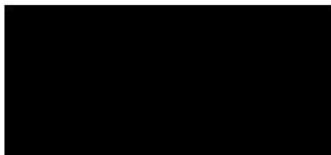




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Ons zaaknummer
367509

Bijlagen

- Inventarislijst;
- Wob-artikelen;
- kopieën stukken

*Bij beantwoording de datum
en ons kenmerk vermelden.
Wilt u slechts één zaak in uw
brief behandelen.*

Datum 29 maart 2013
Onderwerp Beslissing op uw Wob-verzoek

Geachte [REDACTED]

In uw e-mail van 14 december 2012, ontvangen op dezelfde datum, heeft u met een beroep op de Wet openbaarheid van bestuur (hierna: Wob) informatie verzocht over adopties uit India. U vraagt specifiek naar informatie over het onderzoek naar adopties uit India, zoals ik dat bij brief van 29 mei 2007 aan de Tweede Kamer had aangekondigd.

De ontvangst van uw verzoek is schriftelijk bevestigd bij brief van 8 januari 2013 met kenmerk 340614. In deze brief is tevens de beslistermijn met vier weken verdaagd tot 8 februari 2013.

Over uw verzoek heeft u op 30 januari 2013 telefonisch contact gehad met [REDACTED] de behandelende medewerker. Onder andere heeft hij met u besproken dat uw andere Wob-verzoek (geregistreerd onder nummer 336680) met betrekking tot een brief van Prisma Development samen met het onderhavige Wob-verzoek zou worden behandeld, aangezien de betreffende brief onderdeel uit maakt van de door u bedoelde bestuurlijke aangelegenheid, namelijk het onderzoek naar adopties uit India.

In het telefoongesprek met [REDACTED] heeft u verder aangegeven dat uw Wob-verzoek ook betrekking heeft op het onderzoek omtrent de adoptie van het kind "Rahul". Van dat kind is thans vast komen te staan dat het op onterechte gronden ter adoptie is aangeboden.

Volgend op het telefoongesprek is in een brief van 4 februari 2013 aan u medegedeeld dat de beslistermijn met vier weken werd opgeschort, namelijk tot 8 maart 2013, vanwege het vragen van zienswijzen van derde belanghebbenden. Bij brief van 7 maart 2013 heb ik u bericht de beslistermijn wederom op te schorten, ditmaal met een periode van drie weken, vanwege het uitblijven van de (definitieve) zienswijzen van enkele derde belanghebbenden.

Wettelijk kader

Uw verzoek wordt beoordeeld aan de hand van de Wob. Het uitgangspunt van de Wob is dat er, in het belang van een goede en democratische bestuursvoering, voor degene die om informatie verzoekt een recht op openbaarmaking van de informatie bestaat. Het bestuursorgaan kan de openbaarmaking van de gevraagde informatie achterwege laten wanneer zich een of meer van de in de artikelen 10 en 11 van de Wob genoemde uitzonderingsgronden of beperkingen voordoen.

Inventarisatie documenten

Op basis van uw verzoek zijn in totaal 89 documenten (inclusief losse bijlagen) aangetroffen. Deze documenten zijn opgenomen in een inventarislijst, die als bijlage bij dit besluit is gevoegd. Tevens zijn in verband met uw Wob-verzoek zes andere groepen documenten aangetroffen, die betrekking hebben op een Indiaas rechtshulpverzoek. Gelet op de aard en samenhang van de laatstgenoemde documenten zijn deze gegroepeerd weergegeven op de inventarislijst.

In dit besluit wordt verwezen naar de corresponderende nummers uit de inventarislijst, zodat per document(groep) duidelijk is wat is besloten.

Zienswijzen

Ik heb u bij brief van 4 februari 2013 geïnformeerd dat er derde belanghebbenden zijn bij uw verzoek om openbaarmaking van informatie. Die informatie betreft de documenten met nummers 1-3, 7-12, 14, 15, 19, 22, 24, 26, 26a, 27, 29-31, 33, 34, 36, 38, 40, 42, 44, 46, 47, 51-55, 57, 59, 61, 64-70, 73, 74 en 76-81. Ik heb de betrokken derde belanghebbenden, voor zover dat noodzakelijk was, in de gelegenheid gesteld om hun zienswijze te geven. De zienswijzen van de derde belanghebbenden heb ik verder in mijn belangenafweging meegenomen (zie onderdeel "Overwegingen").

