



ADOPTION NEWS AND VIEWS

AUGUST 2011

2011/2

Adoption News and Views is a quarterly newsletter which aims to provide information about adoption of children and about any legal and policy developments affecting adopted children, parents who surrender a child for adoption, and people who adopt a child. It will also provide progress reports on efforts by individuals and groups pressing the government to give a higher priority to enacting new legislation to replace the out of date Adoption Act 1955 and other adoption laws to bring them into line with the Convention on the Rights of the Child and the anti-discrimination provisions in Human Rights Act 1993 and NZ Bill of Rights Act. 1990.

Newsletters will be sent out four times a year. Back issues can be sent by email on request. The main purpose of the newsletter is to provide up-to-date information on current NZ adoption laws, policies and practices and on any proposed changes. Adoption reform developments overseas will also be covered. It is hoped that the Newsletter will also provide a forum for people to discuss adoption issues. Contributions including reviews of books, films etc touching on adoption are invited.

Adoption News and Views is sent to you because you are believed to be a person interested in adoption. If you do not want to receive further issues you should reply to this email indicating this. If you know of others who would like to receive future issues or you or others would like to submit news or views for inclusion in the next newsletter you can reply to this email or ask interested others to do so.

While the aim of this newsletter is to provide an open forum for people interested in adoption issues, the editors reserve the right to decline or abridge any contributions offered.

Robert Ludbrook
Susan Marks Editors

EDITORIAL

Adoption Action files claim that adoption laws breach human rights laws

Adoption Action and its members have on many occasions pointed out to government the discriminatory nature of many of the provisions in Adoption Act 1955. Documents obtained by Adoption Action Inc show that the Ministry of Justice has on more than one occasion alerted Cabinet to the fact that the Act is in breach of the anti-discrimination provisions of the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990 (see below).

New Zealand has since 1976 New Zealand had laws that make it unlawful for individuals and corporations to discriminate against others on certain specified grounds. These anti-discrimination provisions were given greater force by their inclusion in New Zealand Bill of Rights Act (NZBORA) from February 2004. Until 2002 government agencies were not bound by their own anti-discrimination laws but from 1 January 2002 it has been open to anyone who claims that an Act of Parliament discriminates on any of the prohibited grounds to apply to the Human Rights Review Tribunal for a declaration that the Act is inconsistent with NZBORA.

On 27 July this year Adoption Action filed a claim against the Attorney-General alleging that the Adoption Act and other adoption laws breached the anti-discrimination provisions of NZBORA. The Attorney-General has 30 days to respond to the claim which will be heard by the Human Rights Review Tribunal. While the Tribunal cannot force government to amend or replace the Act it can make a declaration of inconsistency which the Minister of Justice is required to report to Parliament. The Minister must also file a report advising the government's response to the declaration.

The current Minister of Justice continues to say that although adoption laws need revision it is not a current priority of government. Minister Simon Power is not standing for re-election in the upcoming election and the new Minister will be reassessing government priorities. Adoption Action believes that the application to the Human Rights Review Tribunal will put pressure on the newly elected government to at long last move on adoption reform.

ADOPTION NEWS

Adoption Action's formal complaint to the Human Rights Review Tribunal highlights the following statutory provisions that it claims breach New Zealand's anti-discrimination laws:

Discrimination on the grounds of sex - s 21(1)(a) HRA

Section 4(2) AA: A sole male applicant cannot adopt a female child unless there are special circumstances;

Section 7(5)(b) AA: The father of a child who is not married to the child's mother and not a guardian of the child may have an adoption order made in respect of his child without his knowledge or consent. The mother's consent is always required.

Family Court Practice Notes and accompanying Form *Affidavit of Natural Mother*:

These impose an obligation on mothers placing their child for adoption (who are not parties to the adoption application) to swear an affidavit containing a large amount of personal information. Natural fathers have no equivalent obligation.

Discrimination on the grounds of marital status - s21(1)(b) HRA

Section 3(2) AA: Only “2 spouses” may jointly apply for an adoption order. The High Court in *Re AMM and KJO* [2010] NZFLR 629 ruled that “spouse” in this context includes some opposite-sex couples who are in a committed de facto relationship. However, s 3(2) AA still excludes unmarried couples in a civil union and same-sex couples who by law are unable to marry.

Section 7(3) AA: An adoption order can be made without the consent of the child's father if he is not and has not been married to the mother. The consent of the mother is always required whatever her marital or relationship status.

Section 7(2)(b) AA: The consent of the unmarried opposite-sex or same-sex partner of a sole applicant for an adoption order is not required even when the couple are living together at the time of the adoption application. The consent of the spouse of an applicant is always required.

Discrimination on the grounds of religious or ethical belief - s21(1)(c) & (d) HRA

Section 7(6) & s11(c) AA: The only condition that relinquishing parents can impose in respect of the adoption of their child is a condition requiring the adoptive parents to bring up the child in a particular ‘religious denomination or practice’. Prospective adoptive parents of different (or no) religious persuasion will be denied the opportunity to adopt the child on the grounds of their religious or ethical belief. Adoptive parents who agree to the religious condition will be obliged to bring the child up until adulthood in a particular religion or denomination even though their own beliefs may change. This is despite the fact that the person imposing the condition is no longer in law a parent of the child and that under s16(1)(c) & (2)(e) Care of Children Act 2004 the adoptive parents have the right and responsibility to determine the child’s “religious denomination and practice”.

