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ADOPTION NEWS AND VIEWS 2012-3

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Editorial

Private Members' Bills to reform Adoption Act 1955

After successive governments have for years treated adoption reform as a "no go" area, individual Members of Parliament from opposition parties have drafted Private Members' Bills to bring the urgent need for adoption reform to the attention of the House.

Jacinda Ardern's Bill
Jacinda Ardern, Labour spokesperson for Youth Affairs and Associate Spokesperson for Justice, has been successful in the ballot with her *Care of Children Law Reform Bill* introduced in August 2012. The Bill is prefaced by a General Policy Statement which is almost as long as the Bill itself. It makes the point that:

> "Parliament has an obligation to ensure that the law is kept up up-to-date. This obligation is of even greater importance for legislation relating to the care of children."

The Statement goes on to criticise the failure of government to implement the recommendations of the Law Commission's 2000 report *Adoption and its Alternatives*. That report made more than 100 recommendations for adoption reform including a proposal that adoption law be incorporated with the laws relating to children's guardianship, day-to-day care (custody) and contact in an omnibus Care of Children Act. A Care of Children Act was passed in 2004 but there was not at the time, nor has there been since, any attempt to incorporate adoption law.
The General Policy Statement in the Ardern Bill is critical of three aspects of the Adoption Act:

- the Adoption Act does not treat the welfare and the best interests of the child as the first and paramount consideration;
- an adoption order severs the child's relationships with the child's parents and the members of his or her whanau or wider family and this places the interests of the adoptive parents ahead of those of the child;
- laws passed in the last decade give recognition to the increasing number of children born as a result of assisted reproduction procedures and surrogacy arrangements but the rules as to parenthood in these new laws run contrary to the reassignment of parenthood in the Adoption Act.

The Ardern Bill, if passed into law, would require the Law Commission to update its 2000 report and to report to the Minister of Justice and to Parliament with recommendations for change and, in addition, to draft a Bill implementing the proposed changes. It would then require the draft Bill to be introduced in the House and set down for its first reading.

Comment
While the Ardern Bill serves a useful purpose by highlighting some of the deficiencies of current adoption law it does not reform either the Adoption Act or the Care of Children Act. Parliament does not have the power to require the Minister of Justice to give priority to adoption reform and the Law Commission cannot be required by the Minister to act on the direction of the Minister. Furthermore the Law Commission advises on policy matters and may lack the resources and expertise to draft complex new adoption laws. Moreover the Ardern Bill would delay any reform to adoption law for at least another two years. It overlooks the fact that, in 2004 and 2007, the Ministry of Justice drafted Cabinet papers containing detailed proposals for adoption reform, based largely on the Law Commission proposals. If the will was there, Ministry staff could draft the necessary changes to adoption law quite speedily.

While the Ardern Bill is likely to be given its first reading early next year there is a risk that it will not survive on technical grounds. It will provide an opportunity for Adoption Action and others to draw to public attention the urgent need for adoption reform.

Kevin Hague Bill

Kevin Hague of the Green Party (with the assistance of National MP Nikki Kaye) has grasped the nettle of drafting amendments to the Care of Children Act along the lines of the Law Commission's recommendations. He has gone further and drafted changes to take account of the problems resulting from incompatibilities between adoption law and the laws regulating assisted reproduction, including surrogacy. His Care of Children (Adoption and Surrogacy Law Reform) Bill was lodged in Parliament as a proposed Member's Bill in October 2012 but will not progress unless it is selected in the ballot. If that happens, it will be introduced to Parliament and given its first reading. Mr Hague and Ms Kaye have drawn on the knowledge and experience of a number of adoption experts in drafting the Bill and they are to be congratulated on tackling the difficulties of reconciling the principles of the Care of Children Act with the very different attitudes and values enshrined in the Adoption Act passed almost half a century earlier.

Robert Ludbrook

New Zealand News

Statement from Kevin Hague MP

Background to Care of Children (Adoption and Surrogacy Law Reform) Amendment Bill

I would like to thank Adoption Action for giving me the opportunity to explain some of the background to my Member's Bill, which is currently in the ballot awaiting the good fortune to have its number drawn as places become available on the parliamentary order paper. As I am sure readers of this newsletter will know, The Adoption Act 1955 is well and truly obsolete, and reform efforts to date have all come to naught. Readers will also be aware of the Law Commission's excellent report that, sadly, was not sufficient for the government of the day to incorporate its recommendations into the Care of Children Act as envisaged. My Bill repeals the Adoption Act (and the Intercountry Adoption Act) and very substantially amends the Care of Children Act to provide a modern regulatory framework for adoption that places the best interests and wellbeing of the child at the heart of all decisions, and provides for open adoption to be the standard used in New Zealand.

I had not previously had a particular interest in adoption prior to coming to Parliament (besides hearing Robert Ludbrook speak about it on several occasions over the years), but in 2009 I inherited a Member's

Bill that my colleague Metiria Turei had in the preceding parliament, to provide for adoption by de facto and same sex couples, one of the many problems with the existing statute. I didn't have that Bill in the ballot for long before Adoption Action and others persuaded me (I didn't need much, to be fair!) that the problems with the existing law were much greater, and that what was required was comprehensive overhaul or replacement, rather than piecemeal reform.

My first actions were to analyse the history of reform efforts over the years, and what became apparent to me was that the main reason successive governments had failed to act was that they were concerned political opponents would use the issue against them. However, I extensively canvassed other members of parliament and found that there was a high level of awareness that the law was overdue for replacement, and also a cautious willingness to work together. I therefore proposed to colleagues in 2010 that a cross-party group be established to work on overhauling the law. The group that was formed has set the foundation for the current Bill.

