

Meeting with UNICEF and ISS on 5 December 2013

On 5 December 2013 the working group held a meeting with ISS and UNICEF. ISS was represented by Director Hervé Boéchat (HB) and Coordinator Cécile Jeannin (CJ). UNICEF was represented by Senior Regional Advisor Jean-Claude Legrand (JCL) and Consultant Nigel Cantwell (NC).

By way of introduction, JCL from UNICEF explained that it is difficult to decide whether to proceed with intercountry adoptions or if children are best served in another manner. Poverty in itself does not justify putting children up for intercountry adoption, and that solution should always be the last resort. However, that said, JCL did not think that it can be ruled out that some children would benefit from being put up for intercountry adoption. He highlighted children, who, for various reasons, may be socially disadvantaged or have special needs, and whose alternative would be growing up in an institution.

JCL was of the opinion that some countries of origin use intercountry adoption to relieve social problems which should have been solved through necessary national social reforms. In countries where the child care system works, putting up children for intercountry adoption should be the exception. Unfortunately, in JCL's experience, it is symptomatic that when a child care system does not work, a large number of children are put up for intercountry adoption, and this counteracts the establishment of effective child care programmes. Thus, he was of the opinion that intercountry adoption in many countries risk blocking reforms of the social system and the establishment of effective child care programmes.

JCL did not think that intercountry adoptions should be stopped, but the receiving countries should be aware that even though countries strive to do things the right way there is no 100% guarantee. Thus, UNICEF is not of the opinion that Denmark should stop receiving children put up for intercountry adoption, but that Denmark instead should put demands to the countries of origin.

According to NC from UNICEF, receiving countries should not cooperate with countries of origin which have not acceded to the Hague Convention. In his opinion the majority of problems with intercountry adoptions were seen in non-convention countries and receiving countries should therefore demand the accession of the Hague Convention before children were to be adopted from a country of origin.

Furthermore, NC was of the opinion that the key aspect in this context is to investigate sufficiently what is in the best interest of every individual child. The requirements applicable to investigations of the circumstances of unaccompanied refugee children under the "UNHCR Guidelines on Formal Determination of the Best Interests of the Child" could be an inspiration for what should be undertaken to investigate the circumstances of children who are put up for adoption. However, there is a dilemma: in resource-strapped countries of origin diligent investigation of the circumstances of the children would mean diverting scarce professional resources from the work of helping disadvantaged families so they can take care of their own children.

HB from ISS said that intercountry adoption is a child protection measure, which, through conventions, forms part of the Danish legislation, meaning that a discontinuation of intercountry adoptions is not a viable solution. To ensure that intercountry adoptions take place on an ethically justifiable basis, ISS is of the opinion that receiving countries should have the courage to stop adoptions from countries where the adoption system does not work. For the purpose of assessing how the adoption system works in countries of origin, it is not enough for the receiving countries to just wait for information from the countries of origin.

According to UNICEF, there is no consensus among the receiving countries about what is needed to assess that the adoption system in a country of origin does not work properly, and UNICEF recommended that Denmark uses its relations with other receiving countries not only for the exchange of information and development of good practice, but also for reaching such consensus.

As regards to the significance of conventional cooperation, NC from UNICEF stated that, in his opinion, cooperation should only be undertaken with countries having acceded to the Hague Convention. Anything else would be too risky. Moreover, NC thought that we should ask ourselves why a country of origin has not acceded to the convention if the best interests of the children are to be "the paramount consideration". From his point of view, there are many undesirable reasons for a country to seek to maintain the status quo and not accede to the Hague Convention. NC was of the opinion that the Hague Convention should serve as the foundation for a solid adoption system and that the solution of the adoption problems in countries of origin cannot be found outside the framework of the convention.

ISS said that it does not consider it sufficient that a country has ratified the Hague Convention as the key aspect is whether a country actually complies with the convention. By forcing a country to ratify the convention you risk losing many of the good measures already in place in a country without these good measures being replaced with the provisions of the convention.

