

Follow-up on Visit to Kenya to Discuss Intercountry Adoption
Attorney-General's Department
20 April 2007

Information for Intercountry Adoption Support Organisations and Applicants

Background

The Attorney-General's Department (AGD) sought an opportunity to meet with officials in Kenya about the possibility of establishing an intercountry adoption program for several reasons:

- Kenya appears to have children in need of adoption who may be legally able to be adopted by Australian families
- Kenya has recently acceded to the *Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*
- Australia has ties with Kenya (Australia is involved, both privately and through government, with Kenyan aid projects)
- Australia has a High Commission in Kenya (with immigration officers who are trained in processing intercountry program adoption visas through our intercountry adoption program with Ethiopia), and
- Australia's program with Ethiopia means that monitoring a program with Kenya could be done in conjunction with monitoring the Ethiopian program (visits, monitoring of regional issues, etc).

Summary

In April 2007, an officer from the International Family Law Branch of AGD travelled to Africa. The primary purpose of the trip was to visit Ethiopia to discuss the Ethiopian – Australian intercountry adoption program. AGD also visited Kenya to begin preliminary investigations into the possible establishment of an intercountry adoption program. AGD met briefly with Kenyan government officials to outline the framework of intercountry adoption in Australia and to become more familiar with the intercountry adoption process in Kenya.

Discussions with officials indicated that, while Kenya appears to have in place many safeguards as to how children enter their adoption program, the adoption process has some criteria that Australian families may find difficult to meet. A central requirement is that prospective parents live with the child in Kenya for three months before the legal process of adoption in the courts begins. At a minimum, the process takes six months, however, advice was that the process takes a year or longer, and that court and lawyers fees can be costly. Australian families may not be able to stay in Kenya this long due to work and family commitments.

Indications were that the time the process for adoption can take can be extremely challenging for families. The emotional and financial pressure on prospective parents is significant and, if the process breaks down, it can also cause emotional distress to the child.

Although the Kenyan government is working to streamline the process, they noted that it is unlikely that the three month residential requirement will be dropped. They also noted that it is unlikely that the length of time the court process takes will change in the short term.

Kenyan officials indicated interest in accepting Australian applications into their current operating intercountry adoption scheme, but have indicated they would need to meet with Australian officials again for further discussions before a program could be established.

In considering whether to progress the development of an intercountry adoption program with Kenya, AGD, through our diplomatic post in Nairobi, sought further information from other countries whose citizens have adopted from Kenya about their experiences with intercountry adoption in Kenya.

A number of significant concerns were identified about the intercountry adoption process in Kenya, including:

- concerns about the legal process: for example, some adoptions are not endorsed by the courts or the Department of Children's Services and it is not always clear when the adoption processes break down
- concerns about transparency and the complexity of the process, particularly the links between orphanages, officials, the courts and adoption societies
- concerns about a number of the adoption societies that operate in Kenya, including the qualifications of staff in the privately-run adoption societies
- other countries' concerns about whether their program with Kenya is viable due to the low numbers of finalised adoptions
- concerns about the length of time, in practice, for adoptions to be completed, and
- concerns that changes to the Kenyan adoption laws (currently under review) are likely to be more technical than substantial, meaning that timeframes for families needing to stay in Kenya will not change and the complexity of the process may not improve greatly.

In light of these significant issues, progress will be dependent on improvements to Kenya's intercountry adoption process. AGD will continue to monitor developments including information provided by the Permanent Bureau of the Hague Conference as a result of the implementation assistance project being conducted in Kenya. AGD will also continue to be in contact with the Kenyan Government.

Further information and updates will be made available in due course.