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Intercountry Adoption, Countries of Origin, and Biological Families

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The International Forum on Intercountry Adoption & Global Surrogacy (ICA Forum) took place at the International Institute of Social Studies (ISS) from 11 to 13 August 2014. The goal was to provide an opportunity for scholars and practitioners to come together to provide an evidence base for international adoption and surrogacy problems and/or best practices. The ICA Working Paper series summarizes the deliberations that took place at the Forum.

Each paper in the series is authored by a chairperson of one of the Forum's five thematic areas, with feedback from thematic area participants. There is also an executive summary by the organizer.

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Abstract

This report discusses concerns raised by participants of Thematic Area 2 (Intercountry Adoption, Countries of Origin, and Biological Families) of the International Forum on Intercountry Adoption and Global Surrogacy held in August 2014. As first parents of internationally adopted children are mostly absent from research and adoption practices alike, the goal of this Thematic Area was to suggest ways in which their perspectives could better be taken into account in the recommendations of the Hague Convention on Intercountry Adoption.

The report gives a short outline of what is known about first parents and then proceeds to take up problematic issues raised in the sessions. Participants drew attention to the marginalization of first parents in the implementation of the Convention. Although a child's care in the family of origin or other suitable care in the country of origin is emphasized by the subsidiarity principle, no common guidelines exist as to what measures should be taken prior to the transfer of the child out of the country. Such guidelines should consider how families in countries of origin can be assisted in keeping their children, as well as incorporate and strengthen wider options of informal family and community care. The exclusivist clean-break approach in adoptions that erases the child's previous kin ties should be replaced by the acknowledgement of such ties. This would include accommodating adoptees' and first parents' need to know about each other and making open adoption available, in which adoptive and first family members remain in contact after adoption.

Keywords

INTRODUCTION

This report is based on the sessions of Thematic Area 2 (Countries/families of origin) of the International Forum on Intercountry Adoption and Global Surrogacy held at the International Institute of Social Studies in The Hague, the Netherlands, 11–13 August 2014. Even though a vital partner in intercountry adoptions, families of origin have mostly been absent from research and adoption practices alike. The incorporation of the perspectives of first parents is important given adoptees' desire for information about and contact with them. This thematic area's objectives were: 1) to reach an updated understanding of the realities, perspectives and concerns of biological families based on recent empirical studies and projects, 2) to investigate how the perspectives of countries and families of origin are represented in the Hague Convention and in present guidelines and practices, as well as to identify shortcomings and strengths, and 3) to suggest ways in which their perspectives could better be taken into account.

As the goal was to suggest how the perspectives of families of origin could better inform the Convention and adoption practices, the approach of this report is critical rather than appraising, but not abolitionist. As pointed out by Norma Cruz from the Survivors' Foundation Guatemala in her plenary talk, we should honour the spirit of the Convention of finding a home for a child who needs it. As realities are changing, the instruments of the Convention and their implementation need to be reviewed and modified. In particular, Cruz, who represented women whose children were abducted to intercountry adoption, mentioned the necessity of making sure that the rights of birth families are not overlooked. This seems to be the cornerstone of any notion of ethical adoptions.

The number of participants in the different sessions of this thematic area varied between 13 and 45; a number of sessions were also joint sessions with one or two other thematic areas. Although participants have provided feedback, the following text is not meant to be a joint declaration that could be accepted by absolutely every participant. My intention has been to adequately characterize the discussions and concerns raised, while acknowledging that another person might have framed those concerns differently.

I will first briefly review existing studies of birth parents of internationally adopted children, discerning some common threads in them. After that I will present the concerns raised in the sessions of this thematic area grouped by theme rather than chronologically. By way of conclusion, some suggestions for changes are made.

What Do We Know about Families of Origin in Intercountry Adoption?

Compared to the wealth of studies on the newly formed adoptive family, we know considerably less about families of origin. Sometimes these parents are

referred to as 'biological', but as Sarah Hrdy (1999: 57) has pointed out, all parenting can be argued to involve physical and bodily processes and are 'biological' in that sense. The term 'birth mother', on the other hand, looks at these women purely from the point of view of the Global North, as 'just' giving birth so that others can become the 'real' parents (see also Smolin, 2012: 315). Families of origin should also be understood more widely as including not only mothers but also sometimes fathers, often siblings, grandparents and other kin. Participants discussed terminology and these points, but no joint agreement was reached. In this report, I will refer to these families as first families, and these women as first mothers.