JCL from UNICEF stated that UNICEF is working to have more countries ratify the convention and incorporate the system. However, UNICEF has yet to decide whether to cooperate exclusively with countries which have acceded to the convention. UNICEF agrees with ISS that it is not in itself sufficient that a country of origin has ratified the Hague Convention.

As regards to the relationship between financial humanitarian aid and adoption, ISS stated that they see this problem as very complex, and ISS referred to the guidelines set out in HCCH's "Guide to Good Practice". However, ISS proposed that, instead of sending money to specific orphanages, a receiving country should support a country of origin in other ways such as support in human resources and training through exchange of professional staff. In order to further control/supervise the adoption process in the country of origin the receiving country could train a staff member from its embassy in the country of origin on child protection and intercountry adoption.

NC from UNICEF said that it should always be remembered that countries of origin are not spontaneously asking for their children to be adopted abroad, which puts into perspective the provision of such support to a country of origin in organising its adoption process.

As regards to the question of whether it would be better to have adoptions arranged by accredited bodies or through government agencies, UNICEF stated that it is not unconditionally

positive that adoptions are arranged by accredited bodies. Not that many children are put up for intercountry adoption so the accredited bodies are in a fierce competition. This means, for instance, that some people are willing to pay in order for them to come first in line.

UNICEF believes that arranging adoption through a government agency would be difficult if only a few countries have this system, and that the competition would remain even if government agencies are introduced. However, UNICEF believes that introducing direct governmental responsibility could reduce the risks in the adoption process.

NC from UNICEF said that in case of adoptions arranged through a government agency in a receiving country, countries of origin might look at the amount of financial humanitarian assistance they would get from the receiving country.

As regards to the question of financial humanitarian aid in connection with intercountry adoption, UNICEF firmly stated that money to humanitarian aid involving children should not be part of the adoption process. Financial humanitarian aid has nothing to do with the best interests of a child who has been put up for adoption. UNICEF does not believe in the argument that financial humanitarian aid supports the remaining children in a country of origin, and UNICEF believes that no financial humanitarian aid should be paid directly to an orphanage.

If a central authority becomes aware that such financial humanitarian aid is needed, the central authority should contact the relevant ministry in its own country and direct the ministry's attention to this need. UNICEF recommends that only relevant authorities in a receiving country offer financial support and humanitarian aid to children in need in the country of origin. However, support should never be offered directly to an orphanage as this maintains the adoption system and leads to the expectation of receiving more funds.

UNICEF stated that it is opposed to all types of direct and indirect funds being involved in intercountry adoption. This does not help the Hague Convention system in the country of origin. If receiving countries really want to help countries of origin to improve their Hague Convention systems, they should donate funds to social workers in the countries of origin in order for the social workers to help families staying together.

In this context, ISS proposed that receiving countries, in conjunction with e.g. UNICEF, could enter into agreements with countries of origin on projects underpinning their Hague Convention systems.

As regards to openness in adoptions, UNICEF believed that if openness in adoptions had been easy it would already have been introduced a long time ago. UNICEF was also of the opinion that if openness in adoptions was really called for, intercountry adoption would not be needed at all, as it was then better to support the family in keeping the child or to work for a temporary placement of the child in the country of origin. UNICEF expressed concern that children could become a commodity.

UNICEF said that many adopted children ask about their personal history, and UNICEF believes that all adopted children have a right to know where they come from. People who are adopted are entitled to have their own identities, also while they are children.

NC from UNICEF said that New Zealand is one of few countries using open adoptions, but he believes that they are mostly national adoptions and that the objective of the open adoptions

may be to encourage more birth families to surrender children for adoption. NC also questioned the practicality of openness, including, for instance, how to sanction a breach of contract on openness, particularly when the child and birth parents are living in different countries.

ISS agreed with UNICEF that if a child has a known family who wants to maintain contact with the child, then intercountry adoption is not necessary.

To sum up, UNICEF stated that it is important to make it clear to the receiving countries that the need for intercountry adoption only to a very limited extent concerns healthy babies. In that context, ISS said that some children are in real need of an intercountry adoption, but these children are often not released for adoption as they are children with special needs and the countries of origin often do not believe these children can be adopted due to disabilities or social stigmatisation.