Besluit

Ik heb besloten om deels aan uw verzoek tegemoet te komen en de informatie waarom u verzocht, opgenomen in de documenten met nummers 1-3, 4a, 4b, 5, 7-17, 19-24, 26-28, 30-34a, 36, 38, 40-42, 44, 44a, 48, 50-55, 57, 59-61a, 63-65, 67-69 en 73 openbaar te maken met uitzondering van de daarin vermelde persoonsgegevens. Voor wat betreft de documenten met nummers 4, 25, 29, 45-47, 58, 62, 66, 70, 71, 72, 74 en 76-81 heb ik besloten om openbaarmaking te weigeren. Voor de motivering verwijs ik naar het onderdeel "Overwegingen" van dit besluit.

De documenten met de nummers 4c, 6, 18, 23, 26a, 35, 37, 39, 43, 49, 56 en 75 zijn reeds openbaar. Deze vallen daardoor niet onder de reikwijdte van de Wob.

Overwegingen

De eerbiediging van de persoonlijke levenssfeer

Op grond van artikel 10, tweede lid, aanhef en onder e, van de Wob blijft verstrekking van informatie achterwege voor zover het belang daarvan niet opweegt tegen het belang dat de persoonlijke levenssfeer van bij de openbaarmaking betrokken personen wordt geëerbiedigd.

**Directoraat-Generaal
Jeugd en
Sanctietoepassing**
Directie Control,
Bedrijfsvoering en Juridische
Zaken
Afdeling Juridische en
Internationale Zaken

Datum

29 maart 2013

Ons kenmerk

367509

In de documenten met nummers 1-3, 5, 7-17, 19-22, 24, 26-28, 30, 30c, 31-34a, 38, 40-42, 44, 44a, 48, 50-55, 57, 59-61a, 63- 65, 67-69 en 73 staan namen van personen en/of functie- of contactgegevens en/of andere gegevens die bij verstrekking tot die personen zouden kunnen worden herleid.

In deze kwestie acht ik het belang van eerbiediging van de persoonlijke levenssfeer van de betrokkenen zwaarder wegen dan het belang van openbaarmaking van de gevraagde informatie. Om de persoonlijke levenssfeer van deze personen – waaronder adoptiekinderen en adoptiefouders – te eerbiedigen heb ik daarom de gegevens die op hen betrekking hebben, geanonimiseerd.

De namen van de heer Oosting en de heer Vlaardingerbroek zijn niet geanonimiseerd voor zover deze direct verband houden met de door hen verrichte onderzoeken. Deze onderzoeken zijn immers onder vermelding van hun namen afgerond met rapporten. Die rapporten, namelijk de documenten met nummers 37 en 43, zijn aan de Tweede Kamer aangeboden en zijn toen tevens openbaar gemaakt. Overigens heeft de heer Oosting naar aanleiding van het verzoek om zijn zienswijze aangegeven geen bezwaren te hebben tegen de openbaarmaking van alle documenten die op hem betrekking hebben. Van de heer Vlaardingerbroek is geen zienswijze ontvangen, maar dit heeft verder geen invloed op dit besluit.

Persoonlijke beleidsopvattingen stukken voor intern beraad

Artikel 11, eerste lid, van de Wob bepaalt dat in geval van een verzoek om informatie uit documenten, opgesteld ten behoeve van intern beraad, geen informatie wordt verstrekt over daarin opgenomen persoonlijke beleidsopvattingen.

Onder intern beraad wordt blijkens artikel 1, aanhef en onder c, van de Wob verstaan: het beraad over een bestuurlijke aangelegenheid binnen een bestuursorgaan, dan wel binnen een kring van bestuursorganen in het kader van de gezamenlijke verantwoordelijkheid voor een bestuurlijke aangelegenheid.

Onder persoonlijke beleidsopvatting wordt blijkens artikel 1, aanhef en onder f, van de Wob verstaan: een opvatting, voorstel, aanbeveling of conclusie van een of meer personen over een bestuurlijke aangelegenheid en de daartoe door hen aangevoerde argumenten.