The studies cited here involve the following countries: China, South Korea, some Latin American countries, Marshall Islands, India, Ethiopia (only through media reports) and South Africa. Mostly these studies have some information on the first mothers only. The picture still remains fragmented. There are no studies, for example, on Russian first parents, whose parental rights have often been terminated and the children taken into state care in the aftermath of the country's economic transition and rising levels of unemployment, mortality and alcohol and drug use, and declining fertility (Stryker, 2001: 23).

How first families are affected economically, socially, culturally and politically differs in different parts of the world. Neither would it be correct to view all first mothers as an undifferentiated mass of victims with no agency and having identical reasons. There are, nevertheless, some common general factors that can be discerned in the background. For the purposes of this report, I wish to highlight two such issues.

Multiple Oppression and Lack of Alternatives

As is well known, intercountry adoption typically transfers children from the Global South (including post-communist Eastern Europe) to the Global North under conditions of rising inequalities. The Global North (primarily Western Europe and North America), comprising a minority of about 600 million privileged people, wields economic and other forms of power over the great majorities of 5,400 million (relatively and absolutely) underprivileged people in the Global South (Connell, 2007: 212). Göran Therborn (2013) has also shown that in the current stage of (neoliberal) capitalism with predatory financialisation and marketization, within-country inequalities are increasing rapidly. Hence, we are faced with extremely divided societies both within and between the Global North and South. First families of internationally adopted children belong to the most vulnerable sections of their countries. Extreme poverty and vulnerability are two of the consequences of such inequalities, leading to these families not having any security or background to fall back on when faced with life's adversities. While not all adoptive parents are the 'richest' in their societies, adoptive parents nevertheless belong to the comfortable middle-classes. The huge gap between these two sets of parents, also described as the gap between two 'humanities' – the humanity of destitution (and under-

development) and that of consumption (and overdevelopment) (Balibar, 1991, cited in Yngvesson, 2010a: 150) – is glaring and needs to be confronted.

Desperate economic situations have been shown to be at the background of first families in the Marshall Islands where financial inability to care for the child coupled with lack of support from the extended family and lack of any welfare provision from the state were the primary reasons for their need to relinquish their children for adoption (Roby and Matsumura, 2002: 17). In the Marshall Islands as well as in many Latin American countries and South Africa, adopted children are typically the last-born children of poor mothers who have other children to care for (Ibid: 13; Fonseca, 2003: 115; Fonseca, 2011; Högbacka, 2014). In South Africa, many first mothers lacked a job or any means of creating income, and many did not even have a place to live. They were often faced with the sudden crisis of a surprise pregnancy, lack of support and/or HIV-positive status. An experienced social worker told me: '99 per cent of the mums giving up are giving up purely due to poverty and just help-lessness and hopelessness and destitution.' It can be assumed that the situation is similar in countries having large numbers of people living below the poverty line, such as Ethiopia and India. Ethiopian first mothers interviewed in an Australian documentary stated that they did not have any means to feed their children or were homeless (Geoghegan, 2009; Jolley, 2009). Likewise, one mother I met in South Africa told me: 'I'm just a poor woman and I have got nothing. I have got nothing. But I want to keep my baby.' The oppression created by economic inequalities often has other consequences, too, or is en-tangled with patriarchal and racial oppression. It is therefore often seen as pertinent to 'save' (and take) the children of poor women through adoption instead of supporting them to keep their children. This is linked to the reifica-tion of 'orphans' as innocent children, while poor parents are often looked at as incompetent or irresponsible, and thus not worthy of assistance.

In China, research has shown how harsh population control policies of the government have pushed daughters out of their families into orphanages and then how restrictive domestic adoption laws have made it more difficult or im-possible for local Chinese families to adopt these children although many local families have been eager to adopt daughters (Johnson, 2004; 2012). Many Chinese first parents felt they needed a son to provide social security in old age. Yet even though most abandoned children were girls, it was rare for the first daughter to be abandoned. Usually the families were from rural areas and had two or three girls but no son. First parents uniformly report that they did not want to abandon a daughter but birth-planning policies created enormous pressures to hide over-quota children: there were severe fines, and sometimes loss of homes, jobs, mandated sterilization for over-quota children or possibly forced abortion in any subsequent pregnancy. Researchers met first mothers who suffered emotional consequences: some still felt the loss of the child over a decade later, while others said it was better over time. In some interviews first mothers said they had gotten over it but then burst into tears (Johnson, 2004: 82–93).