Discrimination on the grounds of race or ethnic origin - s21(1)(f) & (g) HRA

Section 19 AA: Maori customary adoptions have not since 1909 been recognised and are declared (with minor exceptions) not to have any force or effect..

Section 16(2)(a)(b)(c) AA: An adoption order deems an adopted child to be the child of the adoptive parents as if born to them. It deems that the child is no longer the child of the natural parents and also severs the child’s relationships with all relatives traced through the biological parents and confers a new set of relationships traced through the adoptive parents. These provisions expunge the adopted child’s lineage (whakapapa) and sever his or her relationship with members of the whanau, hapu, iwi, or aiga. This is alien to Maori cultural values (and to cultural values of other minority cultural groups).

Discrimination on the grounds of national origin- s21(1)(g) HRA

Section 17AA: Overseas adoptions are recognised provided certain criteria are met but the criteria are less restrictive if the overseas adoption was made or ordered in a Commonwealth country or the United States: see s17(2)(c)(i) (US & Commonwealth countries) and (ii) other countries.

Discrimination on the grounds of disability - s21(1)(h) HRA

Section 8(1)(b) AA: The consent of a parent can be dispensed with on the grounds that that parent by reason of any physical or mental incapacity is unfit to have the care and control of the child and that the unfitness is likely to continue indefinitely. Natural parents who suffer from temporary or permanent physical or mental incapacity are not precluded from parenting children notwithstanding that incapacity.

Discrimination on the grounds of age - s21(1)(i) HRA

Section 4(1) AA: An applicant for an adoption order must generally have attained the age of 25 years and be at least 20 years older than the child.

Section 4(1) AAIA and the definition of “adult” in s2 of that Act: A person under 20 years cannot obtain a copy of his or her original birth certificate and is therefore denied access to information about his or her parenthood and personal identity. In contrast, the Human Assisted Reproductive Technology Act 2004 entitles children and young adults conceived with donor gametes to access much more detailed information about their donor (genetic parent) at the age of 18 years and, with court approval, at 16 years.

1.1 Discrimination on the grounds of sexual orientation - s21(1)(m) HRA

Section 3(2) AA: Same-sex couples (including same-sex-partners who have formalised their relationship by civil union) cannot jointly adopt a child: see *Re Applications by AMM and KJO to adopt a child* [2010] NZFLR 629(HC). Married and some de facto couples are able to make a joint application

s7(2)(b) & s8(4) AA: If one partner in a same-sex relationship applies to adopt a child the consent of the other partner is not required. The other partner is disadvantaged in being denied any say about an adopted child being brought into the household: The consent of a spouse is always required if the couple are living together.

1.1.1 Section 3(3) AA: While a parent and spouse are able to adopt a child jointly, the same-sex partner of a woman who has given birth to a child conceived with donated sperm (although “for all purposes a parent of the child” by virtue of s18(2) Status of Children Act 1969) is not a guardian of the child under s17 Care of Children Act 2004, and so she is a parent without the parental rights and responsibilities which flow from guardianship. She has to obtain a guardianship order to acquire and/or provide formal evidence of her parental rights and responsibilities. She is at a disadvantage in comparison with the opposite-sex partner of a woman in the same situation.

Ministry of Justice advises Cabinet that provisions in Adoption Act are discriminatory

The Ministry of Justice has on at least two occasions advised that certain provisions in the Adoption Act are discriminatory and likely to be in breach of this country's anti-discrimination laws. It has also advised Cabinet that these and other provisions may breach New Zealand's obligations under United Nations Human Rights Conventions that it has ratified.

In a Briefing Paper for the then Associate Minister of Justice Hon Margaret Wilson dated 25 February 2004 the then Secretary for Justice described the Adoption Act 1955 as one of the new Zealand's oldest pieces of legislation and commented that:

"The Act is fragmented, perpetuates discriminatory practices, creates a system which is open to abuse, falls short of our international obligations and does not reflect today's social conditions and public attitudes."

The Ministry of Justice in a Memorandum dated 15 March 2004 prepared for the Cabinet Social Development Committee alerted the Committee to the possibility that groups discriminated against under adoption legislation might make complaints under the Human Rights Act alleging unlawful discrimination on grounds prohibited under that Act. It pointed out that the government is no longer exempt from complying with the Human Rights Act.

In 2007 a Ministry paper for the Cabinet Policy Committee pointed out that New Zealand had recently signed the UN Convention on the Rights of Persons with a Disability and that the power of the court under the Adoption Act to dispense with the consent to adoption of a parent on the grounds of his or her "physical or mental incapacity" is inappropriate and inconsistent with that Convention.

New organisation applies for accreditation to evaluate couples seeking to adopt a child from an overseas country

The Adoption (Intercountry) Act 1997 contains a controversial power which allows the chief executive of Child, Youth and Family to accredit private non-profit organisations to carry out some of its functions in respect of intercountry adoptions of children from Hague Convention countries. While accredited bodies must not deliver a profit to their members they are able to charge for their services and the accredited intercountry adoption agencies (CANZ) and *Compassion for Orphans* charge fees to couples seeking their services.