De documenten met nummers 4, 4a, 17, 25, 41, 44 en 72 zijn opgesteld ten behoeve van intern beraad of er zijn te dien einde notities op die documenten geplaatst. Deze documenten bevatten persoonlijke beleidsopvattingen. De persoonlijke beleidsopvattingen uit de documenten met nummers 4a, 17, 41 en 44 heb ik verwijderd.

Voor zover er ook feitelijke informatie in de documenten met nummers 4, 25 en 72 staat, is die informatie zodanig verweven met de persoonlijke beleidsopvattingen dat die daar niet los van kan worden gelezen. Ik heb daarom besloten de openbaarmaking van deze documenten in zijn geheel te weigeren.

Het kind "Rahul"

- Persoonlijke levenssfeer

**Directoraat-Generaal
Jeugd en
Sanctietoepassing**
Directie Control,
Bedrijfsvoering en Juridische
Zaken
Afdeling Juridische en
Internationale Zaken

Datum
29 maart 2013

Ons kenmerk
367509

U heeft tijdens het telefoongesprek van 30 januari 2013 aangegeven dat uw Wob-verzoek tevens betrekking heeft op de adoptiezaak van het kind "Rahul". Informatie met betrekking tot een adoptieprocedure van een individueel kind is zeer privacygevoelige informatie. In beginsel is dan ook grote terughoudendheid geboden bij het verstrekken van informatie uit persoonsdossiers of informatie die daar direct verband mee houden.

**Directoraat-Generaal
Jeugd en
Sanctietoepassing**
Directie Control,
Bedrijfsvoering en Juridische
Zaken
Afdeling Juridische en
Internationale Zaken

De documenten omtrent het kind "Rahul", waaronder de documenten met nummers 29, 45-47, 58, 66, 70, 71, 72, 74 en 76-81, bevatten uiterst privacygevoelige informatie, die uitsluitend betrekking heeft op onderzoek naar de situatie omtrent zijn adoptie (en niet omtrent andere adopties uit India of adopties uit India in het algemeen). Dit ziet tevens toe op de uitwisseling van vertrouwelijke informatie tussen meerdere betrokken partijen, waaronder de adoptiefouders van "Rahul", inclusief het verloop van het onderzoek.

Datum
29 maart 2013
Ons kenmerk
367509

De openbaarmaking van de hierboven genoemde informatie zou een onredelijke inbreuk maken op de persoonlijke levenssfeer van het kind "Rahul" en zijn omgeving. Van adoptiekinderen is bekend dat zij moeite hebben met zaken als de eigen identiteit en herkomst. Het is in dat kader belangrijk dat zij pas zelf naar buiten hierover communiceren, als en op het moment dat zij dat willen. Ik zou "Rahul" een dergelijke keuze echter ontnemen, als ik informatie die op hem betrekking heeft, openbaar maak, voordat hij zelf hierin een beslissing heeft genomen. Uit de reactie van de advocaat van het betreffende gezin op het verzoek om zienswijze leid ik bovendien af dat het gezin niet instemt met openbaarmaking van stukken.

Het belang van het – in casu geadopteerde – kind en diens recht op privacy behoor ik met extra zorgvuldigheid te betrachten. In dit geval acht ik dit belang zwaarder wegen dan het belang van openbaarmaking van de stukken die op hem of zijn omgeving betrekking hebben. Verder zal anonimisering van de documenten met nummers 29, 45-47, 58, 66, 70, 71, 72 en 74 niet helpen, aangezien de informatie – vanwege de reeds bekende alias "Rahul" – nog steeds tot het kind, zijn adoptiefouders en/of zijn biologische ouders kan worden herleid.

Informatie omtrent "Rahul" die reeds openbaar is, heb ik niet verwijderd uit de documenten. Deze valt niet onder de reikwijdte van de Wob, aangezien deze informatie reeds openbaar is. Voor wat betreft de overige informatie die betrekking heeft op "Rahul" wijs ik uw verzoek op grond van artikel 10, tweede lid, aanhef en onder e, van de Wob af.

Overigens bevinden zich bij de stukken diverse documenten uit de civiele rechtbankprocedure met betrekking tot de adoptie van "Rahul". Hiervoor geldt op grond van artikel 28 van het Wetboek van Burgerlijke Rechtsvordering een afzonderlijke en een beperkte openbaarmakingregeling, die de werking van de Wob opzij zet.¹ Daarnaast maken getuigenverklaringen ook onderdeel uit van deze documenten.

