coordinated by Marcy Darnovsky and Diane Beeson
- [Implementation of the Hague Convention on Intercountry Adoption \(HCIA\) and the](#)

[Best Interests of the Child](#), coordinated by Sarah Richards

- [Intercountry Adoption Agencies and the HCIA](#), coordinated by Peter Selman

Event organizers produced a [final report](#) published by the ISS in December 2014.

A year after the Forum took place and six months after the final reports appeared, AFIN—with permission from the ISS Working Paper Editor—began producing condensed versions of these reports, which will appear in the next six issues. We hope they will be of interest to you.

The images that accompany the text correspond to the working hours of the event.

Introduction

This report is based on the sessions of Thematic Area 2 (Countries/families of origin) of the International Forum on Intercountry Adoption and Global Surrogacy held at the International Institute of Social Studies in The Hague, the Netherlands, 11–13 August 2014. Even though a vital partner in intercountry adoptions, families of origin have mostly been absent from research and adoption practices alike. This thematic area's objectives were: 1) to investigate how the perspectives of countries and families of origin are represented in the Hague Convention and in present guidelines and practices, as well as to identify shortcomings and strengths, and 2) to suggest ways in which their perspectives could better be taken into account. The number of participants in the sessions of this thematic area varied between 13 and 45; a number of sessions were joint sessions with one or two other thematic areas. Although participants have provided feedback, the following text is not meant to be a joint declaration that could be accepted by abso-



lutely every participant. My intention has been to adequately characterize the discussions and concerns raised, while acknowledging that another person might have framed those concerns differently.

Global Northism of the Convention: redefining 'adoptability' and 'family environment'

Several participants raised the problem of the implicit 'receiving country' perspective of the Convention. The Convention talks about 'permanent'



families, which implies a clear preference for the Global North type of financially well-off and stable exclusive nuclear family. Also, the notion of who is 'adoptable' has a similar Global North-centric bias. As was shown above in the literature review, throughout the Global South different understandings of family prevail. Family boundaries are fluid and porous, allowing a child to be cared for by other relatives than the nuclear family members. Furthermore, informal kinship care is widespread. Thus, a child that under Western definitions would be parentless or an orphan may

in reality be looked after within different family constellations. In many regions in Africa, for instance, the concept of orphan did not exist before Western humanitarian interventions on behalf of orphans because there were always extended kin and community members absorbing such children. In essence, a child can be well looked after in family-like environments which do not resemble the minority nuclear couple-based model prevalent in the Global North. It was suggested that the extended family needs to be mentioned in the recommendations. Also, the local context needs to be taken into account when defining 'adoptability' or 'family environment'.

This bias stems from asymmetrical power relations between the Global North (or 'receiving' countries) and Global South (or 'sending' countries). Thus, even though the Convention and the supporting documents are being jointly drawn up by the representatives of these countries, equality of outcome cannot be automatically assumed. Perhaps in this context it might be useful to understand the Convention

and the coming together of the representatives as a 'contact zone'. A contact zone perspective recognizes the complex mutual interactions but emphasizes that these take place under conditions of radical inequality. Other transnational bodies and endeavours have successfully been checked and analysed utilizing this perspective. The entities of 'receiving' and 'sending' countries may also disguise other power issues. It was pointed out that most representatives from the receiving countries tend to be members of the Conference while the majority of representatives from the sending countries are not members of the organization. Furthermore, there are different layers of local knowledge. For instance, social workers in the Global South are often trained using Western (and Global North) definitions and interpretations. Adoptive parents in the Global North have powerful allies and spokespersons, which may lead to their interests being better taken into account compared with the rights of first parents who are often 'invisible' and powerless.

The problematic 'clean-break' approach: opening intercountry adoption

Another example of the power of the 'receiving' state perspective is the legal termination of all pre-adoptive kin ties. Although the Convention technically also covers adoptions in which previous ties are not severed, in the implementation and in the national laws of most countries the child ceases to be the child of his/her previous parents and becomes solely the child of the adoptive parents, in effect 'as if' born to them. First mothers have been advised that after adoption 'it will be like your child is dead to you'. The creation of exclusive parenthood with no messy pre-adoptive ties clearly works to the benefit of the newly formed adoptive family as a self-contained unit. In the Global North the legal paradigm of exclusivity works specifically to protect the nuclear family from outside interference; a family can only have one mother and one father, and all 'other' parents are understood as a threat with the new parent automatically cancelling out the previous

one. While this principle is now at odds with social practices in the receiving states, such as post-separation family constellations, open domestic adoptions or families formed with the help of new reproductive technologies that have more than the stipulated one set of parents, the exclusive clean-break approach is still practiced in intercountry adoption. With adoption being seen as simultaneously completing families and nations (in the context of declining birth rates and the economic costs of aging populations), clean-break intercountry adoptions are also about immigration, in effect making sure that only the child and not his/her pre-adoptive kin can enter the country.

