

Legal and practical considerations for Research of origins – with a special focus on Illegal adoptions & social media



**Paper by Cécile Jeannin and Mia Dambach, International Social Service
Nordic Adoption Council 18th Nordic Meeting
Tórshavn, Faroe Islands, Denmark
12th to 14th September 2013**

International Social Service

International Social Service (ISS) is a professional non-governmental organisation, founded in Geneva in 1924, whose network covers some 140 countries. Over the years, ISS has increasingly focused on what solutions are proposed for children deprived of parental care, with special attention to international standards and good practice in intercountry adoption. Through its casework, ISS has worked for many years in the field of search for origins through its wide network.¹ ISS has developed internal guidelines on how to deal with research of origins by an adopted person, birth parent or relative. Backed by its practical experience and research centre, ISS has further specialised in the:

- *Development and advocacy of International Standards:* ISS has played an active role in advocating and drafting of major relevant international texts, including the 1980 Hague Convention on child Abduction, the 1986 UN Declaration of Legal and Social Principles on fostering and adoption, pertinent aspects of the 1989 Convention on the Rights of the Child, the 1993 Hague Convention on Intercountry Adoption, the 1996 Hague Convention on Protection of Children and the 1996 Hong Kong Guidelines on adoption, fostering, and the child's right to grow up in a family as well more recently the UN Guidelines for the Alternative Care of Children 2009.

Since their acceptance at the UNGA, ISS has been working on various implementation initiatives for the Guidelines (see <http://www.iss-ssi.org/2009/index.php?id=25>). ISS has undertaken a lead role in the development of the Implementation and Monitoring Handbook for the Guidelines (see Moving Forward handbook at www.alternativecareguidelines.org). In parallel, ISS is undertaking treaty body mainstreaming activities to ensure that all the Committees (in addition to the CRC Committee) are aware of the Guidelines (<http://iss-ssi.org/2009/index.php?id=197>).

- *The International Reference Centre for the Rights of Children Deprived of their Family (IRC)*, established within ISS in 1993, promotes first and foremost a global policy giving priority to maintaining children within the biological family, to permanent family-based care and to national solutions in line with these international standards. ISS publishes a Monthly Review on the above topics for alternative care professionals. ISS publishes between 15 and 20 country fact sheets focusing on child care systems of various countries. These analyses examine the situation of children deprived of their family, child care system and measures available as well as adoption procedures in a specific country.
- *Advisory Services:* In collaboration with UNICEF and/or other bodies, ISS has carried out many assessment missions on the issue of alternative care and adoption including to Romania (1991-1993), Albania (1992), Armenia (1998), Rwanda (2002), Ukraine (2005), Moldova (2006-2008), Kazakhstan, Kyrgyzstan (2007-2008), Viet Nam (2009), Côte d'Ivoire, Guatemala and Syria (2010), Laos (2011), Colombia (2012) and Democratic Republic of Congo (2013). Individually, and as a team, and mostly through projects in collaboration with UNICEF, the

European Union and various Governments, ISS has been involved as experts in **legislative reforms** designated to implement children's rights in a number of countries, including Australia, Azerbaijan, Cyprus, Guatemala, Ivory Coast, Kazakhstan, Kyrgyzstan, Laos, Moldova, Rwanda, Ukraine and Vietnam. They have also undertaken training in Africa in Burkina Faso, Mali, Madagascar and Rwanda.

¹ ISS Casework Manual, 2012 – for more information, contact casework@iss-ssi.org

Introduction

An adoptee's access to his or her origins is a process, which depending on the case, is undertaken at different moments in life, and for diverse reasons. As stated by Johanne Lemieux – a Social Worker from Quebec, specialising in intercountry adoption – ‘the questioning and understanding of origins vary depending on the child's emotional and mental age, and subsequently that of the adult. This search does not have the same importance and meaning for all². Thus, for some adoptees, it will never arise, for others this need to know will gain a deep purport. It will, for example, appear at adolescence, or at the birth of the adoptee's first child, etc. Data vary on this issue depending on the country. If in some countries, such as Portugal, the search for origins is not well developed, the process is quite established in others. For example, the Post Adoption Resource Centre in NSW Australia has received over 64,000 enquiries from adult adoptees, birth parents and other family members over the last twenty years.³ In New Zealand, according to the Central Adoption Authority (Child, Youth and Family, Ministry of Social Development), the majority of adoptees want to find their origins.

From a psychological perspective, this quest comes under a personal need that may be linked to building a person's identity or the wish to lift the veil on part of his or her story, which has been kept in the dark for a long time. The search for origins may be interpreted as a step in the construction of what we are. It is not a process that is specific to adoption, but to everyone. From the adoptive parents' point of view, this need is, however, often interpreted as a denial of the adoptive relationship, as a failure of mutual love. ‘Parents wrongly believe that they have not loved their child enough, that they have not repaired the past enough, that they will lose something special with him or her if they let or encourage him or her to return to his or her country of origin. Some parents also intend to prevent the child's suffering or his/her disappointment if he/she does not find the answers or purpose of his or her wishes’, as underlined by Johanne Lemieux. Thus, raising awareness and preparing the child for this stage is essential in order to prevent such difficulties and to avoid conflicts likely to result in breakdowns.

This paper⁴ examines the legal and practical considerations of the search of origins – focusing on two particular issues being illegal adoptions and social media – due to the fact that in recent times they have greatly changed how one undertakes a search of origins as well as its potential consequences.