Verder wijs ik u op het volgende.

- Internationale betrekkingen

¹ Afdeling Bestuursrechtspraak Raad van State 18 februari 2004, LJN: AO3890

Op grond van artikel 10, tweede lid, aanhef en onder a, van de Wob blijft verstrekking van informatie achterwege voor zover het belang daarvan niet opweegt tegen het belang van de betrekkingen van Nederland met andere staten en met internationale organisaties. Een overwegend deel van de documenten waarop uw Wob-verzoek doelt en die betrekking hebben op het kind "Rahul", zijn opgesteld in het kader van een internationaal rechtshulpverzoek. De betreffende documenten zijn op de inventarislijst vanwege hun – vertrouwelijke – aard gegroepeerd weergegeven met nummers 76-81.

**Directoraat-Generaal
Jeugd en
Sanctietoepassing**
Directie Control,
Bedrijfsvoering en Juridische
Zaken
Afdeling Juridische en
Internationale Zaken

Datum
29 maart 2013

Ons kenmerk
367509

Bij deze documenten is het belang van de betrekkingen van Nederland met andere staten, in casu India, in het geding. Dit belang zou kunnen worden geschaad indien de hier bedoelde informatie openbaar wordt gemaakt. Ik ben van oordeel dat dit belang zwaarder moet wegen dan het belang van openbaarheid, aangezien het document betrekking heeft op een internationaal rechtshulpverzoek uit India en een dergelijk verzoek een vertrouwelijk karakter kent. Het openbaar maken van deze informatie zou voorts de (toekomstige) samenwerking met India op dit vlak kunnen schaden. Ik heb daarom besloten de desbetreffende informatie niet openbaar te maken.

Overigens bevatten de documenten betreffende het internationale rechtshulpverzoek uit India ook andere privacygevoelige zaken, zoals getuigenverklaringen. Deze kan ik op grond van artikel 10, aanhef en tweede lid, onder e, van de Wob ook niet aan u kunnen verstrekken, aangezien deze ingrijpen op de persoonlijke levenssfeer van personen.

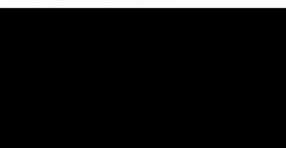
Wijze van openbaarmaking

Ik stuur u bijgaand een kopie van de documenten, genoemd in de bijgevoegde inventarislijst, afgezien van de documenten met nummers 4, 25, 29, 45-47, 58, 62, 66, 70, 71, 72, 74 en de documenten die gegroepeerd zijn weergegeven met nummers 76-81.

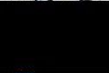
De documenten met nummers 4b, 6, 18, 23, 26a, 35, 37, 39, 43, 49, 56, 62 en 75 zijn reeds openbaar en voor een ieder beschikbaar. De Wob is niet van toepassing op reeds openbare documenten. Om u ter wille te zijn, stuur ik u niettemin een kopie van deze documenten. Overigens heb ik de vindplaats van deze documenten vermeld in de bijgevoegde inventarislijst.

Ik vertrouw erop u hiermee voldoende te hebben geïnformeerd.

Hoogachtend,
De Staatssecretaris van Veiligheid en Justitie,
namens deze,



Directeur Control, Bedrijfsvoering en Juridische Zaken



Tegen dit besluit kunt u binnen zes weken na de dag waarop dit is bekend gemaakt een bezwaarschrift indienen. Het bezwaarschrift moet door de indiener zijn ondertekend en

*bevat ten minste zijn naam en adres, de dagtekening, een omschrijving van het besluit waartegen het bezwaar is gericht en de gronden waarop het bezwaar rust.
Dit bezwaarschrift moet worden gericht aan: de Minister van Veiligheid en Justitie, t.a.v. Directie Wetgeving en Juridische Zaken, Sector Juridische Zaken, Postbus 20301, 2500 EH Den Haag.*

**Directoraat-Generaal
Jeugd en
Sanctietoepassing**
Directie Control,
Bedrijfsvoering en Juridische
Zaken
Afdeling Juridische en
Internationale Zaken