In the current term of Parliament National MP Nikki Kaye and I have continued the work of the cross-party group, and have used the original Law Commission report and advice prepared for an earlier government about implementing its recommendations from the Ministry of Justice to pull together the current Bill. It also provides a modern framework for adoption by commissioning parents in altruistic surrogacy arrangements, a scenario unforeseen in 2001, let alone 1955. While the Bill stands in my name, that's because it has to have one name on it, and for various reasons we thought it best to be mine. The Bill is the work of a great many people, and I have been particularly grateful for Nikki's contribution and for the huge assistance from Adoption Action and a number of lawyers and academics with a particular interest in these areas.

This Bill is a much larger and more complex Bill than those usually tackled through the Members Bill process. It is also an area of law that has profound impacts on people's lives and arouses very strong emotions. Despite all the care that has gone into drafting the Bill, it is certain that I will have made errors and also made judgment calls that others disagree with. Therefore what I hope will happen (and it has been happening already) is that people will let me know how the Bill can be improved, and while it sits in the ballot waiting to be drawn I will continue to refresh it. Of course, there will be another opportunity if the Bill is drawn and gets referred to a select committee. To that end, I'm also committed to working with all parties in Parliament to establish as much support and consensus as I can.
The purpose of the Bill is to reform both adoption and surrogacy law in New Zealand and the main thrust of the Bill is summarised in the prefatory General Policy Statement:

General Policy Statement
The purpose of this Bill is to reform both adoption and surrogacy law in New Zealand.

The need for adoption law reform

New Zealand's current adoption law is archaic and needs to be updated to reflect more modern thinking and other law concerning children and families.

In the 1950s, when the Adoption Act 1955 was drafted, New Zealand society encouraged single mothers to give their child up for adoption, reflecting the prevailing view of the day that children were best brought up in a family home with a married couple. Those single women who refused to give up their child were stigmatised as selfish or immoral. Single mothers who did give up their child for adoption were seen as being responsible, and also fortunate – they were being given a second chance to forget about their transgression (conceiving a child out of wedlock) and move forward with their life. Single women were often sent away from their homes for the term of their pregnancy, often staying in institutions that specialised in providing accommodation for unmarried mothers. Often, these institutions would actively discourage women from keeping their child. Very little support was provided, publicly or privately, to women who wished to keep their children. Fully informed consent was not available for birth mothers. Children were viewed as being under the authority and control of their parents and were not recognised having individual rights.

Ensuring that the best interests of the child are at the heart of the law

The Law Commission published a report in September 2000 detailing a series of proposed reforms for adoption and guardianship, along with a proposal that reformulated adoption laws and other laws governing the guardianship and care of children be incorporated in a Care of Children Act. A Care of Children Act was passed in 2004 reforming the laws relating to custody, access and guardianship but no changes were made to adoption law. The result is that the Adoption Act 1955 sits uneasily with the Care of Children Act 2004. The Bill seeks to remedy this problem, and to ensure all arrangements providing for the care of children in New Zealand are found in one statute and the law is unified. Accordingly, the Bill is an amendment to the Care of Children Act to provide for adoption and surrogacy arrangements, consistent with the Act's modern framework, which requires the Court to decide whether the best interests of the child will be served by granting an applicant or applicants an adoption order.
The Bill ensures that adoption legislation is consistent with other family legislation so that parties to an adoption benefit from the same protections. For example, the Bill requires the appointment of a lawyer for the child unless the appointment would serve no useful purpose. Additionally, the Bill ensures the child's views on the adoption are ascertained and that the Court must take those views into account.

The shift from closed adoption to open adoption

Under the Adoption Act 1955 closed adoptions were highly favoured as a form of adoption. Under the Act, it was possible and usual practice for adoptive parents to have their identity concealed from the birth parents and vice versa. This was viewed as desirable, as it blanketed the stigma associated with both illegitimacy and infertility. Later legislation also allowed adoptive parents to keep their identities secret. Birth mothers were often told they were not permitted to attempt to find their child.

Under closed adoption, once a child is adopted the birth record is sealed and a new birth certificate is issued, naming the adoptive parents as the only parents of the child and changing the child's names to names chosen by the adoptive parents. This has been widely criticised as creating legal fiction by obscuring the factual history of the child's life. This culture of secrecy has been partially eroded by the Adult Adoption Information Act 1985, which provides a process by which adopted children at age 20 can view their initial birth certificate and seek to make contact with their birth parent(s). More recently (since the early 1980's) there has been a marked increase in the number of adoptions that provide for continuing contact between the adopted child and the birth parents. Today, most adoption arrangements make provision for some form of communication from the beginning of the adoption arrangement.
However, there is no legal backing for such arrangements and no means by which they can be enforced by either party or varied if the circumstances of the parties or of the child change. Courts have often struggled to reconcile open adoption with the terms of the Adoption Act, which provides mechanisms for erecting legal walls between the birth parents and the child.

This Bill changes the law to ensure that in all future adoptions there will be a parenting plan providing for contact with birth parents and/or exchange of information between adoptive parent(s) and birth parent(s) unless such arrangements are impracticable or contrary to the child's welfare and best interests.