1. Legal considerations

From a legal perspective, and aware of the importance of this identity issue for the individual's positive development and fulfilment, international legislation recognises the right to access one's origins through several international instruments. In particular article 7.1 of the international Convention on the Rights of the Child (UNCRC), enshrines the child's right, as far as possible, to know his parents and to be cared for by them. Article 8 provides for the right of the child to preserve his or her identity. The recommendations of the Committee on the Rights of the Child to Member States strengthen the good implementation of this right in relation to adopted children⁵. The 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (HC-1993) is more finely-shaded. Even though it recognises the same rights, in its

² Excerpt of the Practical Guide *L'adoption Internationale : Démystifier le rêve pour mieux vivre la réalité*, J Lemieux, *Le Monde est ailleurs Inc.*, 2006.

³ Jane Adams, *In Your Face – Social Media and Adoption Search and Reunion*, Post Adoption Resource Centre, 2012

⁴ A notable amount of information – especially laws - contained in this paper is based on an ISS/IRC circular sent out to Central Adoption Authorities in 2011. The results were collated by Cécile Jeannin in another paper dealing primarily with the search of origins, which did not address the issues of illegal adoption and social media in detail.

⁵ See pp. 116 and following of the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, revised in 2002.

articles 9 and 30⁶, it does so within the context of the existing conditions provided for by the laws in each country. Additionally, paragraph 42, UN Guidelines for the Alternative Care of Children states that: *'when a child is relinquished or abandoned, States should ensure that this may take place in conditions of confidentiality and safety for the child, respecting his/her right to access information on his/her origins where appropriate and possible under the law of the State'*.

In domestic law the recognition of this right has experienced important developments, due particularly to changes in individual and social views on adoption. At an individual level, the higher quality of the preparation and support offered to prospective adopters has allowed for greater awareness of the need to grant a place to the child's pre-adoptive life and to his or her origins. Once neglected in most cases, most often due to fear or ignorance, the trend is towards an integration of the child's origins and past into the adoptive family. At a social level adoption has gradually become a more accepted and recognised form of filiation. The taboos that once existed about adoption resulting in families keeping it secret, have slowly faded, even though they remain strongly established in some countries (Georgia, Liberia, Jamaica, Ukraine, Zimbabwe).

For the most part, legal issues can be discussed via three main axes: preservation of information by countries, recognition and limitations of the right of access to origins and the interaction between the right of access to origins and the right to remain anonymous.

a) The preservation of information by the countries

As stated above both the UNCRC – through its articles 7 and 16⁷, and the HC-1993 – provide for the preservation and confidentiality of information relating to the identity of the child. Yet the implementation of such rights in reality remains complex. The preservation of information is a precondition for the exercise of anyone's right to access his or her origins. Enabling this access therefore presupposes that every country makes efforts to systematically gather and keep for sufficient time information relating to the child's background. Such information should not be limited to the child's original birth certificate, but should also include, for example, information relating to his or her various placements in institutions or foster care prior to his or her adoption. This idea is, in fact, strengthened by article 7 UNCRC, which includes, among those elements that make up a child's identity, his or her story since birth, i.e. the various places where he/she has lived, those persons, who have cared for him/her, and the decisions made about him/her⁸. Thus, for example, for an older adopted child, information should ideally include what has happened to his or her friends in the institution or in foster care, as well as to his/her foster parents. This information might emerge as being very useful to better assess the child's development stage and his or her physical and psychological needs.

Who is responsible for preserving information?

Despite serious gaps in some countries, progress may be noticed in Colombia, for example. Previously the responsibility to keep information on the child's background was once left merely to those institutions, which had cared for the child, thus entailing the tremendous risk of being lost in situations of change in management or during other unexpected events. For a few years now, this responsibility has been transferred to the Colombian Central Authority, in charge of catering for and accompanying Colombian individuals, who have been adopted abroad, and who wish to have access to their adoption file.

This trend is replicated in a considerable number of countries, where the competent public authority in adoption matters is now responsible for gathering and preserving information relating

⁶ Contracting States have a responsibility in matters of preservation of information on the child's origins, in particular that relating to the identity of his or her biological parents, and to his or her access, or that of his or her representative, to this information following appropriate advice

⁷ See pp. 126 and 218 of the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, revised in 2002.

⁸ See p. 125 of the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, reviewed in 2002.

to the child's origins (South Africa, Germany, Andorra, Chile, South Korea, Costa Rica, South Australia, Western Australia, Belgium, Burkina Faso, some states in Canada and Mexico, Croatia, Spain, Hong Kong, Italy, Norway, New Zealand, Philippines, Portugal, the Dominican Republic, Sweden, Switzerland). Moreover, other bodies may be involved, such as the office of the Civil Registry (Germany, some states in Mexico and Australia, Spain, Switzerland), the archives of some tribunals (Italy, Mexico, New Zealand, the Dominican Republic, Switzerland), and in many cases, those Accredited Adoption Bodies that are involved in the adoption process.

How long information should be kept?

Data must generally be kept indefinitely or for a period of minimum 100 years (South Africa, Andorra, Australia, Brazil, Burkina Faso, Canada, Spain, Hong Kong, Italy, some states in Mexico, Norway, New Zealand, Sweden, Switzerland). However, some shorter periods are provided for in some legal systems, such as in Germany (60 years), Belgium (50 years), the Dominican Republic and the Netherlands (30 years), as well as in the states of Hidalgo and Oaxaca in Mexico (10 and five years). Aware that searches for origins may be undertaken by the adoptee, or even by his or her descendants many years after the adoption, the longer the term of preservation, the more these persons' right to know their past will be respected. Thus, some countries have transferred adoption files onto microfilms or digitised them, for their improved preservation and sustainability, which are initiatives that should be promoted. The European Convention on the Adoption of Children, which was reviewed in 2008, states, in its article 22.5, that 'relevant information regarding an adoption shall be collected and retained for at least 50 years after the adoption becomes final'. According to the ISS/IRC, even though the enforcement of a minimum length of time is an improvement and a certain guarantee, it, however, deserves to be raised to at least 100 years, or ideally to an unlimited period of time.