The legal construct of a clean-break and its implications stimulated a lot of comments at the Forum sessions. Barbara Yngvesson in her opening comments pointed out that it is not just a legal principle but has a strong psychological impact, too: it sets up the terms of what connections mean, effectively erasing origins. For adoptees it has paradoxical implications. It sentimentalises 'birth culture' and 'roots' as if



they could be bought in a box, when in fact they are used as an attempt to compensate for the lack of subsidiarity (i.e. that the child is not cared for in his or her country/family of origin).

Yngvesson's call for a transformation of the adoption system was widely supported. Some participants simply wrote in their notes: 'Clean-break must go!' or 'Full severance of ties is false'. Drawing on her research with adult adoptees' reunions with their first parents, Yngvesson concluded that open adoption can be complicated but it can also work and that we need

to leave that decision to the adoptees themselves. Hollee McGinnis (herself an adopted person) gave a moving account of what it means to be adopted under the current adoption system and to be deprived of knowledge of first parents. She pointed out that adoptees have more than one identity. Racism is a big issue, as many adoptees 'wear their birth culture on their face'. Apparently many adoptees will want to know about the circumstances of their adoptions and some search for their kin. Instead of the current legal



clean-break linear adoption, she suggested a move towards a concept of circular adoption that also looks back. The past can never be just erased.

The group that has probably suffered the most under the clean-break regime are first parents of adopted children. In the worst case, they have not been given any information about their children after adoption. It is still up to adoptive parents whether they remain in contact or provide news to the first mother (or other members of the extended family) or not. Those who are granted legal parenthood also have the power. As was shown in the literature review above, there is evidence that many first mothers do want to know. The legal annulment of their motherhood does not correspond to their lived experience and feeling. Indeed, such procedures may be unknown in their cultures. Furthermore, as explained by Ruth McRoy, long-term research on US first mothers has shown that (all other things being equal) those who had more contact with or received more information concerning their adopted children had lower levels of grief (. This body of

research also shows that greater levels of openness are beneficial to all: adoptive parents, adoptees and first parents (Berge et al., 2007; Ge et al., 2008; Grotevant et al., 2007; Henney et al., 2007; Neil, 2010; Wolfgram, 2008). Where the child has been removed from the parents due to parental abuse, the case may be different, as apparently in many domestic foster care adoptions in the UK. In intercountry adoption this is, however, rarely the case. The current practices are inhuman. There are no grounds for treating first mothers differently just because they live in the Global South and have not been able to voice their concerns.

It was also pointed out that the family of origin comprises a wider circle and not just the first mother. The role of siblings, grandparents and fathers must also be acknowledged. Information regarding the child relinquished to intercountry adoption must be made available to families of origin. Likewise, adoptees must have access to all information regarding the conditions under which they were adopted, and regarding their birth kin (first par-

ents can choose whether to be identified). Hiding and falsification of adoption documents has to stop. It is outrageous that in 2014 we cannot have a birth certificate that includes both sets of parents. Instead most adopted children are issued falsified birth certificates that make the child look as if born to the adopters.

It is most likely that adoptees will want to have more information about their backgrounds and many will initiate searches and reunions with the family of origin. These developments should be anticipated. Already there have been reports from many 'receiving' countries, for example Sweden and Canada that their post-adoption services are completely overwhelmed by such requests. It was also suggested that adoption agencies due to their vested interests in adoption may not be the ideal partners to organise 'homeland tours' and searches.