All possible adoptive parents to be considered

The Act reflects 1950's thinking about the categories of people who are suitable to be parents. This Bill seeks to ensure that applicants who wish to adopt do not face automatic ineligibility on grounds of age, sexuality, gender or relationship status. This ensures the widest possible pool of applicants have the opportunity to be considered as adoptive parents.
However, that does not mean that all people will be successful in being granted an adoption order. Instead the Bill provides a process that enables social workers and the Family Court to determine

whether the welfare and best interests of the individual child will be served by the making of an adoption order.

Intercountry adoptions

Since the passing of the original Adoption Act 1955, further legislation was enacted in the form of the Adoption (Intercountry) Act 1997, in order to address issues created by the adoption of children from other countries. This Bill repeals the Adoption (Intercountry) Act 1997 and incorporates its provisions into the new statute, enabling the Bill to function as a comprehensive piece of legislation for adoption cases.

Surrogacy law

Surrogacy arrangements that are not entered into for the purpose of commercial gain are currently not illegal by reason of the Human Assisted Reproductive Technology Act 2004. However, couples or individuals who choose to have a child through an altruistic surrogacy arrangement have to adopt that child in order to obtain legal parenthood of the child born as a result of the surrogacy arrangement even where the child has been conceived with their ovum and/or sperm. The Bill sets out the requirements with which a commissioning parent or parents must comply when entering into an altruistic surrogacy arrangement, and when seeking to have that child legally recognised as being a part of their family.

There are also instances where a child is conceived and born through a surrogacy arrangement in other countries. To this end, the bill sets out the conditions on which a parent or couple may obtain a New Zealand adoption order in respect a child who is born in consequence of an overseas altruistic surrogacy arrangement.

The Bill also addresses situations where a child is born in an overseas country, and the parents of the child as recognised in that country may be different from the parents as recognised under New Zealand law. To this end, the Bill amends the Status of Children Act 1969.

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Adoption Action Inc Claim to Human Rights Tribunal to go ahead

Last year Adoption Action brought a claim to the Human Rights Tribunal on the grounds that the Adoption Act 1955 discriminates against certain categories of people on the grounds of their sex, marital status, religious denomination, age, disability and sexual orientation. Adoption Action indicated when filing the claim that it did not want the claim referred to mediation because of the delay that would be likely to result. It was later persuaded by the Crown that there were prospects of achieving an agreed settlement if that matter were referred to mediation. Two mediation sessions were held and a proposal was put by Adoption Action. The Crown asked for further time to consider this, but after a delay of nearly five months announced on 29 September that it would not accept the proposal. Details of the proposal cannot be given because of the confidentiality attaching to mediation negotiations.

The claim is likely to proceed to a hearing towards the middle of next year. If it is successful on some or all of the grounds, the Tribunal can make a declaration that the Adoption Act is inconsistent with the government's obligations under the Human Rights Act. Adoption Action's view is that the government, like every individual New Zealander, should not by its acts or omissions maintain adoption laws which breach the anti-discrimination provisions in the Human Rights Act and the New Zealand Bill of Rights Act.

Statistical information re adoptions for 2011/12

Domestic adoption orders made by NZ Family Court

122 adoption orders were made in 2011/12, compared with 152 in 2010/11. By way of comparison, 640 orders made in 1994/95.

21 adoption orders were made in favour of non-relatives of the child in 2011/12, compared with 53 in 2010/11 and 124 in 1994/95.

39 adoption orders were made in favour of relatives of the child in 2011/12, compared with 50 in 2010/11 and 146 in 1994/95.

There were no adoption orders made in favour of foster parents of the child in 2011/12, compared with 2 in 2010/11 and 12 in 1994/95.

14 adoption orders were made in favour of a parent and the parent's spouse or partner in 2011/12**,** compared with 15 in 2010/11 and 240 in 1994/95.

Intercountry adoption orders made by NZ Family Court
28 adoption orders were made in respect of children habitually resident overseas in 2011/12. Of these, 19 were adoptions by relatives and 7 by non-relatives. In 2010/11, there were 32 intercountry adoptions (23 by relatives) and, in 1996/97, 70 such adoptions (60 by non-relatives).

Intercountry adoptions by New Zealanders where adoption made overseas
Intercountry adoptions where the adoption is made overseas and recognised in New Zealand as having the same effect as a New Zealand adoption order may be:
- an adoption by a New Zealander of a child resident in a country that is a party to the Hague Convention on intercountry adoption recognised under s15 Adoption (Intercountry) Act 1997; or
- an adoption by a New Zealander of a child resident in a country that is not a party to the Hague Convention recognised under s17 Adoption Act 1955.

Intercountry adoptions by New Zealanders where adoption was made overseas
398 intercountry adoptions by New Zealanders were made overseas with the child being brought to New Zealand in 2011/12**.** Of these, 71 were adoptions of children from a Hague Convention country while 327 were adoptions of children from non-Hague countries. The majority of these involved children or young people from Samoa. The figure for 2010/11 was 238, a considerable reduction from the 1998/99 figure of 814.

Ministry of Justice Review of Family Court 2011/12

In August 2012 the Ministry released a Cabinet Paper setting out its proposals for change following the major Family Court Review undertaken over the previous 11 months. Although adoption cases are part of the Family Court's business, the Cabinet paper contains no proposals for reform of adoption law or procedures despite government's failure to meet its human rights obligations in a number of respects. One can only assume this was because the aim of the Review was to reduce the cost to government of Family Court services. Adoption cases are typically low cost because, unlike disputes over the care and custody of children, there is no ability for the Court to refer parties to counselling, to appoint a lawyer to represent the child, or to call for a psychological or cultural report. A Bill to amend the Care of Children Act 2004 was given its first reading on 4 November 2012 and has been referred to the Justice and Electoral Select Committee. It amends seven other family law Acts but makes no changes to the Adoption Act.