Conveying the information

Even though there is no doubt that the search for origins goes beyond the mere collection of information about the child's past, it remains a duty of States to preserve it in order for everyone's universal right to personal identity to be respected. From a psychological perspective, Sophie Marinopoulos – a French Psychologist and Psychoanalyst – reminds us that everything will be decided in the narrative, i.e. the story, which the adoptive parents and the adoptee will build, based on this information. According to Jesus Palacios – a Professor of Psychology at the University of Seville in Spain, one of the fundamental elements of the disclosure of origins is the adoptive parents' capacity to establish direct, empathetic and open communication with the child on this subject. Rather than the content of the information, it will be the means of conveying it to the child that will be essential in the building of his life story.

b) Recognition and limitations of the right of access to origins

Within the framework of intercountry adoption, the outcome of this search will greatly depend on the adopted person's country of origin and the country into which he or she is adopted into.

It is promising to notice that an increasing number of countries of origin recognise a right of access to one's origins (Brazil, Croatia, the Dominican Republic, Ecuador, Kosovo, Latvia, Mexico, Panama, Philippines, Serbia, South Africa, South Korea, Uganda, etc). Regrettably other countries do not recognise this right (Liberia, Ukraine, Zimbabwe) or do not provide for it in their legislation (Burkina Faso – where it, however, exists in practice).

Among receiving countries, Germany, Belgium, Norway, New Zealand, the Netherlands, Spain, Sweden and Switzerland explicitly recognise the right of adoptees to access their origins in their laws. Portugal, on the other hand, does not have any law that includes a specific reference to this right; however, its recognition results from article 26 of the Portuguese Constitution, which provides for a universal right to personal identity. In Hong Kong, without a law, this right is provided for in practice, in the Code of Conduct of Accredited Adoption Bodies. This is also true for Andorra, where a mere administrative process established by the Andorran Adoption Service enables adopted children to access any available information relating to their adoption. In federal States, such as Australia or Canada, the situation varies from one territory or province to the other. For example in New South Wales and Western Australia, the right of veto that could be

imposed on an adoptee wishing to initiate contact with his or her biological parents has been removed – or has never existed, as in Victoria. The veto remains in force for other parts of the country (Tasmania, Northern Territory, Australian Capital Territory or South Australia). Furthermore, the exercise of this right is always subject to conditions usually linked to the consent of the adoptive parents and/or biological parents, and/or the age of the adopted person. Thus, even though the trend towards a greater recognition, at legal level, of the right to access one's origins appears to become clearer, considerable disparities among countries still remain.

Conditions for accessing information

The right of access to origins may be subject to:

- prior authorisation of a judicial authority (state of Oaxaca in Mexico, Portugal),
- agreement of adopted person himself or herself (Victoria in Australia),
- agreement of his or her biological parents (Province of Quebec in Canada, South Korea, Ecuador, Switzerland),
- or both (Province of Saskatchewan in Canada, as well as the Province of Manitoba in relation to all adoptions prior to 15 March 1999).

In some cases if the parents of origin or the adoptee refuse to have information conveyed and contact, it is possible to provide only non-identifying information. Some legislation provides for an exception, for example, when the lack of disclosure may have serious consequences for the health of the adoptee or his/her close relatives.

Age of accessing information

In a large number of countries, adoptees must have reached adulthood in order to benefit from this right (Andorra, Brazil, the Dominican Republic, Greece, Norway, Portugal, South Africa, South Korea, Spain, Switzerland, Uganda, as well as several Australian Territories, Canadian Provinces and Mexican States). Most of the time, if the person is still underage, his or her adoptive parents' consent is required, and sometimes even that of his or her biological parents (Australian States of Tasmania and Victoria).

This age limit may be higher, such as in the Canadian Provinces of British Columbia and Newfoundland, where it is set at the age of 19, at 20 in New Zealand, and at 25 in Italy. Conversely, it may also be lower, particularly in Germany, where it has been set at the age of 16, at 15 years in Serbia, 14 years in Tanzania, and 12 years in the Netherlands and in the Flemish Community of Belgium. The number of countries without any age condition being set is very limited. As far as we know, this is the case of Croatia, which states in its law that an underage person may be allowed by the Social Welfare Centre to access the birth registry, if the latter has considered this to be in his or her best interest. In Sweden and the French Community of Belgium, it all depends on the child's age and maturity, thereby paving the way for case-by-case interpretation. The ISS/IRC considers the latter to offer flexibility, which may be beneficial for the child's full enjoyment of his or her right to access his or her origins. However, it considers it important to establish precise criteria that allow for the evaluation of the child's maturity, in order to ensure consistency among decisions made by the professionals.

c) Interaction between the right of access to origins and the right to remain anonymous

Even though the right to access information disclosing the identity of a person has been recognised, it does not always prevail over the right to remain anonymous. When faced with potential conflicts that may result from these situations, the replies provided can be very diverse from one country to another.

In some countries, **the primacy of the right of adoptees to access their origins is clear and unequivocal** (Territories of South Australia and Victoria, Brazil, the Canadian Province of Newfoundland, the Mexican states of Oaxaca and Jalisco, Norway, the Dominican Republic, Sweden, Spain since 1999). In others the right to remain anonymous prevails (Quebec, Spain in relation to all adoptions undertaken prior to 1999, Hong Kong, Italy, France, the Netherlands, the

Australian State of Tasmania). In some situations there is the possibility as in the Netherlands of resorting to the judiciary to try to remove this anonymity.

