

Intervention of Mr. Nigel Cantwell Independent Consultant on Child Protection

Fifteen years after the adoption of the Hague Convention, there is unfortunately no doubt that ICA in practice still constitutes a disaster area from a children's rights standpoint.

The TdH study – in which I was not involved, so I can say this objectively – gives an excellent insight into many of the key issues involved and is a much-needed document.

In the 10 minutes available, I will tackle some of these issues from a slightly different angle.

Accepted standards and procedures in the field of ICA are essentially directed towards ensuring that the right children – and **only** the right children – are adopted abroad, for the right reasons, by the right persons and in the right way. Quite the opposite occurs, however: frequently the wrong children are being adopted abroad for the wrong reasons, sometimes by the wrong adoptive parents and very often in the wrong way. These problems are all inter-linked, but here are some brief examples and indications of how the goals of ICA standards are currently being undermined.

The right children?

- Nearly 90 per cent of all ICAs to one European receiving country in 2005 concerned children aged 0-2 years, despite the far greater need of finding foreign adoptive parents for older children. Although there are reportedly more than sufficient prospective adopters in Kazakhstan for children aged 2 years or under, for example, every single intercountry adoption from there to one European receiving country in 2005 concerned children in that age-group. Indeed, the perceived availability of young children often determines which countries are worked with.
- Certain consulates of receiving countries complain of being overwhelmed by the number of applications to be processed in the country of origin. Inter alia, they are unable to verify properly the status of the child to be adopted when necessary – especially important in non-Hague countries. As the TdH study notes, verification anyway comes too late in the process (often after bonding has taken place) to be fully consistent with a “best interests of the child” requirement.

For the right reasons?

- Many young children are “reserved” for ICA by various means. They may be fraudulently declared adoptable, allowed to by-pass registration for domestic adoption, or virtually guaranteed to be rejected by local adopters (e.g. by medical records fabricating the existence or exaggerating the seriousness of an illness or disability)
- Some prospective adopters groups lobby politicians, diplomatic representatives and/or agencies to secure increased allocations of adoptable children – certain diplomats have stated that they are unmistakably “under pressure” from their capitals to do so.

By the right persons?



- Many foreign PAPs have an “ideal image” of the child they wish to adopt and are not adequately prepared for (or suited to) the fact that children available for ICA in many countries usually have some degree or form of “special need”. Once confronted with that reality, they may resign themselves to adopting such a child rather than none, but this attitude does not necessarily auger well for the development of the adoptive relationship.
- Central Authority websites are currently very uneven in the quality and quantity of information they provide to PAPs, as are those of agencies. Information is often woefully out-of-date, incomplete, misleading and even contradictory from one source to another. Accurate, up-to-date and comprehensive information must be ensured to avoid creating unrealistic expectations from the start.

In the right way?

- Independent adoptions, without assistance from accredited agencies and usually with minimal or no oversight by the authorities of the receiving country, are still common from non-Hague countries. Independent adoptions do not comply with Hague standards, and Hague Contracting States are enjoined to apply those standards whenever feasible in their relations with non-Hague States. There is no child rights-based argument whatsoever in favour of independent adoptions in general – on the contrary, they have been shown to involve far greater risks of illicit practice (cf., for example, the TdH-ISS-DCI study expressly prepared in 1991 for submission to the drafters of the Hague Convention). Save in exceptional situations that should be pre-authorized on a case-by-case and children’s rights basis, independent adoptions must be prohibited across the board.
- Receiving countries should be systematically submitting their citizens’ dossiers for consideration only in response to requests from the country of origin (“reversing the flow” of applications), and never forwarding them to countries of origin implicitly “for action”.

It is unacceptable to allow a legitimate **desire** to found a family, or to take in a child who needs an alternative stable family environment, to somehow become “effective demand” for a child. In the worst cases, authorities do not just permit this to happen, they even take active steps to ensure that it does. The pressure of this effective demand has been the major factor behind the regrettable series of suspensions, restrictions, moratoria, quotas, hastily-concocted laws, and ill-conceived structures and procedures in countries of origin since the early Nineties in particular. The consequent “stop-go” policies reflect the grave problems they experience in protecting the rights of children actually or potentially concerned by ICA. Too often, those problems are spawned by effective demand from receiving countries.

In this regard, the wide variations in the way Central Authorities in receiving countries set about undertaking their tasks is an additional preoccupying issue. One glaring example is the diametrically different positions they have taken with respect to adoptions from countries such as Guatemala, Cambodia and Vietnam once severe rights violations were documented.

Surely it is well within the bounds of the possible that receiving countries reach concerted CRC- and Hague-based policies and approaches in these and other cases. It is vital to avoid sending different signals – to PAPs, to agencies and to countries of origin – that can be the springboard for seriously jeopardising the rights of children who are, or who may become, involved in ICA.