Ministry of Justice Annual Report 2011/12

This report published in October 2012 starts with a self-congratulatory statement from the Chief Executive:

> "If there was a theme to the year, it was about modernising the Ministry and justice system: putting in place the foundations that will lead to substantially better services, outcomes and value for New Zealanders. We are building on areas of strength – including sector collaboration and success and delivering Treaty settlements and policy change – and shifting our focus to operational change and service improvements for our customers."

Later the report states that:

> "To maintain the civil and democratic rights of New Zealanders, [the Ministry has] ensured that there is a credible legal basis for New Zealand's civil and democratic systems and that New Zealand responds appropriately to international laws and conventions."

Comment on Annual Report

There is no reference to the need to rewrite adoption laws which are 57 years old and completely out of touch. Much is made of changes to the Bail Act 2000, which is only 12 years old. These changes will result in more people facing charges being deprived of their liberty and more under-17s ending up in police cells or other places of detention.

The statement that the Ministry ensures that NZ responds appropriately to international conventions conveniently omits to mention that it has failed to deliver on its assurance, given to the United Nations Committee on the Rights of the Child in 2003, that it was about to embark on a major revision of adoption laws to bring them into line with the Convention on the Rights of the Child, despite a recommendation from the Committee in February 2011 that it resume work on adoption reform.

New Zealand Network Against People Trafficking (NZNAPT)

A new organisation has been set up with the aim of helping to prevent all forms of people trafficking including working in the areas of prevention, protection, prosecution, recovery and reintegration. Its particular focus will be on New Zealand and the Pacific, while recognising the global links and forces that impact on trafficking. Anyone interested in learning more about NZNAPT should contact Alan Bell at www.ecpat.org.nz

Overseas News

United Kingdom

Judges express concern that adoption process is being rushed

In March 2012, the UK Education Secretary, Michael Gove, promised to institute a new approval process to halve the time taken to place a child with an adoptive family to six months, and introduce "scorecards" to hold local authorities to account over delays.

Several High Court Judges have responded with claims that children in care are being threatened with separation from siblings and other family members because local authorities are attempting to rush through inappropriate and premature adoptions. Judge David Pearl, a former president of the Care Standards Tribunal and a deputy High Court judge who has spent 15 years dealing with care cases, is quoted as saying:

> "What I think has happened is that local authorities have taken government policy as saying adoption is the only solution. That cannot be right because it ignores the welfare of the individual children involved. There are some cases where [adoption] is not in the best interests of the children: where it would be far better for the children to remain in long-term foster care, with continuing contact with members of their birth family. One of the concerns is that the local authorities are anxious to move towards adoption because it is the cheapest option"

The Department for Education countered these crticisms, saying:

> "It is unacceptable that the average time between a child entering care and joining their adoptive family is one year and 10 months. Delay can cause irrevocable harm. We are speeding up the adoption process and undertaking urgent reforms to make it as easy as possible for people to foster and adopt, so that more children in care find loving and stable homes. We know adoption is not suitable for all children. The child's welfare is of paramount consideration for local authorities, and decisions are made depending on the interests of each individual child."

The number of children adopted in Britain has increased by 6% since last March, according to the Office for National Statistics nearly two-thirds of those adopted were aged between one and four, up from 58% the year before.

Amelia Hill *The Guardian*, 18 November 2012.

British Association of Adoption and Fostering

The *British Association of Adoption and Fostering* (BAAF) is the UK's leading non-government organisation providing advice and support for all persons affected by adoption and fostering. BAAF promotes the highest standards of practice in adoption, fostering and childcare services in social work, health, legal and other professional bodies on behalf of children separated from their birth families. It aims to increase public understanding of the issues and to act as an independent voice for children, informing and influencing policy-makers, all those responsible for children and young people, and public opinion. BAAF works within a children-orientated, multi-disciplinary and anti-discriminatory framework.

BAAF provides a comprehensive database of information on locating and searching adoption records. It also provides expert guidance for adoptive parents and families on meeting the needs of children of black, asian or mixed-heritage background. More information is available on the BAAF website www.baaf.org.uk

Australia

Australian Commonwealth

Date set for apology

It has been announced that the Australian Commonwealth Parliament will be making an apology for past adoption policies and practices in February or March 2013.

Australian academics raise concerns over intercountry adoptions by Australians

Senior academics from nine Australian universities, including the University of New South Wales and the University of Melbourne have written to the Commonwealth's apology reference group, urging it to consider the growing research showing that the "loss and pain suffered by overseas birth mothers is at least equal to that of mothers in Australia.".

Adoptees from countries including New Zealand, the United States and South Korea have also sent a letter to the reference group demanding an apology, saying that, as intercountry adoptees, they "have suffered similar hardships including displaced belonging; disempowerment in relation to access to adoption information and their identity, and a profound sense of loss." Professor Denise Cuthbert, dean of graduate research at RMIT, stated that international studies showed birth mothers were often separated from their children because they were single, widowed, divorced or poor. "The federal government failed to satisfy itself that women in sending countries were relinquishing their children with free consent in a way it now insists Australian women do." Professor Cuthbert said "No immigration can take place without the Commonwealth, so it has direct involvement."

More than 10,000 children have been adopted Into Australia since the 1970s from countries such as China, Ethiopia and the Philippines. Of the 384 adoptions of children in 20I0/II, 56 per cert involved overseas children. South Korea has sent 2282 children to Australian parents since 1987, making it one of the top countries of origin.