An application by a new organisation *Adoption First Steps* has been advertised. The applicants seek accreditation to undertake assessment of prospective adoptive applicants and to evaluate and write reports for CYF on couples who want to adopt an overseas child (known as Home Study reports). All reports on New Zealand domestic adoption applications are prepared by adoption social workers working with CYF which has a statutory obligation to

obtain police reports, medical reports and personal references in respect of prospective adoptive applicants. There is no equivalent obligation in respect of intercountry adoptions except in the rare situation where the New Zealand Family Court is asked to make the adoption order. Adoption orders under the Hague Convention are usually made in the country where the child lives and are recognised in New Zealand under section 17 Adoption Act as having the same effect and a New Zealand adoption order.

The trustees of *Adoption First Steps* are persons who have themselves adopted a child from an overseas country and questions have been raised as to a possible conflict of interest which might lead to their settling lower standards than those set by CYF. There is a further question whether it is reasonable to allow a private agency to charge for preparing Home Study reports when these can be prepared free of charge by experienced adoption social workers employed by CYF.

Any objections to accreditation have to be lodged by Tuesday 30 August 2011. If any person or agency wishes to oppose or support the application they should address this to:

National Manager Approvals
 Child, Youth and Family
 Bowen St Building
 P.O Box 1356
 Wellington.

For further background information contact Fiona at adoption@clear.net.nz

New offence of fraudulently or improperly inducing parent to give consent to adoption

An Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography was adopted by the General Assembly of the United Nations on 25 May 2000. The New Zealand government has indicated its intention to ratify this Optional Protocol and has made changes to the criminal law to facilitate ratification but has been slow to make necessary changes to adoption law.

A step towards ratification has been taken with the passing of the Adoption Amendment Act 2011 which came into force on 16 August 2011. The amendment which inserts new sections 27A to 27D Adoption Act 1955. These make it an offence for a person to induce another person by fraud, duress, undue influence (by payment or otherwise), or other improper means to consent to an adoption: The offence carries a maximum penalty of seven years imprisonment.

If the offence takes place overseas, the New Zealand criminal courts have extraterritorial jurisdiction to deal with the offender. Even if the acts which constitute an offence have occurred overseas the offender may be prosecuted and a convicted if he or she::

- is a New Zealand citizen; or
- is ordinarily resident in New Zealand; or

- has been found in New Zealand.

Proceedings can also be brought where the person whose consent has been induced:

- is a New Zealand citizen; or
- is ordinarily resident in New Zealand:

Prosecution of an offence committed overseas can only occur with the consent of the Attorney-General.

Where a Court is satisfied that an offence under s27A had been committed it may order that the child be removed to a place of safety until he or she can be restored to his/her parent or guardian or other care arrangements can be made. The Court has this power whether or not any person has been convicted of an offence under s 27A. The amendment is silent as to who will meet the cost of returning an overseas child to his or her home country. Child, Youth and Family is likely to meet the cost if the child's home country is a party to the Hague Convention but might not meet the cost of returning the child to a non-Hague country.

Will the new law make any difference? It is already an offence under s25 Adoption Act to pay or receive money for the adoption of a child but there is no record of a conviction under that section. There are many stories of cases where young single women in New Zealand and other countries were pressured to give their consent to adoption of their child but the new criminal offence is not retrospective so the persons who exerted the pressure cannot be charged. The new offence was clearly aimed at overseas parents who have been paid, tricked or pressured to consent to the adoption of their child. There have been many reported instances of this occurring and of intermediaries in the child's home country exacting large sums of money from eager couples in westernized countries seeking to adopt a child. It will be hard to obtain a conviction under the new section because where children are adopted from non-Hague countries the adoption order is made in the child's home country and is neither subject to vetting by Child Youth and Family nor by the New Zealand Family Court. Like other offences with extraterritorial effect it will be hard to find witnesses in the overseas country to testify before a New Zealand criminal court.

Labour Party says New Zealand's adoption laws need a shake-up

Labour's Youth Affairs spokesperson, Jacinda Ardern, is pushing to have New Zealand's antiquated and discriminatory adoption laws modernised and updated. She plans to introduce a Care of Children Law Reform Bill that would require the Law Commission to review and update adoption law to better reflect modern New Zealand, and to put the interests of children at the heart of any decision-making about their future. It would replace the current Adoption Act which governs children and the relationships between them and their wider families – both adoptive and biological.

In announcing the proposed Bill, Ms Ardern commented:

“The current Adoption Act needs changing. It is over 50 years old. It was written at a time when we had far more ‘stranger’ adoptions than we do now. It discriminates against

prospective parents, doesn't take into account whangai adoption and prevents children from being cared for in the best possible family environment.

"The Human Rights Commission has confirmed that a review of adoption law is long overdue. This is an issue that the Government should be taking charge of, but, given they have ruled out work in this area, Labour is progressing it through this member's bill."