Whereas the Chinese research in the 1990s and 2000s find only a minority of those who relinquish children are single women, unwed motherhood figures

prominently in intercountry adoptions in some other countries. A single woman raising her child may be heavily stigmatized, as in India (Bos, 2007) and South Korea. South Korean first mothers are nowadays mostly young single women facing pressure to terminate the pregnancy or to give the child born out of wedlock for adoption. Unwed mothers face severe discrimination and are not provided adequate support from the government (Situation on South Korean Adoption and Child Welfare).

Many poor and vulnerable mothers do not have any other alternative but adoption. In China, first families may be impoverished by the severe fines imposed on those having an 'over-quota' child (Johnson, 2004); were it not for threatened punishments parents report they would have kept all of the children they gave birth to. Many poor first mothers in Ecuador (Leifsen, 2009: 84), Brazil (Fonseca, 2003: 123), Marshall Islands (Roby and Matsumura, 2002: 19) and South Africa (Högbacka, 2014) reported having no other solutions: if they do not have the means to support their child at the moment, the only option available is to give it up permanently for adoption. I met, for example, many first mothers in South Africa who, if provided with assistance, would have been able to keep their children.

Continuity of Ties

A common theme emerging from different countries of origin is the clash between the exclusive permanent adoption of the 'receiving' countries and the indigenous, more informal childcare practices and expectations of the continuity of the tie between a mother and her child in the 'sending' countries.

According to research, in Oceanic societies, various parts of Latin America, Asia and Africa, an 'additive' model of parenthood prevails. This more inclusive model of the family allows for social parenthood that does not have to replace birth parenthood in order to be 'real'. In many parts of the world, informal child circulation and childcare practices are common. A child can be raised by another member of the extended family or kin or by non-kin, yet ties with the natal family are maintained and the child will at some stage usually return (Bowie, 2004: 3–17). Informal fosterage of children can also be a mechanism whereby poor families place some of their children in families that are in some way at least slightly better off.

Research in rural China finds that informal circulation of children among kin and friends has been common as a means to hide but keep children in local areas, allowing them to return later to their first families. 'Strong' local adoption outside kinship circles has also been customary in some areas and has provided homes for many relinquished girls. Yet many of these adoptions as well as informal kin arrangements have been restricted and made illegal by national adoption laws in the 1990s, laws under which intercountry adoption, in contrast, flourished. Local adoptions are not infrequently disrupted by local officials enforcing birth planning and adoption regulations. This pattern, established by Chinese laws and regulations, clearly violates the subsidiarity principles of the HCIA and diminishes the power of first families to determine what happens to the children they must relinquish (Johnson, forthcoming).

In Oceanic societies, there is the expectation of a close bond between the giver and the receiver of a child. Adoption or fosterage is a social endeavour (Modell, 2002: 183). In the Caribbean, informal fosterage and informal adoption are common (Wardle, 2004: 198). Fonseca (2003: 115–122) Scheper-Hughes (1992: 104–105) and Hoelgaard (1998: 207) provide examples from Brazil and Colombia of 'multiple' parenthood, of child sharing. A child can have many 'mothers': there is the mother who gave birth to you, but a mother is also whoever brings you up (Fonseca, 2003: 120). In New Zealand, Maori (the indigenous population) use the term *whangai* to describe this informal arrangement, which involves 'gifting' a child to another (usually related) person or couple (Gibbs and Scherman, 2013: 7). The impetus is not based on one's inability to parent (as in cases of many first families in traditional adoption who relinquish because of poverty, disadvantage, or stigma) but rather a desire to gift a child (on the part of the person to whom the child was born). First families in this context have the greater agency, and the *whangai* child gains commensurate rights to both families. In Bolivia, Ecuador and Peru local practices of child fosterage recognize the relatedness of birth and everyday parents and there is no complete severing of familial bonds (Leifsen, 2009; Leinaweaver, 2008; Van Vleet, 2009). In Africa, children are regularly circulated among kin, but a permanent rupture from first parents is unusual (Goody, 1982). The role of the extended family and other kin is very important in the African context (African Child Policy Forum, 2012).

Hence, it is not surprising that most mothers and other kin whose children were adopted internationally did not see it as the permanent and total severance of ties. First mothers in the Marshall Islands thought that their child would return after reaching maturity. First mothers also thought and some had been told so by adoption agencies that they would get information, letters and pictures on how their child was faring. Nearly 90 per cent of first mothers stated that if they had known at the time of relinquishment that they would not get information, they would not have made the placement (Roby and Matsumura, 2002: 22–25). Fonseca (2003: 123) and Cardarello (2009: 144–145, 150) show that many Brazilian first mothers did not understand that adoption is final and means a permanent rupture of ties. First mothers in India were not able to understand how a piece of paper could totally annul the tie they felt with their children (Bos, 2007).