ABC encourages people affected by adoption to share their stories

ABC Open (an offshoot of the Australian national radio and television broadcaster) sets up projects to get people to share their stories, photos, videos and experiences. In October 2012 it initiated *Separated,* a photogallery of mothers and children separated by past policies and practices of forced adoption. While the gallery is primarily for those affected by Australian policies, there are many people now living in Australia who experienced forced adoption outside that country. Contributors are asked to specify which country they were living in when they were separated from their mother or child. As well as photos they may contribute a personal story of not more than 300 words.
Go to https://www.open.abc.net.au

Queensland

On 27 November 2012, the Queensland Parliament issued a formal apology to people affected by past forced adoption policies and practices in that State. The apology was given by the Queensland Premer, Campbell Newman, who stated that:

> "the policies and practices of forced adoptions by successive Governments were wrong and should never have occurred. This is an extremely sad chapter in the State's history, which has had profound and lifelong impacts for many mothers, fathers, sons, daughters and their families."

Victoria

Apology for past adoption practices

On 25 October 2012, the Victorian Parliament at a joint sitting of its upper and lower houses made an apology to those whose lives have been affected by past adoption policies and practices. One thousand children's shoes were laid on the steps of Parliament building in recognition of the number of children believed to have been affected. At the same time, Premier Ted Baillieu announced that changes would be made to Victoria's Adoption Act 1984, which has fallen behind adoption laws in other States and Territories. While Victoria was the first State in Australia to allow adult adopted persons to access their original birth certificates and associated information, it is currently the only State which does not allow mothers to access information about their children placed for adoption.

Now all Australian States and Territories, except the Northern Territory, have made an apology to those who have suffered from unacceptable adoption policies and practices.

Eastern Australian States

Apology by Salvation Army

In September 2012, Salvation Army branches in New South Wales, Queensland and Australian Capital Territory apologised for its role in the policy of forced adoptions and the impact this policy on the many mothers, fathers, and adopted persons who were affected.

The Salvation Army provides a Family Tracing Services in respect each of these States and Territories.
Salvation Army (Australia Eastern Territory)

Media Release 19 September 2012 email pso@aue.salvationarmy.org

Europe

France is about to legalise gay marriage and will remove the words “mother” and “father” from all official documents and replace these terms with the words “parent” or “parents”. The change will also give equal adoption rights to same-sex couples. The legalisation of gay marriage was an election pledge by French President Francois Hollande.

The Telegraph (UK) 14 September 2012.

Vietnam

One aspect of the Vietnam war is not well known. In 1975, when the war was ending, in what came to be known as “Operation Babylift”, thousands of Vietnamese children were removed from their homeland and put up for adoption in Western countries. One of these children was Cath Turner who was adopted by an Australian family. She now works as New York correspondent for Al Jazeera, and has completed a documentary in which she recounts her own experiences and talks to some of the others involved. Cath Turner found her birth mother in 2003 and has had to juggle two loving families. Other children removed under Operation Babylift were not so fortunate. The effects on them were devastating because the lack of reliable records and the dislocation caused by the war has made it impossible for them to trace their original families. Many Vietnamese parents have no idea what has happened to their sons or daughters.

For the documentary see
www.aljazeera.com,/programme/aljazeeracorrespondent/2012/10/201210101123347249.html

Africa

Adopting from Africa, saving the children?

The veneer of philanthropy regarding intercountry adoption is beginning to fade as the issues involved are more broadly and better understood, and a dangerous connection to child trafficking becomes more evident. It is worrying for Africa, then that it has been dubbed the “new frontier” for intercountry adoption by the African Child Policy Forum (ACPF). Despite global rates of intercountry adoption falling to a 15-year low, Africa has experienced a threefold rise in the last eight years. Demand outstrips supply with 50 prospective adopters for every available child. Between 2003 and 2011, more than 41,000 African children were moved overseas. Ethiopia now ranks second only to China in the number of children removed from their home country for the purposes of intercountry adoption.

It is estimated that there are 58 million orphans on the continent. While the proportion that are adopted may be small, it is clear that the trends are significant enough for government officials from over 20 African countries to have convened a meeting in Addis Ababa, Ethiopia in May 2012. What is shocking is how these orphans are characterised. According to Save the Children, over 80% of children in orphanages around the world have a living parent, and most are there because their parents cannot afford to feed, clothe and educate them. In Ghana, the figure is as high as 90%. In Ethiopia, where the government recently attempted to trace the families of 385 children from 45 institutions, the families of all but 15 children were located. When seen through this lens, the African “orphan” crisis is more of a crisis in family support. Poverty is not a reason to remove a child from his or her parent, yet this is exactly what is driving Africans to give up their children, in what they perceive are temporary arrangements which will give their children stability and an education before returning home.

There is no word for adoption in most African languages and the concept is greatly misunderstood. Many African family systems have traditionally favoured informal care of children by extended family or community, with no legal basis for the arrangement. Adoption agencies are accused of profiting from this misconception as parents are persuaded to sign away their children. This is exemplified by the situation in

Ethiopia. It could soon become the leading sending country in the world, as adoption agencies there are accused of soliciting children directly from families. Women are coerced into relinquishing their new-borns. According to Dutch NGO *Against Child Trafficking,* the adoption process in Ethiopia "is riddled by fraud and other criminal activities. Parents are stated to be dead when they are not, dates of birth are falsified, false information is provided to the courts." While Ethiopia has made progress in the past two years by placing 700,000 vulnerable children into alternative care, such as community placements and domestic adoption, family reunification has still not been a priority, and impoverished parents are coerced into giving up their children in what is dubbed an "orphan creation" industry.