Ms Ardern has written to Justice Minister Simon Power, challenging the National Government to look at the issue. Her Bill is aimed at recognising developments in the fields of child protection, relationship status and whangai adoption practices, and would have the care and wellbeing of children at its core. The welfare of our children is paramount, and that should be reflected in legislation. We owe it to them and to their adoptive families, whatever form they may take." Jacinda Ardern may be contacted at 021 288 7977.

International coverage of deficiencies in NZ adoption laws

The Children's Rights Information Network (CRIN) is a global network for children's rights. It advocates advocate for a genuine systemic shift in how governments and societies view children. It takes its inspiration from the United Nations Convention on the Rights of the Child which it uses to bring children's rights to the top of the international agenda. More than 2,100 organisations in 150 countries rely on CRIN's publications, research and information.

In the issue of its newsletter dated 10 August 2011 CRIN carried a brief piece about the need for adoption reform in New Zealand quoting Fiona Donoghue, Convenor of Adoption Action:

"New Zealand's 1955 law on adoption does not take into account the best interests of the child, with the law being based on property law rather than on the human rights of children, children's rights activists have said. Fiona Donoghue of the lobby group Adoption Action has said that "The best interests of the child should be paramount. At the moment the child isn't even a consideration in the legislation." She additionally highlights that the 56-year-old law also discriminates against prospective adoptive parents on the grounds of marital status, religious or ethical belief and race as well as age and sexual orientation, without considering the best possible family environment for the child."

.<<http://www.crin.org/resources/infodetail.asp?id=25756>> .

Former Minister of Justice raised concerns about NZ's intercountry adoption laws

Information obtained under the Official Information Act has shown that a detailed Memorandum dated March 2004 on reform of adoption law was provided by David Benson-Pope, then Associate Minister of Justice in the Labour government, to Cabinet Social Development Committee. The Memorandum commented that New Zealand's adoption legislation is "fragmented, perpetuates discriminatory practices, creates a system which is open to abuse, falls short of our international obligations and does not reflect today's social conditions and public attitudes". It added that " current legislation does not reflect well on New Zealand's international reputation, creates potential inconsistencies between the law and practice, and continues to expose the government to risks ..": paras 12, 13. It recommended

that the Adoption Act 1955 and the Adoption (Intercountry) Act 1997 be repealed and replaced.

A section headed “Adopting Children from Overseas” stated:

“21. The most significant inconsistencies in our adoption laws occur in three provisions that enable children from overseas to be adopted:

- Section 3 Adoption Act 1955 allows a NZ court to consider an adoption application by any person, regardless of where they or the child live;
- Section 17 Adoption Act 1955 accords recognition to an overseas adoption where certain criteria are met. This provision was intended as a conflict of laws provision to ensure immigrants to New Zealand who had adopted children in their country of origin would have the adoption recognised in New Zealand;
- New Zealand has ratified the Hague Convention and has incorporated it into domestic law in the Adoption (Intercountry) Act 1997. This statute sets out the rules that must be complied with in intercountry adoptions between contracting states under the Convention.

22. Section 3 allows New Zealanders to adopt children from overseas using New Zealand adoption legislation, and in combination with section 17 allows New Zealand adopters to circumvent the provisions of the Hague Convention as expressed in the Adoption (Intercountry) Act.

23. Section 3 allows New Zealand law to be used to circumvent more restrictive adoption practices in the child’s or adoptive parents’ country of origin. These loopholes expose New Zealand to a perception that we could be used as a clearing house for adoption of children from other countries.

24. Section 3 also creates practical difficulties. Where the parties are not resident in New Zealand, they cannot be assessed appropriately, and post-placement services and monitoring cannot be provided. This does not allow social workers to discharge their statutory obligation to report on the suitability of the applicant to adopt or the advisability of the adoption generally.

25. Section 17 is now primarily used by people resident in New Zealand to adopt children from countries that have not ratified the Hague Convention. This means there is not opportunity for an assessment of how well that country’s legal system protects the welfare and interests of the child. The lack of protection for children adopted by New Zealanders using this route is in marked contrast to assurances that must be sought from Hague Convention countries.

26 There are no checks on the suitability of prospective parents to adopt via the section 17 route. Child, Youth and Family have concerns about children who have been brought to New Zealand via section 17 and have been the subject of abuse by those who adopted them.

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27. The conflicts in adoption legislation concerning children from overseas will continue to

- **Expose New Zealand to the risk of being seen by other countries to ignore our obligations under the Hague Convention;**
- **Place children at risk of being removed from their country of origin without any safeguards around that removal;**
- **Allow people in other countries to use our courts to circumvent adoption practices in their own country.**

Sixteen years after these concerns were voiced to Cabinet there have been no changes to adoption law to address them.

OVERSEAS ADOPTION NEWS

Australia

Apology by Catholic Church in Australia

The Catholic Church in Australia has issued a national apology over past adoption practices that have been described as a "national disgrace". The apology was prompted by an ABC investigation into claims of abuse and trauma in Newcastle. It is believed at least 150,000 Australian women had their babies taken against their will by some churches and adoption agencies between the 1950s and 1970s.

Psychiatrist Geoff Rickarby has treated scores of affected women, and says it is a stain on Australia's history. "It sounds like some totalitarian country somewhere hundreds of years ago, but in fact it's Australia only 35, 40 years ago," Dr Rickarby said.