Women I interviewed in South Africa (some of whom were Zimbabwean) spontaneously raised the topic of 'when' (and not 'if') their child returns and wants to meet them. Some were even trying to save some money for their adopted child's future needs. Most first mothers would have wanted to receive information on how their adopted child was faring, and many did. Those who did not seemed to have a hard time not knowing (Högbacka, 2014). Ethiopian first mothers interviewed by Australian reporters (Geoghegan, 2009 and Jolley, 2009) did not always understand that they were permanently giving up their children. Furthermore, they believed or were told by adoption agencies that they would receive news of their children. Mothers interviewed in the documentary were extremely sad and even regretted the adoption, because they did not know what had become of their children.

MAIN CONCERNS AND TOPICS RAISED AT THE FORUM

Global North Centrism of the Convention: Redefining 'Adoptability' and 'Family Environment'

Several participants raised the problem of the implicit 'receiving country' perspective of the Convention. The Convention talks about 'permanent' families, which implies a clear preference for the Global North type of financially well-off and stable exclusive nuclear family. Also, the notion of who is 'adoptable' has a similar Global North-centric bias. As was shown above, throughout the Global South different understandings of family prevail. Family boundaries are fluid and porous, allowing a child to be cared for by other relatives than the nuclear family members. Furthermore, informal kinship care is widespread. Thus, a child that under Western definitions would be parentless or an orphan may in reality be looked after within different family constellations. In many regions in Africa, for instance, the concept of orphan did not exist before Western humanitarian interventions on behalf of orphans because there were always extended kin and community members absorbing such children (Cheney, 2014). In essence, a child can be well looked after in family-like environments that do not resemble the minority nuclear couple-based model prevalent in the Global North. It was suggested that the extended family and the local context of child circulation need to be taken into account when defining 'adoptability' or 'family environment'.

This bias stems from asymmetrical power relations between the Global North (or 'receiving' countries) and Global South (or 'sending' countries). Thus, even though the Convention and the supporting documents are being jointly drawn up by the representatives of these countries, equality of outcome cannot be automatically assumed. Perhaps in this context it might be useful to understand the Convention and the coming together of the representatives as a 'contact zone'. A contact zone perspective recognizes the complex mutual interactions but emphasizes that these take place under conditions of radical inequality (Pratt, 1992: 6–7). Other transnational bodies and endeavours have successfully been checked and analysed utilizing this perspective (Conway, 2011). The entities of 'receiving' and 'sending' countries may also disguise other power issues. It was pointed out that most representatives from the receiving countries tend to be members of the Conference while the majority of representatives from the sending countries are not members of the organization. Furthermore, there are different layers of local knowledge. For instance, social workers in the Global South are often trained using Western (and Global North) definitions and interpretations. Adoptive parents in the Global North have powerful allies and spokespersons, which may lead to their interests being better taken into account compared with the rights of first parents who are often 'invisible' and powerless.

The Problematic 'Clean-break' Approach: Opening Intercountry Adoption

Another example of the power of the 'receiving' state perspective is the legal termination of all pre-adoptive kin ties. Although the Convention technically also covers adoptions in which previous ties are not severed, in the implementation and in the national laws of most countries the child ceases to be the child of his/her previous parents and becomes solely the child of the adoptive parents, in effect 'as if' born to them (Modell, 1994). First mothers have been advised that after adoption 'it will be like your child is dead to you' (Yngvesson, 2002: 232). The creation of exclusive parenthood with no messy pre-adoptive ties clearly works to the benefit of the newly formed adoptive family as a self-contained unit. In the Global North the legal paradigm of exclusivity works specifically to protect the nuclear family from outside interference; a family can only have one mother and one father, and all 'other' parents are understood as a threat with the new parent automatically cancelling out the previous one (Högbacka, 2011; Young, 1998). While this principle is now at odds with social practices in the receiving states, such as post-separation family constellations, open domestic adoptions or families formed with the help of new reproductive technologies that have more than the stipulated one set of parents, the exclusive clean-break approach is still practiced in intercountry adoption. With adoption being seen as simultaneously completing families and nations (in the context of declining birth rates and the economic costs of aging populations), clean-break intercountry adoptions are also about immigration, in effect making sure that only the child and not his/her pre-adoptive kin can enter the country (see Yngvesson, 2010b: 58).