The finances this industry commands shows why it is so hard to suppress. According to the Bureau of Consular Affairs in the United States, adoption service providers charged prospective parents up to $64,357 for processing an intercountry adoption in 2011. One UNICEF representative commented that running an orphanage in Ghana had been transformed into a lucrative "business venture", beyond the realms of philanthropy. In stark contrast is the amount of money needed to keep a mother and child together: it has been suggested that in Addis Ababa this would total $15 per month.

Elizabeth Willmott Harrop for *Think Africa Press,* 6 August 2012, email: editor@thinkafricapress.com

Court decisions

English High Court

Overseas surrogacy where surrogate mother could not be found to give consent

In a recent English High Court decision, a male couple were awarded legal parenthood of twins born through an Indian surrogacy arrangement despite the fact that the surrogate mother could not be traced to give her consent. Under UK law, the intended parents under a surrogacy arrangement must obtain a parenting order to become the legal parents of the child and the consent of the surrogate mother must be obtained no earlier than six weeks after the birth of the child. There is an exception where the mother cannot be found. The High Court accepted that the intending parents had taken all reasonable steps to obtain the mother's consent.

An embryo created with the sperm of one of the men and the egg of an anonymous donor was transferred to the womb of the surrogate mother. The men had paid 17,000 pounds to the Indian clinic for the procedure and the surrogacy agreement. It was a condition of the agreement that the intending parents would not meet the mother.

The High Court granted parental orders in favour of the two men on the basis that the welfare of the twins was the paramount consideration. Justice Baker said that the case was a warning of the risks in foreign surrogacy arrangements and that others considering such arrangements should establish clear lines of communication with the surrogate mother prior to the birth of the child.

D and L (Surrogacy) [2012] EWHC 2631 (Fam) reported in BioNews 676, 8 October 2012

New Zealand Family Court

Grandparent adoption granted where mother's new husband rejects her child

This case was about K, a six year old child whose father had died and whose mother had brought K from Fiji to New Zealand and had remarried here. Her new husband refused to have K in their household, got angry if the child visited, and did not want the boy to have anything to do with the seven month-old child of their marriage. The application to adopt was by the K's paternal grandparents, with whom K had been living for some time. The Court heard evidence that, in Fijian Indian culture, another family will not accept a child who is not a blood relative and, in this case, the father's rejection of K was understandable in cultural terms. The mother visited the grandparents

home regularly and had contact with K. She supported the making of an adoption order. The Judge accepted there was a strong cultural component in the adoption

The adoption was initially opposed by the Child, Youth and Family social worker on the grounds of the grandparents' health problems and because the child had an existing family network and was not in need of being adopted. In the end, CYF took a neutral position. The Judge took into account earlier Court decisions that indicated that Courts should be cautious in making adoption orders in favour of relatives which would extinguish one side of the family. A factor in the case was that a guardianship order would not give K NZ immigration status. The Court accepted that adoption law was evolving with a greater acceptance of other cultural values which recognised the important role of grandparents in the upbringing of a child and where the distortion of family relationships created by adoption were not so apparent. In making an adoption order, the Judge was confident that the child's relationship with the mother, although extinguished legally by an adoption order, would continue and that the mother would have regular contact with K. The Judge was also satisfied that the grandparents' health problems were not so serious as to preclude the making of an adoption order and that the primary purpose of the adoption was not to gain immigration status for K.

Re K Manukau Family Court [2012] NZFC 5894, 7 August 2012.

Tongan cultural practices

While there is no specific power in the Adoption Act for a judge to direct a cultural report, it is undoubtedly within the discretion of the judge to do so. A cultural report was ordered on an application by an uncle and aunt to adopt a 19 year old Tongan boy. The report stated that in Tongan culture there was great emphasis on "kainga" as a co-operative societal system with mutual sharing of the care of children between members of the kainga or extended family. Adoption was seen as a part of that mutual sharing of duties involving sharing of parental responsibility for the care of children of family members.

Re SK [2012] NZFC 4798, 18 July 2012.

Child gestated by overseas surrogate mother

This case illustrates some of the obstacles facing the genetic parents of a child born to an overseas surrogate mother. The female applicant had been advised by medical specialists that a further pregnancy would pose a serious risk to her life. Having no family member or friend in New Zealand who could act as her altruistic surrogate, she and her husband arranged with a woman living in California to carry a child for them. The child was conceived with an embryo created from the mother's egg and the father's sperm. The applicants remained in constant contact with the surrogate mother during the pregnancy. They travelled to California arriving shortly after the birth, and immediately took over the care of the baby. A parentage order declaring them to be the child's mother and father was made by the Supreme Court of California. The surrogate mother had consented to the adoption. Although the baby was a US citizen, she was allowed to enter New Zealand under a visitor's visa. In considering an adoption application by the genetic parents the Family Court had to consider several issues.

Did the Adoption (Intercountry) Act 1997 apply?
The United States is a party to the Hague Convention and the Court had to decide whether the child was habitually resident in that country. The applicants were New Zealand citizens: they had always intended to take the child back to New Zealand and did so as soon as the necessary immigration and other formalities had been completed. The Court was satisfied that the child was habitually resident in New Zealand and accordingly the Hague Convention did not apply.