The chief executive of Catholic Health Australia, Martin Laverty, says he is sorry for what happened. He says the organisation is committed to righting the wrongs and wants to develop protocols to assist women affected. Mr Laverty became aware of the past practices after the ABC began its investigations.

"It's with a deep sense of regret, a deep sense of sorrow that practices of the past have caused ongoing pain, suffering and grief to these women, these brave women in Newcastle but also women around Australia," Mr Laverty said.

Mr Laverty says it is not a period to be proud of.

"The evidence that's come forward really speaks to a shameful and regretful time in the history of healthcare in Australia," he said. "It wasn't just a small number of hospitals. We now know that there were many hospitals across Australia."

Women have told the ABC there was pressure to sign adoption papers well before consent could legally be obtained, and in some cases documents were forged.

The Catholic Church's adoption agency has previously apologised for misguided, unethical or unlawful practices, after an inquiry by a New South Wales Parliamentary committee in 2000.

ABC Australia 26 July 2011

Australian Senate inquiry into past adoption practices extended

The Senate has extended until 21 November 2011 its Community Affairs Committee inquiry into the Commonwealth contribution to former forced adoption policies because of the extent and nature of the evidence received and complexity of the issues involved.

“The committee has already received over 300 submissions, but is aware there are others who still want to contribute to the inquiry”, said committee chair Senator Rachel Siewert.

This inquiry is very complex, involving many legal, historical and policy issues, and the committee wants to get it right. The committee simply didn’t have enough time with the June deadline to collect and thoroughly review the evidence”.

She advised that the information already received included reports that women were pressured, deceived or threatened in order to secure signatures on adoption consent forms, actions that may have been in breach of the policies and laws of the time. The accounts received by the committee date from the 1950s to as recently as 1987. The committee wants to obtain evidence from institutions and agencies involved in adoption, particularly during the 1960s and 1970s.

Submissions to the inquiry must be sent to or Senate Community Affairs Committee, Department of the Senate, PO Box 6100, Canberra 2600, before February 28 2011. Notes to help prepare a submission are available at www.aph.gov.au/senate/committee/wit_sub/index.htm

Europe

Recommendations of Commissioner for Human Rights, Council of Europe

Adoption of children, whether in the same country (“national adoption”) or across borders (“intercountry adoption”), raises several human rights issues. Hence it is essential that the whole process of adoption should be guided by the principle of identifying, and acting in, the best interests of the child. Measures are needed in several areas to better protect children and their rights during national and international adoption procedures. It is also important that the best interests of the child should be determined in a manner that ensures respect for all rights.

The Commissioner for Human Rights recommends that member States of the Council of Europe should:

1. ensure that children’s rights are fully taken into consideration during the whole adoption process, with particular attention being paid to the principle of the best interests of the child, including the right for the child to express his or her own views;
2. adapt national legislation and practices to the 1993 Hague Convention and the European Convention on the Adoption of Children (Revised), and ratify these conventions immediately where this has not yet been done;
3. ensure that children with special needs will be appropriately protected and cared for by prospective parents;

4. ensure that adequate programmes are in place to prepare prospective adoptive parents for both national and intercountry adoption, and that suitable and accessible support is available to them and to their child in the post-adoption phase, to minimise any risk of breakdown in the adoptive relationship;
5. review the national child protection systems to ensure that their control mechanisms also prevent, and/or detect and address abuse and neglect of adopted children during and after the adoption process;
6. prepare for the possibility of children asking to know their origins;
7. ensure that intercountry adoption is carried out only through accredited and authorised agencies and explicitly ban non-regulated and private adoptions from any country of origin;
8. establish a mechanism of regular and independent control of accredited and authorised agencies to prevent and/or address any cases of abuse or neglect and prevent improper financial gain from adoption procedures;
9. prevent any risk of children becoming stateless in the intercountry adoption process, *inter alia* by ensuring that they will receive the nationality of their adoptive parents;
10. ensure that applications to adopt are transmitted to countries of origin only in the numbers and at the time that the latter request, and that the characteristics of the applicants correspond to those requested;
11. adopt a particularly vigilant approach during and following emergency situations to prevent potential abuses and violations of international obligations;
12. provide prospective adoptive parents with accurate information as to the degree and nature of the need for intercountry adoption, as determined by the countries of origin concerned, and combat the dissemination of false information in this respect.

South Korea

Government regulations to reduce intercountry adoptions

South Korea has been an “orphan exporter” for years as thousands of abandoned children have been adopted by foreigners, mostly Americans and Europeans. In 2007 the number of domestic adoptions of orphans and abandoned children came to 1,388, exceeding, for the first time, overseas adoptions numbering 1,264. In 2009, 1,314 children were adopted by Koreans, compared to 1,125 by foreigners.

Records indicate that at least 200,000 Koreans have been adopted out of Korea in recent years and raised in other countries. Little is known about the long term impact of this loss on the Korean mothers and families, because few of them have felt confident to speak out about their experiences. Adults who were adopted out of Korea as children are now speaking out about what it meant for them to have been raised apart from their families and heritage. Many are now returning to Korea in search of family and in an attempt to connect with their sense of being Korean. They are describing their sense of cultural displacement. Their stories are

harrowing, but their enthusiasm and commitment are admirable and they are a powerful force for change.