In other parts of the world, such as Australia, Ontario (Canada) or New Zealand, **a veto system has been established**, available to adoptees, biological parents and sometimes even adoptive parents (British Columbia, Canada). It is worth mentioning, however, that, since 1986, in New Zealand, the right of veto concerning the access to the birth registry is reserved for adoptees aged 19 and over. In other states, this right has been abolished without retroactive effects (South Australia, Province of Alberta in Canada).

The issue becomes trickier when a country's legislation requires **the mutual consent of the adoptee and his or her biological parents** in order to access one's origins (Canadian Province of Saskatchewan). In these cases, a consensus will have to be sought, often thanks to the involvement of a third-party mediator. In Germany and South Africa, where the law tends to favour adoptees, in practice everything will be undertaken to find a satisfactory solution for all those involved. Depending on the case, only limited access to the adoption file may be, for instance, granted to the adoptee, thus allowing him/her, nevertheless, access to significant information about his or her origins.

Applying these laws in practice

Even though the right of access to origins is now widely recognised, it is worth addressing the conditions that surround it in each country, in order to measure and assess its true scope and effectiveness. As mentioned in the introduction, at international level, the trend of legislations is rather in favour of the right of adoptees to know their origins. At the European level, the 1967 European Convention on the Adoption of Children – which was reviewed in 2008 – has focused on the right of adopted children to know their identity rather than on the right of biological parents to remain anonymous⁹. On the other hand, however, at the European Court of Human Rights, the trend seems to be different. In its ruling *Odièvre v France*¹⁰ of 13 February 2003, the Court did not consider the request submitted by Pascale Odièvre – a 37-year-old woman in search of her origins, who wished to know the name of her mother, who had given birth anonymously – to be admissible.

The ISS/IRC welcomes such progress, which offers a choice to adoptees, without going into extremes, in which the search for origins would become an injunction. As emphasised by one adoptee during a roundtable¹¹, 'what is important for us, adoptees, is for the law to enable us to have a choice, if we do feel the need to discover where we come from and who our birth parents are'.

2. Practical considerations

From a practical perspective, clearly States have responsibilities to preserve information and ensure it is accessible (see section 1). Furthermore States have the responsibility to ensure quality professional support is available due to factors such as:

- the diverse needs of all involved actors (adoptee, birth parents, adoptive parents)
- growing number of illegal adoptions coming to light (see section 2a)
- fast changing technological developments facilitating contact (see 2b)

⁹ Article 22.3: 'The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority'.

¹⁰ Ruling available at: <http://blog.dalloz.fr/files/42326-98.pdf>.

¹¹ Patricia Mowbray, Author of the book *A comme Adoption* at Editions Pascal (2nd ed., October 2011) and Director of the French association *Racines d'Enfance*.

Professional assistance is important firstly when preparing adoptees for a search for origins with issues such as:

- the personal objective of researching his or her origins
- limitations and risks of undertaking such a search
- various methods for undertaking such a search (e.g.: social media and trips to country of origin)
- potential harmful consequences (discovery of fraudulent elements, absence or loss of the file, the biological parent's refusal to have contact, etc.)
- a potential meeting with the biological family

The support offered by competent professionals has proven to be essential, and special attention should be paid by post-adoption monitoring services, whenever these exist. This support takes place at various levels: general awareness-raising as to the content, the stages and implications of a search for origins, individual psychological support if necessary, recourse to family mediation when there is a wish for a meeting with the biological parents, etc. Furthermore, the professionals will need to be able to help these persons to solve potential conflicts caused by the clash between the right of adoptees to access their origins, and that of the biological parents to remain anonymous.

Secondly as a result of the increasing visibility of potential cases of illegal adoptions (see Investigating the Grey Zones of Intercountry Adoption by ISS/IRC), it is inevitable that a growing number of adopted children and families will be affected by this reality – the reason why we have chosen to focus on this delicate subject, among many others. Every illegal situation has a particular background, and thus, might have very diverse consequences. Furthermore, the adoptive family's degree of involvement and awareness of the illegal or unethical situation is an additional factor in addressing this situation. **This paper seeks to work through some of the preceding issues by examining how professionals can help with the discovery of an illegal adoption as discussed below (see section 2a).**

Thirdly professional assistance is essential with the growing use of social networks that are currently changing post-adoption contacts, which are likely to occur between adopted children, adoptive parents and biological parents. Social networks provide actors with the opportunity to directly get in touch with each other, without any professional involvement or preparation. Facebook currently has over 500 million users and has, for a few years now, changed the way people communicate among themselves. Thus, thousands of biological parents are able to get in touch with their biological children. Similarly, many adopted children and adolescents are searching for their biological parents through these networks. Adoptive parents may also feel tempted to gain information relating to their children's biological parents via these means. These situations are not without risks, and the need to have tools to confront these is increasingly felt. **This paper aims to address some of these issues by examining how professionals can help with a mediated contact between the different parties (see section 2b).**

a) Professional support when faced with a traumatic finding: illegal adoption

Facing current and future realities

There are two primary consequences of an illegal adoption where professional assistance will be of help – the legal and the psychological implications. Legal implications can arise when during the process of researching one's origins, a discovery is made that part/all of the adoption process has an illegal¹² element (e.g.: fraudulent birth certificate, lack of consent and payment over and above regular expenses which are permissible etc.). At this stage professional assistance may be required to decipher what the applicable laws of the two countries involved are in terms of sanctions and the future of the child. Another potential issue to explore with the adopted person is whether it would be productive to start individual legal proceedings against the responsible parties or whether another action would be more beneficial.