The legal construct of a clean break and its implications stimulated a lot of comments at the Forum sessions. Barbara Yngvesson in her opening comments pointed out that it is not just a legal principle but has a strong psychological impact, too: it sets up the terms of what connections mean, effectively erasing origins. For adoptees it has paradoxical implications. It sentimentalises 'birth culture' and 'roots' as if they could be bought in a box, when in fact they are used as an attempt to compensate for the lack of subsidiarity (i.e. that the child is not cared for in his or her country/family of origin).

Yngvesson's call for a transformation of the adoption system was widely supported. Some participants simply wrote in their notes: 'Clean-break must go!' or 'Full severance of ties is false'. Drawing on her research with adult adoptees' reunions with their first parents, Yngvesson concluded that open adoption can be complicated but it can also work and that we need to leave that decision to the adoptees themselves. Hollee McGinnis (herself an adopted person) gave a moving account of what it means to be adopted under the current adoption system and to be deprived of knowledge of first parents. She pointed out that adoptees have more than one identity. Racism is a big issue, as many adoptees 'wear their birth culture on their face'. Apparently many adoptees will want to know about the circumstances of their adoptions and some search for their kin. Instead of the current legal clean-break linear adoption,

she suggested a move towards a concept of circular adoption that also looks back. The past can never be just erased.

The group that has probably suffered the most under the clean-break regime are first parents of adopted children. In the worst case, they have not been given any information about their children after adoption. It is still up to adoptive parents whether they remain in contact or provide news to the first mother (or other members of the extended family) or not. Those who are granted legal parenthood also have the power. As was shown in the literature review above, there is evidence that many first mothers do want to know. The legal annulment of their motherhood does not correspond to their lived experience and feeling. Indeed, such procedures may be unknown in their cultures. Furthermore, as explained by Ruth McRoy, long-term research on US first mothers has shown that (all other things being equal) those who had more contact with or received more information concerning their adopted children had lower levels of grief (see also Grotevant et al., 2013). This body of research also shows that greater levels of openness are beneficial to all: adoptive parents, adoptees and first parents (Berge et al., 2007; Ge et al., 2008; Grotevant et al., 2007; Henney et al, 2007; Neil, 2010; Wolfgram, 2008). Where the child has been removed from the parents due to parental abuse, the case may be different, as apparently in many domestic foster care adoptions in the UK. In intercountry adoption this is, however, rarely the case (Cantwell, 2014: 75). The current practices are inhuman. There are no grounds for treating first mothers differently just because they live in the Global South and have not been able to voice their concerns.

It was also pointed out that the family of origin comprises a wider circle and not just the first mother. The role of siblings, grandparents and fathers must also be acknowledged. Information regarding the child relinquished to intercountry adoption must be made available to families of origin. Likewise, adoptees must have access to all information regarding the conditions under which they were adopted, and regarding their birth kin (first parents can choose whether to be identified). Hiding and falsification of adoption documents has to stop. It is outrageous that in 2014 we cannot have a birth certificate that includes both sets of parents. Instead most adopted children are issued falsified birth certificates that make the child look as if born to the adopters.

It is most likely that adoptees will want to have more information about their backgrounds and many will initiate searches and reunions with the family of origin. These developments should be anticipated. Already there have been reports from many 'receiving' countries, for example Sweden (Att Adoptera, 2007: 3) and Canada (Speirs et al., 2005: 843) that their post-adoption services are completely overwhelmed by such requests. It was also suggested that adoption agencies due to their vested interests in adoption may not be the ideal partners to organise 'homeland tours' and searches.

As most domestic adoptions in USA, Canada, the UK and New Zealand are now open, and openness is promoted as good practice (Neil, 2006: 3; Riemer and Siegel, 2007: 12; Smith, 2006; Scherman, 2012), the question arose as to why this is not being proposed for intercountry adoptions. At first the

concept of open adoption would need to be clarified. The way it is used in US domestic adoptions, for instance, implies some kind of contact between adoptive family and family of origin after adoption. This contact can be anonymous through a letter-box or mediated by adoption social workers, or it can involve on-going direct contact including one or more of the following: sending letters and photographs, using email (or Skype nowadays), making phone-calls, or visiting each other in person (Berge et al., 2007: 1012; see also Scherman 2012 for a discussion on the wider meanings of openness). Researchers have been clear that open adoption does not involve 'returning' the child to first parents, as the legal parental rights and obligations remain with the adoptive parents (Reamer and Siegel, 2007: 12). Hence, first parents' rights, including the right to receive information regarding the child, should be clearly stated and enforceable by law.