The Korean government is now encouraging domestic adoptions by providing foster parents with financial subsidies and other incentives and the making. It has made regulations placing stricter requirements on overseas adoptions.

Information provided by Lee Hyo-sik (Korea Times) and Evelyn Robinson

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A new Adoption Act needed for the new Millennium

Family Court Judge Paul von Dadelszen in an address to a seminar *Families in Transition* organised by the Roy McKenzie Centre on 17 August 2009 commented forthrightly on New Zealand's adoption laws:

"I shall be blunt. The Adoption Act is outdated and it has become unjustly discriminatory. Since the passing of the Adoption Act, we have had the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993 (HRA) pass into law. We have also signed the United Nations Convention on the Rights of the Child (UNCROC) and incorporated that into our domestic law.

In September 2000 the Law Commission submitted to the then Government its Report No. 65, *Adoption and its Alternatives: A Different Approach and a New Framework..* Amongst the Commission's recommendations was the proposal that status should no longer be an eligibility issue. As was said at paragraph 141:

'Single persons (whether male or female) and couples (whether married, de facto or same-sex) would all be eligible to adopt a child. The suitability of a specific person or couple to adopt a particular child is a factual question to be determined on a case by case basis.'

The Commission felt that the outdated 1955 legislation needed to be modernised to reflect the norms and expectations of current society. The Adoption Act was enacted 35 years before the NZBORA. By s.19(1) of the Bill of Rights legislation, everyone has the right to freedom from discrimination on the grounds contained in the Human Rights Act, including marital status (meaning, amongst other things, married, in a civil union or a de facto relationship) and sexual orientation.

Although the provisions in the NZBORA and the HRA cannot override the Adoption Act, nevertheless, it is clear that the restrictions in the current adoption legislation run counter to Parliament's (and so society's) expectations as reflected in those two later pieces of legislation.

The idea of what constitutes a family has undergone a sea change in the last fifty years. What is commonly known as the nuclear family is no longer the norm.

Nowadays, families often include those comprising a de facto couple and children from another marriage or relationship, same sex couples, a partner who has separated and entered into a new relationship with another person but who still retains contact and is on a friendly basis with the ex-partner. A family may be made up of many generations of a wider family group living and loving together.

Yet the Adoption Act only caters for the 1950s nuclear family. This needs to change.

Pregnancy not a happy time for young unmarried mothers

When couples announce they are pregnant everyone is happy and glad. There is no mention of social workers or adopting out their firstborn or subsequent children. When a mother is unmarried suddenly there are 'options'. Do you want to keep it, it's hard bringing up a child alone, you can't provide what a child needs, what about adoption, giving the gift of life to a couple who can't have children. So the propaganda begins. Does she feel differently to a married mother, why is she capable of parting with her first born but the married woman wouldn't dream of it, both women are sharing the same experience but their experience is completely different. Instead of looking forward to the milestones of pregnancy the unmarried mother is given adoptive couple profiles to read to see who she would 'chose' to parent her baby. At 15, 16, 17 as a minor you are meant to have a general understanding of an event that you have not experienced, guided by so called 'professionals.' So as the months go by the brainwashing for the single mother intensifies. You have a whole life ahead of you; you will have more children of your own. The married mother gets phone calls from friends excited about baby's progress and what does she think it will be, and she starts nesting, buying wee outfits and looking forward whilst the unmarried one is wondering if the gift she will give her wee one will be kept by the adoptive parents so her child will know she loved him. Come birthing day the experiences are still different, the unmarried mother gets treated like a dirty slut and left for hours to labour alone, the married woman gets all the love and care. Both recovering from the experience the unmarried mum knows her baby will be gone and has BFA put on her baby's crib even though papers haven't even been signed. Other mothers look at her with sorrow and she explains she is adopting as that is best for her baby whilst they hug theirs close and are very glad it's not them but for the grace of a wedding ring. How old were you when you learned you had basic human rights under the Geneva Convention – bet it wasn't as a teen. Where are the protections for a teen, a minor, that can't vote or legally drink but can sign a permanent lifelong document – there aren't any. How did we know we were the legal guardians up until consent papers were signed when nobody did us the courtesy of informing us. The 1955 Adoption Act protects only the adoptive parents not the mother and this needs to be addressed. There are not many adoptions these days however if changing the law ensures even one mother doesn't have to go through a lifetime of suffering and grief then it is worth changing as every single citizen should be valued.

As for the mother who took her baby home from the hospital she was able to enjoy all the milestones and experiences motherhood provided. The unmarried mother didn't fare so well as the lifelong shame, grief and pain never left her.

Susan Marks

The cruelty of being denied the right to one's parentage

I was adopted almost 60 years ago, in 1951 in Wellington. The babe of an unmarried mother and disinterested father, I was given to a young married couple when I was two weeks of age.

My experience of adoption is one of distaste. A hard childhood, devoid of love, plenty of the iron rod, and frankly, just never measuring up. I am far from comfortable with the whole process of Adoption believing it to be morally wrong, with pretty much no exceptions. Strong claims, yes.