Promising practice – class legal action resulting in an apology, Australia

It may be worthwhile discussing the options of a class action such as in Australia where in March 2013, the (then) Prime Minister apologised to those affected by “forced adoptions” – usually unwed mothers forced to sign consent papers. In Hobart Tasmania, “the Government has set up a Forced Adoption Implementation Working Group – including five mothers, three adoptees and a father, all of whom have been affected by forced adoption and who have played a leading role in various aspects of the apology. The measures include \$5 million for specialist counselling services and \$5 million to immediately increase access to psychological services and develop training and guidelines for mental health professionals. They also include governments working together on integrated birth certificates and to harmonise access to births, deaths and marriages registers. The National Archives of Australia has been funded to deliver a Forced Adoption History Project. The Archives will record the experiences of those affected by forced adoption, and increase awareness and understanding of this painful period in the nation's history.”¹³

In addition there are many potential psychological implications of illegal adoptions, and these undoubtedly affect all the parties involved in the adoption triangle. From the *adoptees'* point of view, a potential illegal adoption raises doubts as to the past and present of those affected. The adoptee usually requires information and knowledge about what happened, in particular in order to be able to initiate a search for his or her biological family, as well as for the process of full (re)construction of their damaged identity. This may be complex when all the information has not been ascertained yet, or when the illegal adoption did not come to light until the adoptee himself initiated the search process.

With regards to their present, the adoptees may feel the need to seek justice, which they can perceive as a contribution to the development of their identity and search for their family. In this process, building their identity – rather than replacing their adoptive family – remains the objective. In this process, as well as in the search for their origins and the potential meeting with their biological family, the support and preparation provided must be specific and adapted. They will require additional work, as much at administrative as at emotional level, given that the adoptees do not always know, who to direct their pain and anger at, and their imagination may be even wider than that of other adoptees. It is essential to help them channel their emotions before they initiate an active search for their origins.

¹² Note that a difference is made between an illegal adoption and child trafficking - 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 equivocal.

¹³ 8 Jul 2013, Mercury (Hobart) [Australia], It's time to right adoption wrongs

In any case, but even more so when the degree of awareness or even involvement in the illegal situation is considerable, the *adoptive families* are faced with a significant feeling of guilt and accountability. In those cases, in which they were unaware of their child's background, they tend to feel deceived. Furthermore, when the potential illegal circumstances of an adoption come to light, the adoptive family is confronted with the fear that this will have a negative impact on their relationship with the adoptee; thus, they will require advice and psychological support in the (re)construction of the family identity.

Room must also be given to the *families of origin*¹⁴ and the loss they feel. Professionals in countries of origin will also need to discuss ways forward with this vulnerable group. Receiving countries will also have a role in their involvement in such a situation.

Kinds of professional support available

Some adopted people require psychological support, when they feel overwhelmed by the situation and the uncertainty of not knowing how to build their own story with clarity. In those cases, in which they do not have any medical information about themselves, they sometimes feel the need to submit themselves to a genetic study, in order to know the risks and what they may inherit to their descendants (even though this is not exclusive of illegal adoptions).

If they decide to initiate an active search about their origins, it is recommended that they do so via a family mediation process (see promising practice Spain), which will support and help them (each of the parties) prepare themselves emotionally, channel their emotions, adjusting the pace of timelines in relation to communication, measuring the dose of information submitted, and defining the points in common, prior to the potential meeting. It may also be appropriate to consider taking collective action (see promising practice Australia and France).

Promising practice - family mediation process, Spain¹⁵

In accordance with the procedure that is now undertaken by the Spanish Family Mediation Service¹⁶ in the search of origins, four stages are identified:

- to know one's personal story (advice);
- exchange information with one's family of origin (mediation);
- contact with the family of origin (mediation);
- building a relationship with the family of origin (mediation and support).

It is a process that usually lasts several months, and it is fundamental to feel very confident every time one of these stages is initiated. Should there be a feeling of

¹⁴In cases of potential illegal adoptions, the biological families, on the other hand, face the need to develop a new grieving process. At the time of the events, they had to face the grief of the loss of a child (death), sometimes even with a feeling of guilt, whilst they now have to confront a new grief, that of the lie, i.e. the development of a 'non-existent' grief. They also feel the need to seek justice with regards to what happened to them, which they sometimes also develop feelings of guilt about, for not having taken more measures, at the time, to remedy the deception and the lie. Of course, the preparation for the search for origins and for the potential meeting with the biological child requires even further support and preparation in these situations.

¹⁵ Family mediation is a voluntary and confidential procedure aimed at extra-judicially solving conflicts arising within the family, and in relation to which one or more qualified and impartial professionals, who are not competent to make a decision in relation to the parties, support the members of a family that is in conflict, with the objective of facilitating means of dialogue and the common search for an agreement. For more information, see L'envol- Belgique- propose les services d'un médiateur dans le cadre de son support post adoption, <http://www.lenvol-adoption.be/equipe/>

¹⁶ Jaime Ledesma del Busto, Psycho-Educator and Family Mediator - jaime_ledesma@hotmail.com in Monthly Review 8/2011

insecurity, it is appropriate to – temporarily or permanently – suspend the process and to focus on this issue until it is solved.