Was there compliance with s6 Adoption Act requiring social worker approval for keeping the child in the applicants' home?
The applicants had been assessed as suitable by Child, Youth and Family and a certificate under s6 had been issued but had expired a month after the birth of the child under s6(2). The applicants argued that s 6(1) approval was not needed until the child arrived in New Zealand and that their care of the child in

California was authorised by the parentage order made by the California Supreme Court. The Court accepted that any breach of s6 was technical and that by reason of s6(3) the Court was able to make an adoption order despite the technical breach.

Had there been a breach of s25 Adoption Act prohibiting payment for adoption?
The paternal grandfather of the male applicant had paid money to the Californian agency to cover the surrogate mother's expenses and to compensate her for her discomfort, inconvenience and pain and suffering in carrying and giving birth to the child. The Court was satisfied that s25 had not been breached because the applicants had made no payment to the surrogate mother and the payments made by the grandfather were not for the adoption but for the surrogate mother's services in carrying the child for nine months. The Court was satisfied that the money paid was reasonable and that the arrangement was not a "commercial surrogacy" arrangement within the meaning of s14(3) of the Human Assisted Reproductive Technology Act 2004.

Would an adoption order be in the best interests of the child?
The Court had no hesitation in finding that an order would be in the best interests of the child. Refusal of the order could result in the child being deported on the expiration of the visitor's visa and the applicants would then have to leave New Zealand for some other country in order to continue their parental relationship with their child.

Re C [2012] NZFC 5466, 20 June 2012.

Further problems that can occur with overseas surrogacy arrangements

In this case a Thai surrogate mother gestated a child which the commissioning parents believed had been conceived with an embryo formed with the sperm of the intending father and the ovum of a niece of the intending mother. The couple travelled to Thailand for the birth of the child and cared for the child from birth. Immigration New Zealand required to see the results of DNA tests showing the intending father and the niece were the child's genetic parents before granting an entry visa for the child. The test results excluded both the intending father and his niece as the child's parents. The child's true parenthood could not be established and the overseas clinic was unhelpful. The Court decided that the child (who had lived in Thailand since the birth a year earlier) was not habitually resident in New Zealand, despite both commissioning parents being resident in New Zealand, and despite their intention to bring the child to this country. Thailand being a party to the Hague Convention, the Court ruled that any adoption would have to proceed according to Hague Convention requirements. This case is a reminder of the risks inherent in relying on surrogacy services provided by a clinic based in an overseas country.

Re AT [2012] NZFC 2015, 8 June 2012

More lenient attitude of Courts towards "immigration adoptions"

An adoption order was made In this case despite the opposition of the social worker. The eight year old boy had entered New Zealand on a visitor's visa. Neither applicant had permanent residency in New Zealand. The male applicant was here on a temporary work permit and the female applicant had serious health problems. Despite these difficulties, the Court granted an adoption order. There appears to be a greater willingness on the part of Family Court judges to make adoption orders even where a desire to secure immigration status for the child is an important motive for the application.

Application by K & K [2012] NZFC 5060

Adoption Views

The problem with saving the world's 'orphans'
E J Graff, associate director at Brandeis University's Schuster Institute for Investigative Journalism

It's the time of year when we are deluged with appeals to save the world's millions of orphans. On TV, in the newspaper, in our mailboxes, we see sad-eyed children who are starved for food, clothes, and affection. Surely only Ebenezer Scrooge (or his Seuss-cat incarnation, the Grinch) could turn away with a hard heart. But when these appeals are combined with glamorous examples like Angelina Jolie and Brad Pitt's world adoption tour, would-be humanitarians can arrive at a dangerous belief that Western families could – and should – help solve this "world orphan crisis" by adopting.

It is true that, sometimes, international adoption can save a child's life. But be very careful. By heading to a poor, undeveloped, or war-torn country to adopt a baby, Westerners can inadvertently achieve the opposite of what they intend. Instead of saving a child they may create an orphan. The large sums of money that adoption agencies offer for poor countries' children too often induce unscrupulous operators to buy, defraud or kidnap children from families that would have loved, cared for, and raised those children to adulthood.

For further details see www.brandeis.edu/investigative. This website includes country by country reports on countries that offer children for adoption by western countries.

Lesbian couple are critical of New Zealand's adoption laws

Janine Chester and Anja Otto adopted Tia, an 11 month old girl, while living in Hackney, an inner- London suburb, after failing to conceive through IVF. Hackney Council had put up posters encouraging same-sex couples to come forward. The two women, who had lived together for ten years, settled in New Zealand and made inquiries about adopting a second child together. They were shocked to discover that they could not do so under New Zealand law. They see themselves as have been lucky to have been able to adopt Tia in a country that does not discriminate. "I have the perception of New Zealand as being quite forward" commented Anja "Why keep a law from 1955? We are in 2012.".

Despite their inability to adopt a child as a couple in this country, Janine and Anja are accepted in this country as being Tia's legal parents. Under Section 17 Adoption Act 1955 overseas adoptions are recognised as having the same effect as a NZ adoption order.

From *NZ Adoption shock for lesbian couple* by Kathryn Powley, New Zealand Herald News, 17 June 2012.

Adoption Research

Australian Institute of Family Studies research into Past Adoption Experiences

A 2012 AIFS research study surveyed a large number of mothers and adoptees and smaller numbers of adoptive parents and fathers to gather information about past adoption practices. The 505 mothers surveyed identified a number of negative experiences which continued to affect them. These included:

- Harmful treatment by health professionals and hospital staff during the birth process
- Differential treatment from that received by married women
- The administration of drugs which impaired their capacity to make sound decisions
- Lack of capacity to give or revoke consent
- Not being listened to about their preferences
- Being made to feel unworthy or incapable of parenting - particularly by the attitudes of authority figures.