When the facility became available to get the original birth certificates I obtained mine and managed to contact my birth mother. She was quite shocked initially to hear from me, but over the next few years we chatted by phone and sent birthday cards. We did not meet face to face. She did offer, but I did not ask it of her. I asked her about my birth father but she said she preferred not to think about him because he didn't want to marry her, and it upset her to think back to that time. She also told me her present husband was uncomfortable about my unexpected 'appearance' in her life and also that she didn't want her three children to find out about me. I respected her wishes and quietly backed away and contact was stopped, and never resumed to this day.

I discovered my birth mother had given my birth father's name to the Social Welfare at the time of the adoption, but as his name did not appear on the actual birth certificate, I was unable to be given his name. It is this fact which has caused me a lot of sadness.

I believe that every person has the right to know who they are, where they originate from, why my eyes are blue and my hair dark blonde. It is a need to find out where the ancestors lived, that history is so precious, and I am denied that by Government decision.

I have been told by the authorities that I may apply to the Director-General once my birth father is dead and then I may be given his name. Every few years I write to the authorities and they do a search of all the death notices, so far he does not appear deceased.

Can you imagine how I feel, knowing that an office Clerk is pouring over the records looking for my birth father's name, when I, his daughter, is not even allowed to know it. How utterly ridiculous is this?

I have a few health issues now and am certainly of a mature and sensible age. I am a long-time wife, Mother and Grandmother of five. Surely I have every right to know my parentage? This is just a cruelty and it leaves an emotional hole in my heart. I need to pass on these things to my family as well.

I will be very interested to see if there can be some very-necessary changes to the Adoption Laws.

Letter from Donna to Fiona Donoghue, Convenor of Adoption Action 1 August 2011

Should non-Africans be allowed to adopt African children? An African viewpoint

ARISE Magazine published in its July 2011 issue a feature article *Should non-Africans be allowed to adopt African* A British/Ethiopian/Eritrean poet, writer and performer Lemn Sissay, having experienced what it's like to be an African child adopted by non-African parents, had strong views on the issue.

Should non-Africans be allowed to adopt African children?

Non-Africans should be allowed to adopt – but they should be monitored. I know good people who were adopted by non-Africans. However, I also know those who committed suicide. How many of these adoptions is one suicide worth? Where are the statistics of this private and government trade in adoption?

Many non-African adopting parents in Britain will say how difficult it is to adopt a child in their home country. The reason it is 'difficult' is that the social services have a vigorous process to protect the child and will often deem the prospecting adults unsatisfactory. This is when many adopting parents embark on a form of child tourism. If the logic stands this means these child tourists, as a group, will have a high count of parents deemed inadequate by the British system.

The non-African people who want to take babies from Africa should have a clear understanding of history. A history where taking babies thousands of miles away, where their names are changed and where they will not know the language of their country is accepted. Does this remind you of anything? The non-African fascination with and ownership of the African child was evident in the days of Empire.

Look at the story of Alemayehu, the son of the Ethiopian Emperor Tewodros II who committed suicide when imprisoned by the British. Prince Aleymayehu was placed on a ship to Britain and under the guidance of Queen Victoria he was enrolled in a boarding school in Rugby. He died in Leeds aged eighteen of suspected pleurisy after years of loneliness. The prince claimed a bloodline from King Solomon and Queen of Sheba. He was buried at the crypt of St George at Windsor Castle. I hear his name is in the crypt but they wouldn't allow his body to be buried there so it's just outside. The Ethiopian government has requested the return of his bones.

Why do you think non-Africans want to adopt African children?

Having an African baby is often a sign to non-African adopters of their philanthropic, political, familial or religious credentials. The African child is a badge of honour displaying their commitment to philanthropy, politics or religion. They feel that by extricating a child from Africa and showing them the light of their way signifies their own righteousness.

Taking a child from another culture is an act of aggression. Why has no one looked into the history of trans-racial adoption by the Europeans? Where did it come from? The British have been taking African babies for many years and many for spurious reasons. The belief system of the prospecting parents (religion) and economics are often cited as reasons to take a child

from his or her country. Some of these children are literally stolen and then laundered into the system.

Who does inter-country adoption most benefit – the child or the parent?

In many 'adoptions' the child is saving the parents because it is they who desperately need a child and not just because of infertility. They need it to fulfil who they are – as do most parents who conceive naturally. If they are not colonising the country then in this way they colonise a person. A child who has been taken from their country will in the future ask, 'Why am I here?' or else live in fear of asking that question. The answer, 'We saved you from the dark bad continent and its dark, bad, needy, poor people and tyrannical governments', will not do. Non-Africans put in a lot of work to take the African child from their continent. These searching adults are victims of their own narrative. Europeans benefit from their lost Empire more in the present day than in the past. These adopting parents must re-educate themselves. And if they do re-educate they might find that taking a baby away from its country is a statement of intent that says more about their needs than the needs of a child.

Tell us about your experience of the 1960-80s British care system?

You could call it a shadow adoption. My mother came to England to study for a short time. Unbeknownst to her she was pregnant when she arrived. Her college helped her approach the social services for short-term fostering while she studied. I was born. On her behest the social worker gave me to foster parents and said, 'Treat this as an adoption. He's yours forever. His name is Norman'. The foster parents had chosen me. I was, they said, *the chosen one*. I was to become a missionary and return one day to Africa to save the poor African babies.