The same happens when there is too much confidence and trust in believing that everything will work out perfectly; the mediator will have to set different hypothetical situations, in which the adoptee/biological family will consider the possibility of things not turning out the way they imagined. Many search processes, and meetings between biological families and adoptees, fail because they do not meet the expectations wished for (expectations filled with too many fantasies). Given all this, the mediator must always remain alert, in order to find the permanent balance between the ‘fear of moving forward’ and the ‘impulsiveness to run’; necessarily halting the course along the way, and therefore repairing the vehicle, ensuring that every screw is in its place, before resuming the journey.

Prior to embarking on a collective action and face public scrutiny, the professional working with the adopted person should encourage the adopted person to first undertake individual therapy (and many others must rebuild a second grief of the grief they had undertaken for years on the basis of a lie). Once prepared individually, he or she will be better placed to take collective action of which many can be positive. Some organisations, such as La voix des adoptés (France and Spain) and Plataforma Afectados Clínica San Ramón (Spain), Truth and reconciliation for the Adoption Community of Korea (TRACK), Triobola – Building Bridges Project (Belgium), Racines coréennes (France), etc, have organised meetings, conferences and support workshops.

Promising practice - taking action together, France¹⁷

La Voix des Adoptés was created by Céline Giraud, who discovered that she was stolen from her birth parents in Peru and consequently wrote a book about her experiences (J’ai été volée à mes parents, 2009). La Voix des Adoptés came into existence from a willingness to enable adopted people to meet and discuss their experiences and feelings.¹⁸ The La Voix des Adoptés faced hurdles in its creation as perceived by some as a group of “angry adoptees”, often by high-ranking people in the adoption world and this does not help.

Céline states that *“this organisation’s success is linked to the fact that, to date, it is the only organisation of this type in France, i.e really open to all. Everyone identifies himself with it and can find an activity which is suitable for him, depending on his progress in the process of reflection with regards to his adoption and his own story. These activities may range from a simple question (advice line) to attending friendly events, as well as more formal exchange opportunities (discussion groups). These activities respond as much to the child’s need to speak (mentoring) as to the adult’s need to undertake an assessment following a reunion with his biological family (post-reunion assessment workshops). The range of activities is wide and this is undoubtedly what is appreciated.*

Furthermore, we belong to no radical movement, we do not fight for an end to intercountry adoption (even though we reiterate that it should be an alternative of last resort) and we do not state that everything is trafficking ... (even though I am in a good position to state that it does indeed exist!).”

¹⁷ This is based on an interview with Jaime Ledesma del Busto in Monthly Review 11/2012 – modified for this presentation

¹⁸ This is based on an interview with Céline Giraud (former president) in Monthly Review 5/2009 – modified for this presentation

b) Social networking: an opening for opportunities and/or risks

Many opportunities and challenges arise at a time when new technologies proliferate, particularly the expansion of social networks, such as Facebook, or the recent medically assisted reproductive technologies¹⁹. The Evan B Donaldson Adoption Institute *Untangling the Web* (Dec 2012) notes “there are also many sites that facilitate such connections. A google search of “adoption search” yields over 13 million results. Many of the online search services and supports are free or low cost, often staffed by people with personal connections to adoptions.”²⁰

Opportunities

Such changes to social media can assist positively in the research of origins, especially “useful in two ways. Firstly, post contact: in building and maintaining relationship and secondly when there is no contact: for gleaning information such as photos in the absence of any relationship. It is most useful when it is used observing all the standard contact and reunion etiquette... We can also see from this research though that many more people accept an ongoing relationship through social media that they would not manage or even tolerate in real life, particularly with extended birth family. Therefore we can learn that with cautionary advice and encouragement clients can make use of this incredible tool to ensure they do not lose touch with newly found family which can give comfort to birth mothers and can heal wounds for both parties.”²¹

“Social networking sites do have the potential to be very useful and invaluable in searching for and maintaining contact with birth relatives. My birth Mother moved to Australia therefore if I were able to contact her then social networking sites would be worth their weight in gold. I did however manage to see my brother and sister through Facebook although I could never contact them and without this I would have never been able to find out what they look like.”²²

Dangers and risks

These developments may also complicate the steps taken by those searching for their origins, or on the contrary, dangerously simplify them. When a meeting between an adoptee and his or her biological parents occurs through social networks, without any intermediary, unfortunate situations may arise: the adoptee may be subjected to pressure by the family of origin in order to obtain money. To mention another case, parents, who adopted a little boy, out of curiosity went onto Facebook to see whether there were pictures of his biological parents. They easily found pictures of their son’s biological mother; however, they were not expecting to see the latter’s comments, expressing regrets and distress about what had happened and the fact that she would ‘get her son back’ when he turned 18 years old.

These risks are due, in particular, to the total absence of professional support, prior preparation of those involved, or protection of the privacy and confidentiality of personal data. By initiating direct contact with the sought-after parent, the adoptee may jeopardise for instance the biological mother’s safety and physical integrity, due to religious, cultural or incidental aspects. Indeed, the mother may have hidden the existence of this child to her family and social environment, and may have rebuilt her life, or her new partner may be opposed to any contact with the latter. She may be

¹⁹ For example, what about the right of access to origins when a person has been conceived through in vitro fertilisation or artificial insemination? In some countries, legislation includes provision on this issue, like in Portugal (art. 15 of the Law N° 32/2006 of 26 July and Regulatory Decree N° 5/2008 of 11 February), Sweden, Austria (see p. 119 of the *Implementation Handbook for the Convention on the Rights of the Child*, UNICEF, revised in 2002), etc; in others, like Denmark, we face a legal gap.