In the context of intercountry adoption, further challenges to openness are created by the immense gap in wealth between the two families, huge geographical distances and possible language barriers. While it is clear that the characteristics of and relations between particular adoptive parents, adoptees and first parents would need to be taken into account, greater openness would benefit adoptees' and first parents' needs to know (about) each other. It would also move intercountry adoption towards more inclusive and just practices by participation instead of erasure. A study conducted in New Zealand found that half of the 72 families studied attempted to establish contact with the first families in the children's country of origin and half of these made contact, even in the absence of clear information about who first family members were (Scherman and Hawke, 2010).

Rights of the Family of Origin and 'Best Interests of the Child'

The argument is sometimes raised that we should prioritise the interests of the child as opposed to what first parents or adoptive parents may want or need. Hence, it is claimed that we should wait to see if the adoptee herself wishes to establish contact or search for the family of origin. However, this may be too late. As the New Zealand families stated, they wanted to search before the 'trail goes cold' and connections to first parents are lost forever (Scherman and Hawke, 2010). Likewise, the suggestion to ask adopted children where they think their best interests lie is fraught with difficulties. In an example given, a seven-year-old child had said that her best interests are best served by staying in this (adoptive) family (and with its three cats). As these children do not in most cases know of any other possible way of life or family, having been adopted at an early age, this is in a way the only conceivable answer they can give. The interests of the child may also change as she matures. As was pointed out several times, we need to start conceptualizing adoptees as adults and not as eternal children.

Nigel Cantwell specifically addressed the confusion around the concept of 'best interests of the child'. It is problematic precisely as the interests can be different in different life-stages. The concept is also vague and lacks clear

criteria. There is no agreement as to who decides what these interests are. Under such circumstances, there is a real danger that 'best interests of the child' just reflect (class-based and gendered) notions and values of the powerful. Cantwell suggests that a clearer way of conceptualizing best interests would be to link them more explicitly to the human rights of the child. He also provides a comprehensive checklist for rights-based best interest considerations (see Cantwell, 2014).

What is of particular relevance from the point of view of families of origin is that the child's best interests, when looked at from the human rights perspective, clearly include the right to be raised by his or her (first) parents whenever possible. Best interest considerations, then, need to make sure that all measures to ensure or aid family reunification are undertaken. This would require more attention to the rights of the family of origin, where the Convention is at its weakest. At the moment, first parents are only mentioned as those whose consent is needed. Otherwise, first parents and kin are marginalised in the implementation of the Convention.

Furthermore, it is questionable whether the rights and well being of first parents and their children can be totally separated. This is because the child is, initially, a member of the family of origin. Hence, harming the first parents also harms their child (See Smolin, 2007a). Likewise, Claudia Fonseca's (2011: 331–332) interviews with Brazilian adoptees suggest that the way their first parents had been treated by the adoptive parents (and the adoption system) had a big influence on adoptees' well being and on their relations with their adoptive parents.

The participants felt that there is a big need to strengthen the rights of first parents in the Convention. At the moment they are absent, while the interests of adoptive parents are safeguarded and protected.

Violations of the Subsidiarity Principle

Subsidiarity is the cornerstone of the Convention. Hans van Loon, in his plenary presentation at the Forum, reminded us of its meanings. According to the subsidiarity principle, it is the primary obligation of states to enable the child to remain in his or her family of origin. Only if this is not possible and if a suitable permanent family cannot be found in the country of origin, should intercountry adoption be considered. Subsidiarity must be considered for every adoption conducted under the Convention.

Here again, the bias for a Global North type of family can be seen ('suitable permanent family') possibly leaving out of consideration other types of family environments as discussed earlier in section 3.1. The biggest problem appears to be the implementation of the subsidiarity principle. Participants pointed out that the Convention leaves the considerations regarding subsidiarity to the countries of origin but without any checklists or concrete guidelines to be followed. Also, the responsibility of receiving countries should be acknowledged, as it is the increasing demand for 'adoptable' children from their side that in the current context of declining numbers of intercountry adoptions contributes to the problem. There is the danger of subsidiarity in

many cases being an empty word, sometimes even being viewed by adoption agencies as a threat (to the smooth continuation of adoptions). This leads to the marginalization of families of origin and other domestic solutions.