Very few of the mothers surveyed felt that adoption was their choice. Nearly one-third of these mothers were assessed as having a severe mental disorder. Most adopted persons, whether or not they had a positive or more challenging relationship with their adoptive parents, identified problems with attachment, identity, and abandonment and referred to problems they had encountered in parenting their own children.

Past Adoption Experiences: National Research Study on the Service Response to Past Adoption Practices Australian Institute of Family Studies, 17 August 2012: www.aifs.gov.au/pae

Collaboration in open adoption: The birthmother's experience

A research study by Dr Phillipa Castle explores the experiences of birth mothers in establishing and maintaining contact with the adopted child in the Australian State of Victoria. Under Victoria's Adoption Act 1984, birth mothers are able to nominate a preferred frequency of information exchange and/or contact (whether face-to-face, or indirectly by letter or by electronic means such as email, text messaging or Skype). If agreement is reached, this can be written into the adoption order and can be enforced. While studies have generally supported the benefits of open adoption for the adopted child and the birth mother, research has also emphasised that openness cannot be prescriptive; rather the level of openness should be decided on a case-by-case basis with an awareness that changes are to be expected over the course of the child's life. The researchers conducted in-depth, semi-structured interviews with 15 birth mothers who had relinquished a child after 1984. They found that the birth mothers had empathy with, and an understanding of, the needs of the adoptive parents Their contact behaviour was predicated on their perception of the adoptive parents' limits.

Information about this research is drawn from *Collaboration in open adoption: The birthmother's experience* a paper given at the 10th Australian Adoption Conference held in October 2012. The paper is reproduced in *Australian Journal of Adoption* Vol 6 No 1 (2012): see www.nla.gov.au/openpublish/index.php/aja/issue/view/220/Toc

History of Adoption in Australia

Two papers given at the 10th Australian Adoption Conference look at the history of adoption in Australia Professor Shurlee Swain of the Australian Catholic University delivered a keynote address in which she provided a series of snapshots of key moments in Australian adoption history and placed them in a wider historical context. The presentation delved as far back as 1913 and drew on advertisements in local newspapers placed by people seeking or offering children for adoption at a time before legal restrictions were imposed.

The second paper, presented by a group involved in the *Monash History of Adoption Project,* concentrates on two themes. The first analyses adoption law and practice in terms of a market in children in which shifts in demand and supply have over time resulted in changes of approach. In particular, there have been changes in the definition and understanding of what constitutes an adoptable child and who may be considered fit adoptive parents. The authors note that, at the present time, adoption appears to be in decline but that another market in children - offshore surrogacy - is opening to replace it. The second theme is that adoption has a social significance which exceeds its demographic significance because it goes to the heart of deep concerns about human identity and belonging.

Both papers are reproduced in *Australian Journal of Adoption* Vol 6 No 1 (2012) see above for website

Books and films with adoption themes

Non-fiction: *Love Child* by Sue Elliott

Sue Elliott met her birth mother in 1991 and later discovered that her mother had given birth to two other children, both of whom had been adopted out. All three children had different fathers. The author's relationship with her mother and her two half-sisters makes fascinating reading. The response of the adoptive parents of the three women to their making contact with their birth mother differed from strong support and encouragement to anger and accusations of betrayal. In addition to the personal stories, *Love Child* reviews 20th century fostering and adoption practices including baby-farming, the stigma of illegitimacy, incest, bastardy laws, children taken by force, the Magdalene laundries, and mass child emigration schemes. It also looks at modern day adoption practices, buying babies from abroad, sperm donor fathers and adoption reunions.

Love Child is published by Vermilion Press a branch of Ebury Publishing a division of Random House Group Ltd, 20 Vauxhall Bridge Road, London SW1V 2SA England, September 2012.

Film: *Somewhere Between*

This film released in 2012 looks at the lives of four Chinese girls who were adopted in the United States from birth.. Since 1989, approximately 80,000 Chinese children have been adopted by American citizens. The film focuses on the coming of age stories of the four girls and their experiences of "being other" in America as they navigate their way through adolescence.

Adoption Action Inc News

Adoption Action now has its own website www.adoptionaction.co.nz

The back issues of Adoption News and Views will shortly be posted on the website and other material will be added from time to time. Our grateful thanks go to our chairperson Fiona Donohue, to an anonymous donor and to OpenHost Ltd for setting up the website. Contributions and suggestions are welcomed.

Committee members have all given a lot of their precious time providing comments and suggestions on the Kevin Hague Private Members Bill. Special thanks to Anne Else, Fiona Donohue, Mary Iwanek and Bill Atkin.
The exercise has been useful in providing an opportunity for the Committee to give serious thought to what new adoption laws should look like.

Any readers wishing to become members of Adoption Action Inc or to renew their membership can complete and return the membership application form below.

Thanks to Chrissie Hamilton, Evelyn Robinson, Joss Shawyer and Maggie Wikinson for providing material for this issue of Adoption News and Views.

Robert Ludbrook and Anne Else - Editors

APPLICATION FOR MEMBERSHIP OF ADOPTION ACTION INCORPORATED

Adoption Action Inc
38 Derwent St
Island Bay
Wellington 6023

I wish to apply for membership/ renewal of membership of Adoption Action Incorporated and attach payment of $10 for the membership fee for the period to 31 March 2013.

Name
Address

Email

Phone or mobile no.

Signature

Date