²⁰ For example, see www.adopteseach.info, www.the-seeker.com/angels and www.boards.ancestry.com/topics.adoption.adoption

²¹ Jane Adams, *op cit* at 9

²² Jane Adams, *op cit* at 7

at risk of violating the law, the ways and customs of a country of origin, and expose herself to serious consequences (e.g.: rejection of adulterous or incestuous children).

When faced with these risks, States find themselves a little destitute. The establishment of a system of control of social networks is indeed totally illusory and impossible. Only sanctions may be decided for violations of the confidentiality of some data. The Australian territory of Western Australia states, on this point, that even though its law condemns the violation of clauses relating to confidentiality, proceedings in this regard are very rare. Thus, it appears that the only responses that may be offered are the following: information, prevention, awareness-raising and education. The duty of the States and professionals will therefore consist in raising the awareness of adoptive parents during their preparation (Belgium, Norway, Portugal) or during the interviews prior to the search for origins, in relation to the risks of resorting to social networks (New Zealand, the Netherlands). In Tasmania, for example, this issue is addressed during advice and counselling sessions aimed at those persons, who are searching for their origins, by addressing, among others, the various means available to initiate contact with biological parents.

Promising practice – official warning to adoption community, Canada

In Quebec, as well as in Sweden, the Central Adoption Authority warns the concerned persons about the risks linked to personal initiatives, by publishing recommendations relating to this issue on its website.²³ Furthermore, it informs the latter that any attempt to directly contact the sought-after parent may entail difficulties, if the latter does not expect it, if there is a mistake as to his or her identity, if he/she is not prepared for it or if he/she has not expressed his or her consent to the reunion.

Transforming dangers into opportunities

Nonetheless, the fact remains that the majority of countries have so far, not adopted any regulations or guidelines in this regard. The professionals and affected persons therefore try to develop their own strategy to face this phenomenon, which they are overwhelmed with. Faced with the distress of many parents and social workers, two guides²⁴ have been published by the British Association for Adoption and Fostering (BAAF). The first one is directed at adoptive parents, and is designed to prepare them and their children to the use of social networks. The second one is aimed at social workers, in order for the latter to be able to help the families in the appropriate use of these networks, and to warn them in relation to its potential consequences, in particular with regards to the initiation of contact with or by the biological parents.

²³ See « Informations destinées aux personnes adoptées à l'étranger à la recherche de leurs origines » available at <http://www.adoption.gouv.qc.ca/download.php?f=d12b42e0fedc4f91ea363cfb1c05fd88>.

“Attention aux initiatives personnelles

En recherche des origines, le consentement à dévoiler son identité et à entrer en contact avec l'autre constitue le fondement de la démarche de retrouvailles. Toute tentative d'entrer directement en contact avec le parent recherché comporte des risques, en raison des répercussions possibles que cela pourrait avoir sur celui-ci, s'il ne s'y attend pas, s'il n'y est pas préparé et s'il n'a pas donné son consentement à des retrouvailles. Dans certaines situations en raison de particularités culturelles, religieuses ou circonstancielles, la mère, qui a autrefois confié son enfant en adoption, peut subir de graves conséquences, si son entourage apprend qu'elle a déjà eu un enfant, sans qu'il n'ait déjà été mis au courant. Il peut y avoir erreur sur la personne et les contacts directs peuvent provoquer des situations malheureuses. Des individus contactés au fil des recherches pourraient également être tentés de profiter de votre situation et de votre vulnérabilité. Par ailleurs, les spécialistes en recherche de personnes à l'étranger, toutes compétentes soient-elles, ne connaissent pas nécessairement notre législation et pourraient par leurs actions vous exposer à enfreindre la loi d'ici, mais aussi d'ailleurs. »

²⁴ Eileen Fursland, *Social Networking and Contact : How social workers can help adoptive families*, BAAF, 2010 and Eileen Fursland, *Facing up to Facebook, A survival guide for adoptive families*, BAAF, 2010

Checklist - preparing the adopted child/person for a search of origins

Adopted child/person with professional help should:

- *implement privacy settings on their facebook account – e.g.: account specific for birth relatives²⁵*
- *choose an intermediary via the internet (see guidelines below)*
- *become aware of risks of social media as a first point of contact in a public arena where more traditional means such as a letter are usually more beneficial giving parties a period of private reflection*
- *be able to identify and discuss the type of safe and neutral environment that contact needs to happen in, initial and on-going*

Promising practice – Facebook and adoption search and reunion information factsheet, Australia²⁶

Extract of factsheet: Privacy settings

Your Facebook friends may not be aware of your connection to adoption and it is likely that the person you are seeking is in the same position. It is also likely that there are people you are connected with on Facebook that you would prefer did not know that you were doing a search for a birth relative. It has been recognised for many years that you are less likely to get a positive response to an approach if you knock on someone's door. It is now increasingly being acknowledged that direct approaches on Facebook will have a similar negative responses.

Checklist – preparing the adoptive family for a search of origins

These guides²⁷ recommend that adoptive parents with professional help (various extracts):

- *tell their child his or her story, as openly and honestly as possible;*
- *tell their child that they will help him or her in contacting and/or meeting with his biological family, should he or she wish to do so;*
- *remember that information provided via the Internet is done so permanently and cannot be withdrawn;*
- *request, from their adoption body, an appointment for their child, with a social worker, who will explain him or her the implications and risks of a meeting, and the importance for the latter to take place in a safe and neutral environment;*
- *explain to their child that his or her siblings may not necessarily be prepared to know about this situation;*
- *remind their child that they will always be there for him or her.*
- *be informed about their entitlement to request an assessment for adoption support at any time in the future if problems arise. This includes mediation services in relation to contact between the adopted child and others, including birth parents and birth brothers and sisters.*