As most domestic adoptions in USA, Canada, the UK and New Zealand are now open, and openness is promoted as good practice, the question arose as to why this is not being proposed for in-

tercountry adoptions. At first the concept of open adoption would need to be clarified. The way it is used in US domestic adoptions, for instance, implies some kind of contact between adoptive family and family of origin after adoption. This contact can be anonymous through a letter-box or mediated by adoption social workers, or it can involve on-going direct contact including one or more of the following: sending letters and photographs, using email (or Skype nowadays), making phone-calls, or visiting each other in person. Researchers have been clear that open adoption does not involve 'returning' the child to first parents, as the legal parental rights and obligations remain with the adoptive parents. Hence, first parents' rights, including the right to receive information regarding the child, should be clearly stated and enforceable by law.

In the context of intercountry adoption, further challenges to openness are created by the immense gap in wealth between the two families, huge geographical distances and possible language barriers. While it is



clear that the characteristics of and relations between particular adoptive parents, adoptees and first parents would need to be taken into account, greater openness would benefit adoptees' and first parents' need to know (about) each other. It would also move intercountry adoption towards more inclusive and just practices by participation instead of erasure. A study conducted in New Zealand found that half of the 72 families studied attempted to establish contact with the first families in the children's country of origin and half of these made contact, even in



the absence of clear information about who first family members were.

Rights of the family of origin and 'best interests of the child'

The argument is sometimes raised that we should prioritise the interests of the child as opposed to what first parents or adoptive parents may want or need. Hence, it is claimed that we should wait to see if the adoptee herself wishes to establish contact or search for the family of origin. However, this may be too late. As the New Zealand families stated, they wanted

to search before the 'trail goes cold' and connections to first parents are lost forever. Likewise, the suggestion to ask adopted children where they think their best interests lie is fraught with difficulties. In an example given, a seven-year-old child had said that her best interests are best served by staying in this (adoptive) family (and with its three cats). As these children do not in most cases know of any other possible way of life or family, having been adopted at an early age, this is in a way the only conceivable answer they can give. The interests of the child may also change as she matures. As was pointed out several times, we need to start conceptualizing adoptees as adults and not as eternal children.

Nigel Cantwell specifically addressed the confusion around the concept of 'best interests of the child'. It is problematic precisely as the interests can be different in different life-stages. The concept is also vague and lacks clear criteria. There is no agreement as to who decides what these interests are. Under such circumstances, there is a real danger that 'best interests

of the child' just reflect (class-based and gendered) notions and values of the powerful. Cantwell suggests that a clearer way of conceptualizing best interests would be to link them more explicitly to the human rights of the child.

What is of particular relevance from the point of view of families of origin is that the child's best interests, when looked at from the human rights perspective, clearly include the right to be raised by his or her (first) parents whenever possible. Best interest considerations then need to make sure that all measures to ensure or aid family reunification are undertaken. This would require more attention to the rights of the family of origin, where the Convention is at its weakest. At the moment, first parents are only mentioned as those whose consent is needed. Otherwise, first parents and kin are marginalised in the implementation of the Convention.

Furthermore, it is questionable whether the rights and well-being of first parents and their children can be totally separated. This is because the child is, initially, a member of the family

of origin. Hence, harming the first parents also harms their child. Likewise, Claudia Fonseca's interviews with Brazilian adoptees suggest that the way their first parents had been treated by the adoptive parents (and the adoption system) had a big influence on adoptees' well-being and on their relations with their adoptive parents.

The participants felt that there is a big need to strengthen the rights of first parents in the Convention. At the moment they are absent, while the interests of adoptive parents are safeguarded and protected.

Violations of the subsidiarity principle

Subsidiarity is the cornerstone of the Convention. Hans van Loon, in his plenary presentation at the Forum, reminded us of its meanings. According to the subsidiarity principle, it is the primary obligation of states to enable the child to remain in his or her family of origin. Only if this is not possible and if a suitable permanent family cannot be found in the country of origin, should intercountry adoption be considered. Subsidiarity must be con-

sidered for every adoption conducted under the Convention.

Here again, the bias for a Global North type of family can be seen ('suitable permanent family') possibly leaving out of consideration other types of family environments as discussed earlier. The biggest problem appears to be the implementation of the subsidiarity principle. Participants pointed out that the Convention leaves the considerations regarding subsidiarity to the countries of origin but without any checklists or concrete guidelines to be followed. Also, the responsibility of receiving countries should be acknowledged, as it is the increasing demand for 'adoptable' children from their side that in the current context of declining numbers of intercountry adoptions contributes to the problem. There is the danger of subsidiarity in many cases being an empty word, sometimes even being viewed by adoption agencies as a threat (to the smooth continuation of adoptions). This leads to the marginalization of families of origin and other domestic solutions.