Subsidiarity is currently violated in several ways. First of all, countries of origin in most of the Global South do not have the resources required in order to fully offer another option for impoverished or vulnerable first mothers and families that would enable them to keep their child. Although it is stated that the Convention cannot solve the root causes of why these children are adopted abroad, it must be acknowledged that by operating under such conditions of inequality without stipulations regarding support to families of origin, the Convention perpetuates such divisions. Such practices not only violate the obligation to enable the child to stay with the family of origin but also the principle that poverty alone should not be an acceptable reason for inter-country adoption. So far, this principle has only been evoked in the UN Guide-lines for the Alternative Care of Children (see Cantwell, 2014: 73). Receiving countries with their power and superb resources must take a more active role in financing such assistance. David Smolin sketched the contours of such an aid rule. He pointed out that at the moment the Convention does not require that family support be offered first. Smolin argued that where the country in question does not have a working family welfare system to draw on and where large numbers of people live below the international poverty line, material assistance should be offered to the families first before the adoption of the child. Such assistance must, however, be completely unconditional, i.e. it cannot be tied to adoptions in any way (see Smolin, 2007b for details). Other suggestions were to provide a comprehensive welfare package to first families, which would take into account cultural factors. In the course of my own re-search I met many first mothers in South Africa who, if provided with the possibility of temporary housing with childcare, would have been able to keep their children. Social workers I interviewed were sensitive and sympathetic to such endeavours but lacked resources. One option they mentioned (realizable if they had funding) would have been to turn some of the empty office build-ings in downtown Johannesburg into flats for first mothers with someone looking after the children while the mothers looked for jobs and tried to get back on their feet.

Others, however, felt that it is too late to consider such aid at the time when intercountry adoption is already being considered. Nigel Cantwell pointed out that the emphasis should be on preventive work and on strength-ening welfare structures through bilateral and multilateral agreements. Care should also be taken to channel resources into family support and strengthen-ing and into underpinning existing community and kinship care structures, and not to the maintenance of institutions or 'orphanages'. Mark Riley explained how in Uganda such donor-led facilitating of orphanages in fact severely undermined local efforts to develop working child and family welfare struct-ures. With their considerable resources, these orphanages were able to pull increasing numbers of children into their system, often with a view to channel-ling some of them into intercountry adoption (see also Cheney and Rotabi, forthcoming). Subsidiarity is hence also violated by such 'child harvesting'.

Participants pointed out that cash donations to child protection must be completely accountable as well as kept completely separate from intercountry adoptions (see also Cantwell, 2014: 77–78). Subsidiarity can also be compromised by the possibilities for some to make money through intercountry adoptions. The amounts of money circulating around intercountry adoption prompted participants to urge that money be taken out of it altogether. Nigel Cantwell pointed out that this may be a problem in all types of donations, also when directed to first families, and that instead of redirecting cash flows in intercountry adoption, we should try to eliminate them. Others warned about the dangers of certain types of donations to establish skewed relations of obligation and reliance between donors and the targets of donations.

However, it should be kept in mind that the starting point of intercountry adoption is already skewed (created by past rounds of unequal global divisions of labour that have worked to the advantage of the Global North). Such inequalities are the reason intercountry adoption exists. Such previous cash flows (to the Global North) should have been eliminated but were not. The proposed aid rule that would offer at least some concrete options for first families would just be in a small way correcting the scales.

Thirdly, subsidiarity can be violated by discriminatory practices stipulated by governments in countries of origin. Kay Johnson explicated the ways in which government policies undermined both first families' possibilities to keep their daughters and informal domestic fostering and customary local adoption practices in China. Harsh implementation of population control policies effectively pushed children out of their families of origin, while restrictive adoption laws limiting domestic adoption of 'abandoned children' pulled children out of their Chinese adoptive homes and sometimes out of the informal care of kin. According to Johnson, there is evidence that there are more than enough adoptive homes for all healthy relinquished children within China. Yet, inter-country adoptions continue, increasing unmet domestic demand and fuelling a growing interregional traffic in children in China. Chinese first parents and adoptive parents are rendered powerless in the face of international adoptions sanctioned by receiving states as well as the sending state; this power arrangement favours international adopters and hurts the interests of Chinese birth families and many Chinese adoptive families.

Violations of the subsidiarity principle are connected to violations of 'freely given and informed consent' of first parents. In the context of oppressive rules such as the population and domestic adoption policies in China, 'consent' is without meaning. In the context of extreme deprivation and discrimination, 'consent' is so severely restricted as to be no real choice. 'Choosing survival' is a contradiction in terms.