²⁵ Jane Adams, *op cit*

²⁶ Jane Adams, PARC, NSW Australia www.benevolent.org.au

²⁷ Eileen Fursland, *Social Networking and Contact : How social workers can help adoptive families*, BAAF, 2010 and Eileen Fursland, *Facing up to Facebook, A survival guide for adoptive families*, BAAF, 2010

Checklist – preparing the adoption professional for a search of origins

These guides²⁸ recommend that adoption professionals (various extracts):

- *ensure that they keep all adopters' information safe during the early stages of matching and beyond. A throwaway remark about an adopter's job or current location can lead to compromise the security of the placement.*
- *tell the child you will help him, with his parent's agreement, to contact his birth parents (if it is safe to do so). If it is appropriate, you will arrange for him to meet them in a safe environment, e.g. in a supervised meeting in a contact centre (see practice below).*
- *certainly in some cases birth relatives pose a risk and you would not wish encourage or facilitate any contact. A risk assessment should be undertaken in these situations, which will inform whether and how contact should be arranged.*
- *challenge any misconceptions he may have about the past. Explain that birth parents sometimes block out the painful memories themselves. It is all too easy for people to rewrite history and portray themselves in a more favorable light.*
- *remind him that once he has given information out to them (e.g. about where he lives), he can never take it back.*
- *some young people are angry or under the influence of the birth parent and refuse to co-operate with any contact set up by the agency. Even if the child refuses, you may want to go ahead and set up a meeting anyway so that you are providing an opportunity for him to do it safely if he wants.*
- *teach to young people how they can protect their privacy on social networking sites(p. 53). Ex: they should use the highest privacy settings, they shouldn't make public any information that could help someone to identify them, they should remember that a person on Facebook may be using an assumed name and/or pretending to be someone else)*

Having regard to such dangers and guidelines, the UK has developed innovative means for contact to capitalise on the many benefits of social media as per the example below.

Promising practice – making first contact, United Kingdom²⁹

A virtual contact centre which allows for meetings via safe and secure electronic means has been established in the UK. It provides the adoptee with an opportunity to contact his or her biological parent online, without jeopardising either's identity. Furthermore, this process provides for the involvement of a moderator, who remains alert to potential risks and notices any issue or inappropriate language. Thus, if the biological parent asks the child for his or her mobile phone number, the moderator will intervene, will block the sending of the message, and initiate a discussion with the concerned parent.

Checklist – choosing an internet site for search of origins for all adoption actors

Based on a yearlong review, the Evan B Donaldson Institute³⁰ suggests that parties to adoption ask the following questions (selected extracts):

4. *What are the titles and credentials of those offering services? Are they consistent with commonly recognized training and experience in the field? For instance, those*

²⁸ Eileen Fursland, Social Networking and Contact : How social workers can help adoptive families, BAAF, 2010 and Eileen Fursland, Facing up to Facebook, A survival guide for adoptive families, BAAF, 2010

²⁹ Eileen Fursland, Social Networking and Contact : How social workers can help adoptive families, BAAF, 2010 at appendix 3

³⁰ Evan B. Donaldson Adoption Institute | Untangling the Web, page 52-54

offering counseling (unless clearly identified as volunteers or peer advocates) should have advanced degrees in fields like social work, psychology or counseling, and experience in the adoption field. Some sites use terms like “counselor” or “specialist” but do not define them or explain how the workers are trained or their levels of experience.

7. Does the service have accreditation or other recognition from regulatory bodies or from other appropriate groups? If the site assists with international adoption, it should have Hague accreditation. Sites that provide legal services should have attorneys that are members of the bar and licensed in the jurisdiction in which the adoption will take place.

9. Is information about costs and about the agency’s financial operation clear and straightforward? If there are fees for services, are they clearly stated? When are they assessed? For example, on a search site are fees required upfront? What is the total amount that is charged for the service?

10. To what other services or sources of information is the site linked? Do resources or referrals profit from referrals?

13. What services are provided after placement and beyond? If an online site is used to arrange an adoption, determine what services are provided afterward. For instance, if a post-adoption contract agreement is made, can the first/birthparents or adoptive parents receive help from those at the site if problems arise? If a child develops medical issues and the adoptive parents need to learn more from the original family, or if a birthparent who does not have contact needs to share information about a recently discovered genetic problem, will the site facilitate communication?

15. Is the agency or service licensed?

16. What is the site’s privacy policy?

Conclusion

Knowing ones origins – where one comes from and how one came to being – is one step in the larger picture of knowing who we are today. The importance of this “step” is well-recognised by international standards, creating responsibilities for countries to not only preserve information but also ensure that it is accessible. In this quest for information, by anyone and not only people involved in adoption, a myriad of complex situations can arise. This paper focuses on two such situations – illegal adoptions and social media - aiming to show the diverse needs of the adopted person, family of origin and adoptive family. Given this situation, this paper strongly argues for the need to have professional support during this process. This paper provides some practical examples and guidelines on how to avoid dangers, better confront potential difficulties as well as turn risks into opportunities. Whilst there are varying practices for a search for origins, as adoption professionals we must at least agree that a right exists and we should help implement this as best we can. We hope that the information in this paper can be one resource to help us in our work.

“My family has suffered a lot since I disappeared 23 years ago. How can we imagine that a mother would ever forget her baby was stolen? My mum is one of those women who brought the case before the Peruvian courts [...]. Why keep such a secret? Twenty years have passed and I think it is time to reveal the truth. Everyone has the right to know the truth about his or her origins. It is then up to each person to go further (or not) in his or her research. But KNOWING, that right must be recognised [...]” – Céline Giraud