Subsidiarity is currently violated in

several ways. First of all, countries of origin in most of the Global South do not have the resources required in order to fully offer another option for impoverished or vulnerable first mothers and families that would enable them to keep their child. Although it is stated that the Convention cannot solve the root causes of why these children are adopted abroad, it must be acknowledged that by operating under such conditions of inequality without stipulations regarding support to families of origin, the Convention perpetuates such divisions. Such practices not only violate the obligation to enable the child to stay with the family of ori-





gin but also the principle that poverty alone should not be an acceptable reason for intercountry adoption. So far, this principle has only been evoked in the UN Guidelines for the Alternative Care of Children. Receiving countries with their power and superb resources must take a more active role in financing such assistance. The contours of such an aid rule were sketched by David Smolin. He pointed out that at the moment the Convention does not require that family support be offered first. Smolin argued that where the country in question does not have a working family welfare system to draw on and where large numbers of peo-

ple live below the international poverty line, material assistance should be offered to the families first before the adoption of the child. Such assistance must, however, be completely unconditional, i.e. it cannot be tied to adoptions in any way. Other suggestions were to provide a comprehensive welfare package to first families, which would take into account cultural factors. In the course of my own research I met many first mothers in South Africa who, if provided with the possibility of temporary housing with child care, would have been able to keep their children. Social workers I interviewed were sensitive and sympathetic to

such endeavours but lacked resources. One option they mentioned (realizable if they had funding) would have been to turn some of the empty office buildings in downtown Johannesburg into flats for first mothers with someone looking after the children while the mothers looked for jobs and tried to get back on their feet.

Others, however, felt that it is too late to consider such aid at the time when intercountry adoption is already being considered. Nigel Cantwell pointed out that the emphasis should be on preventive work and on strengthening welfare structures through bilateral and multilateral agreements. Care should also be taken to channel resources into family support and strengthening and into underpinning existing community and kinship care structures, and not to the maintenance of institutions or 'orphanages'. Mark Riley explained how in Uganda such donor-led facilitating of orphanages in fact severely undermined local efforts to develop working child and family welfare structures. With their considerable resources these or-

phanages were able to pull increasing numbers of children into their system, often with a view to channelling some of them into intercountry. Subsidiarity is hence also violated by such 'child harvesting'. Participants pointed out that cash donations to child protection must be completely accountable as well as kept completely separate from intercountry adoptions. Subsidiarity can also be compromised by the possibilities for some to make money through intercountry adoptions. The amounts of money circulating around intercountry adoption prompted participants to urge that money be taken out of it altogether. Nigel Cantwell pointed out that this may be a problem in all types of donations, also when directed to first families, and that instead of redirecting cash flows in intercountry adoption, we should try to eliminate them. Others warned about the dangers of certain types of donations to establish skewed relations of obligation and reliance between donors and the targets of donations.

However, it should be kept in mind that the starting point of intercountry

adoption is already skewed (created by past rounds of unequal global divisions of labour that have worked to the advantage of the Global North). Such inequalities are the reason intercountry adoption exists. Such previous cash flows (to the Global North) should have been eliminated but were not. The proposed aid rule that would offer at least some concrete options for first families would just be in a small way correcting the scales.

Thirdly, subsidiarity can be violated by discriminatory practices stipulated by governments in countries of origin. Kay Johnson explicated the ways in which government policies undermined both first families' possibilities to keep their daughters and informal domestic fostering and customary local adoption practices in China. Harsh implementation of population control policies effectively pushed children out of their families of origin, while restrictive adoption laws limiting domestic adoption of 'abandoned children' pulled children out of their Chinese adoptive homes and sometimes out of the informal care of kin. Accord-

ing to Johnson, there is evidence that there are more than enough adoptive homes for all healthy relinquished children within China. Yet, inter-country adoptions continue, increasing unmet domestic demand and fuelling a growing interregional traffic in children in China. Chinese first parents and adoptive parents are rendered powerless in the face of international adoptions sanctioned by receiving states as well as the sending state; this power arrangement favours international adopters and hurts the interests of Chinese birth families and many Chinese adoptive families.