Who Can Speak on Behalf of Others?

Finally, we need to consider whose 'voices' dominate adoption discourse and research and how other 'voices' could be better represented. So far, the perspectives of adoptive parents have dominated over those of adopted persons and first parents. Several participants pointed out that we need to listen to

adult adoptees more, many of whom are also scholars. After all, it is to them that intercountry adoption 'happens'. Their input could be utilised more; for instance, funds could be directed to adult adoptees' organizations, enabling them to take part in the designing of post-adoption services.

It is much more difficult for first mothers (and other kin members) of intercountry adoption to represent themselves. The question then becomes how and by whom to conduct research on them. Some have been of the opinion that, due to the huge power differences, research on 'Third World others' conducted by First World researchers is never ethical (bel hooks, 1991, Patai, 1991, cited in Gillies and Alldred, 2002: 40). On the other hand, as the postcolonial critic Sara Ahmed (2000: 166–167) has remarked, prohibiting research on this basis would only lead to a 'perverse silence', which would reproduce such inequalities and asymmetries of power. We clearly need to know about the situations and views of first parents of internationally adopted children in order to adequately protect their rights.

I would therefore suggest that researchers from the Global North studying first families in the Global South make sure their research follows the principles of ethical research. Gillies and Alldred (2002: 42), for example, propose three conditions for speaking on behalf of others: 1) the intentions of the research must be explicated: what can be achieved by speaking for or about others, 2) researcher's position must be clarified: what are the researcher's social, political and personal interests and assumptions about those she is researching, 3) consideration of the impact of the research: could the material be used afterwards in ways that are contradictory to the researcher's intentions and in ways that are harmful to those researched. Such issues are further explicated in attempts to 'decolonize' research (see Mutua and Swadener, 2004). In addition, participatory action research methodologies are valuable in the engagement of research *with* rather than *on* a group of people.

SUGGESTIONS FOR CHANGE

- Definition of key terms
    - Local context needs to be taken into account when defining adoptability and suitable family environments, including an openness to different family or caregiver forms
    - The role of the extended family should be emphasized in the recommendations
    - Permanency should be viewed from the angle of local realities, not from that of an idealised Western nuclear family
    - People involved in all facets of adoption, 'child protection' and 'child welfare' need to acknowledge that children grow up, and so there may be a need to reframe the definition of 'child' to include the grown (autonomous) person that the child will one day be

- From severance of ties to the maintenance of contact
    - Members of the family of origin should have the right to regularly receive news of their children after adoption
    - Open adoption, i.e. maintaining contact between adoptive families and families of origin from the start, should be available and accepted as good practice
    - Preparations should be made in order to manage adoptees' and first family members' searches for each other
    - All information regarding the circumstances of adoptions should be saved and made available to adoptees when of age; first parents can choose whether to remain anonymous
    - The development of bilateral or multilateral agreements between sending and receiving countries that have a mandate to collect and share information that might be accessed by adopted persons or first families should be considered
    - A secure data-base or register with information on adoptees and families of origin could be created and maintained by the Central Authority

- True implementation of the subsidiarity principle
    - A checklist or proper guidelines for the practical implementation of the subsidiarity principle in the countries of origin should be drawn up, including what measures need to be conducted prior to considering the transfer of the child out of country
    - Similar guidelines should be in place for the receiving countries recognizing their responsibility in not exerting any pressure to obtain a certain number of intercountry adoptions but being able to monitor

and assist in processes of family support and strengthening, and local community solutions to the care of children

- o The tool-kit for intercountry adoption considerations should include offering families of origin support that enables them to keep the child
- o Support for child and family welfare should in the first place come through appropriate bilateral and multilateral assistance programmes to be requested by the country of origin, and be completely divorced from intercountry adoption activities
- o Support should not go to maintaining (or creating) 'orphanages', many of which are donor-led and have linkages to the same countries' adoption programmes

- In the case of China, fundamental sovereign laws of the state, specifically population control law and national adoption law, make ethical intercountry adoption of healthy children under HCIA principles impossible. HCIA advocates, lawyers, and social workers cannot influence the sovereign laws of a powerful state; only internal Chinese political forces can do this. However, HCIA advocates can and should influence first world adoption agencies and adopters to understand the fundamental violation of principles that occurs when they participate in these adoptions

- Rights of families of origin need to be strengthened throughout

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