At eleven years old they put me into a children's home and said they'd never contact me again. They'd had a third child of their own. I was twelve years old and took biscuits from the kitchen without asking and I came home late. They perceived this to be the devil working inside me when in fact it was simply adolescence, something they hadn't experienced. The social services held me for six years in a series of emotionally brutal children's homes. At seventeen they washed their hands of me and that's when I received my birth certificate. It had a strange name upon it – Lemn Sissay. Angry with what had happened to me, the new social worker also gave me letters from my mother dated 1968. She was pleading for me back. She said: "How can I get Lemn back? I want him to be with his own people, in his own country. I don't want Lemn to face discrimination'. Her letter was addressed to a social worker named Norman. He'd named me after himself.

I spent most of my adult life searching for her and my family and by 33 I'd found and met them all. My mother married a minister under Emperor Haile Selassie and my father was a pilot for Ethiopian Airlines who died in a plane crash in the early seventies. When people ask me where I am from I say England, Ethiopia, Eritrea and the world.

Intercountry adoption is surely better now than when you experienced it 30 years ago – for example parents go on courses to learn about how to nurture their adopted child's culture?

Once non-African parents become educated about their own culture and its historical and contemporary relationship to Africa they will be ready to decide whether taking babies is a

help to the story of Africa and its children. I fear the education of the prospecting adults is embarked upon only as a means to get the baby.

If they still decide to take an African child then yes, they should become educated in how to 'acknowledge' and 'celebrate' the 'culture' of a child ripped from its birth country. One of the ways to do this is to keep regular contact with the people and actual place/agency/birth parents or family from where the child was adopted.

Non-Africans taking African children from their country of origin is not a simple solution to a simple problem. In practice, it is a woefully inadequate conclusion to a complex problem. It's often said that love is all you need. But love without understanding is dangerous. Hitler loved Germany. Love is not *all* you need.

Put the shoe on the other foot. How would the Europeans feel if Africans started child tourism in England? They wouldn't call it adoption. They would call it abduction.

RESEARCH STUDIES

Research on donor offspring and their knowledge of their donor parents and siblings

Appeared in BioNews 619, July 2011

The largest study to date of donor-conceived people has just been published in Human Reproduction (1). Its findings show the need to address two different effects of anonymous donating: first, when should children find out that their parents used donor sperm or eggs; and second, should children ever find out the identity of their donors? The researchers, from California State University and the Donor Sibling Registry, provide definitive answers to these questions. The majority of the 751 respondents believed that early disclosure was important. Three quarters recommended that only 'known' or 'willing to be known' donors should be used.

Today, disclosure turns on the type of family. Study participants who grew up in lesbian, gay, bisexual and transgender (LGBT) or single-parent households were more likely to learn of their origins at an earlier age than those of heterosexual couples. They, in turn, had a healthier or more positive view of their means of conception. The study also found that children in LGBT households are more comfortable expressing curiosity about the donor than those of heterosexual parents, and that they are significantly more likely to express this interest at a younger age. For example, twice as many LGBT offspring expressed an interest in their donor by the age of 11.

However, according to the study, offspring of heterosexual parents are more likely to be confused about their means of conception, and these families have a tougher time dealing with disclosure and honesty. Around one quarter of respondents from heterosexual families reported an inability to discuss their origins with their social father. In many cases the fathers were not aware of the children's knowledge, or that the children were actively searching for their donors.

On the other hand, regardless of family type, most donor-conceived participants were interested in learning more about the donor and any half-siblings (those who were conceived through use of the same donor). Most frequently, the participants explained that they simply wanted to see what the donor looked like, followed closely by a desire to learn more about themselves, their ancestry and family medical history. Some had even been able to contact the donor. Participants used words ranging from 'good friend', 'friend', or 'acquaintance' to 'mentor', 'aunt/uncle' or 'parent', to describe how they felt about their donors.

The findings show the need for more openness in the donor world. There is a growing trend around the world towards granting donor-conceived people access to information about their donors.

ADOPTION AGENCIES

International Social Service (ISS)

This international not-for-profit organisation founded in 1924 helps individuals, children and families confronted with social problems involving two, or more, countries as a consequence of international migration or displacement. As an international not-for-profit organisation, it is active in around 140 countries through a network of national branches, affiliated bureaus and correspondents. Each year, it provides services to more than 50,000 persons throughout the world. ISS sees movement across borders (voluntary or forced) as amongst the most challenging issues of the 21st century. Areas in which it is involved include: prevention of family separation, child abduction, intercountry adoption and search for origins.

ISS assisted in the drafting of the Hague Conventions on child abduction and intercountry adoption. It produces a number of valuable publications. Website: <http://www.iss-ssi.org>

Sunshine House Adoption Centre

Based in Brisbane the Centre offers a range of services to natural mothers and fathers, adoptive parents, adoptees and siblings to assist with searches and reunions. The Centre has helped several families who have biological family members in NZ and welcomes inquiries from New Zealanders who have family in Australia. Suzanne Hammond, the director of the Centre, is a birth mother who can be contacted at Suzanne@bigpond.com

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Robert Ludbrook
Susan Marks – Editors