Violations of the subsidiarity principle are connected to violations of 'freely given and informed consent' of first parents. In the context of oppressive rules such as the population and domestic adoption policies in China, 'consent' is without meaning. In the context of extreme deprivation and discrimination, 'consent' is so severely restricted as to be no real choice. 'Choosing survival' is a contradiction in terms.

Definition of key terms

- Local context needs to be taken into account when defining adoptability and suitable family environments, including an openness to different family or caregiver forms
- The role of the extended family should be emphasized in the recommendations
- Permanency should be viewed from the angle of local realities, not from that of an idealised Western nuclear family
- People involved in all facets of adoption, 'child protection' and 'child welfare' need to acknowledge that children grow up, and so there may be a need to reframe the definition of 'child' to include the grown (autonomous) person that the child will one day be

From severance of ties to the maintenance of contact

- Members of the family of origin should have the right to regularly receive news of their children after adoption
- Open adoption, i.e. maintaining contact between adoptive families and families of origin from the start, should be available and accepted as good practice
- Preparations should be made in order to manage adoptees' and first family members' searches for each other
- All information regarding the circumstances of adoptions should be saved and

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- made available to adoptees when of age; first parents can choose whether to remain anonymous
- The development of bilateral or multilateral agreements between sending and receiving countries that have a mandate to collect and share information that might be accessed by adopted persons or first families should be considered
- A secure data-base or register with information on adoptees and families of origin could be created and maintained by the Central Authority

True implementation of the subsidiarity principle

- A checklist or proper guidelines for the practical implementation of the subsidiarity principle in the countries of origin should be drawn up, including what measures need to be conducted prior to considering the transfer of the child out of country
- Similar guidelines should be in place for the receiving countries recognizing their responsibility in not exerting any pressure to obtain a certain number of intercountry adoptions but being able to monitor and assist in processes of family support and strengthening, and local community solutions to the care of children
- The tool-kit for intercountry adoption considerations should include offering fami-

lies of origin support that enables them to keep the child

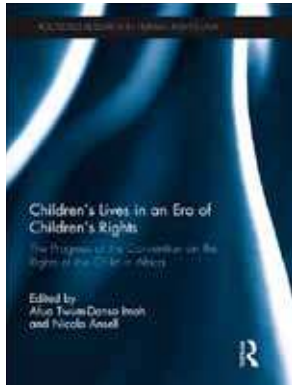
- Support for child and family welfare should in the first place come through appropriate bilateral and multilateral assistance programmes to be requested by the country of origin, and be completely divorced from intercountry adoption activities
- Support should not go to maintaining (or creating) 'orphanages', many of which are donor-led and have linkages to the same countries' adoption programmes

The case of China

- Fundamental sovereign laws of the state, specifically population control law and national adoption law, make ethical intercountry adoption of healthy children under Hague Convention principles impossible. Hague convention advocates, lawyers, and social workers cannot influence the sovereign laws of a powerful state; only internal Chinese political forces can do this. However, Hague convention advocates can and should influence first world adoption agencies and adopters to understand the fundamental violation of principles that occurs when they participate in these adoptions

Rights of families of origin need to be strengthened throughout

FURTHER READING



Twum-Danso Imoh, A and Ansell, N. (eds.) (2013) ***Children's Lives in the Era of Children's Rights: The Progress of the Convention on the Rights of the Child in Africa***
Oxford: Routledge

The Convention on the Rights of the Child (CRC), which was adopted unanimously by the United Nations General Assembly in 1989, marked a turning point in the perception of children in international law and policy. Although it was hoped that the Convention would have a significant and positive impact on the lives of all children, this has not happened in many parts of the world. This edited volume, based on empirical research and Non-Governmental Organisation project data, explores the progress of the Convention on the Rights of the Child, and to a lesser extent, the African Charter on the Rights and Welfare of the Child, in nine African countries in the 25 years since it was adopted by the UN General Assembly. The book considers the implementation of the Convention both in terms of policy and practice, and its impact on the lived experiences of children in societies across the continent, focusing on specific themes such as HIV/AIDS, education and disability, child labour, witchcraft stigmatisation, street children, parent-child relationships and child participation. The book breaks new ground in blending legal and social perspectives of the experiences of children, and identifies concrete ways forward for the better implementation of the CRC treaty in the various political contexts that exist in Africa.

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Fonseca, C. (2011). The de-kinning of birthmothers – reflection on maternity and being human. *Vibrant*, 8(2): 307–339.

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