Datum
29 maart 2013

Ons kenmerk
367509

Juridisch advies ten behoeve van Meiling

1. Inleiding

Meiling, stichting voor Adoptie en Projecthulp, heeft zich gewend tot Adviesbureau Van Montfoort te Woerden omdat een voormalig adoptiecontact van Meiling, Malaysian Social Service (MSS) in Madras in India in 2005 is beschuldigd van kinderhandel. Volgens deze beschuldigingen zou MSS rond 2000 een aantal kinderen hebben geaccepteerd van personen die zich voordeden als afstandsmoeder terwijl ze in werkelijkheid de kinderen elders zouden hebben gekocht of weggehaald bij arme families. In reactie hierop heeft de Indiase politie alle papieren van MSS in beslag genomen ten behoeve van onderzoek. Dit onderzoek heeft tot op heden geen duidelijkheid gebracht en er is evenmin een rechtszaak in gang gezet. Meiling verbrak overigens om een geheel andere reden in 2003 de contacten met MSS, namelijk omdat deze organisatie toen was gestopt met haar adoptieprogramma. Toen Meiling in 2005 kennis nam van de beschuldigingen heeft de stichting direct contact opgenomen met MSS, met haar andere contacten in India en daarbuiten en met de centrale overheid in New Delhi en met de kinderbescherming in Madras (ICCW). Ook zijn contacten gelegd met collega vergunninghouders die eveneens samenwerkten met MSS. Meiling kwam tot de conclusie dat de beschuldigingen zo ernstig waren dat ze grondig onderzocht moesten worden. Tot nu toe heeft Meiling echter niet vast kunnen stellen of MSS schuldig is en zo dit het geval mocht zijn, of er kinderen bij deze zaken betrokken zijn die naar Nederland zijn gekomen voor adoptie.

Ofschoon er tot op heden op beide vragen geen antwoord is te geven, verzoekt Meiling Adviesbureau Van Montfoort, om uit te zoeken wat de status is van de adopties door Nederlandse ouders in het geval onverhoopt mocht blijken dat de beschuldigingen juist zijn en dat er kinderen door Nederlandse ouders zijn geadopteerd waarvan later komt vast te staan dat er bij het doen van afstand misstanden aan de orde waren. Het betreft kinderen die in 2001 of 2002 door een uitspraak van een Nederlandse rechter zijn geadopteerd. Concreet wil Meiling weten of deze adoptie naar Nederlands recht kan worden teruggedraaid op grond van eventueel gebleken misstanden en of de autoriteiten van India de adoptie uitspraak ongedaan kunnen maken, dan wel niet erkennen.

2. Herroepen van de adoptie naar Nederlands recht

Indien de rechter het verzoek om adoptie van de ouders in een rechterlijke uitspraak heeft toegewezen, is daarmee de adoptieprocedure afgerond. Gevolg is dat er familierechtelijke betrekkingen ontstaan tussen het kind en zijn adoptiefouders en dat de familierechtelijke banden met de oorspronkelijke ouder(s) worden verbroken (art. 1: 229 en 230 Burgerlijk Wetboek). Omdat adoptie van oorsprong vooral als een maatregel van kinderbescherming is bedoeld bepaalt de wet dat de adoptie haar gevolgen blijft behouden ook al zou blijken dat de rechter de voorwaarden voor de adoptie ten onrechte als vervuld zou hebben aangenomen (art. 1:230 lid 2 Burgerlijk Wetboek). In verband met dit advies betekent dit concreet dat ook als later blijkt dat de ouders geen toestemming hebben gegeven, of dat deze toestemming niet in vrijheid is gegeven, de adoptie blijft voortbestaan. De overheid of de rechter grijpt, ook als achteraf blijkt dat niet aan alle voorwaarden voor adoptie is voldaan, niet op eigen initiatief in.

Op de regel dat de gevolgen van de adoptie blijven bestaan ook als later blijkt dat niet aan alle voorwaarden is voldaan, geldt één uitzondering waar we in deze notitie volledigheidshalve op wijzen. Het burgerlijk procesrecht biedt de mogelijkheid van herroeping (art. 390 i.v.m. art. 382 Wetboek van Burgerlijke Rechtsvordering). Lange tijd is gedacht dat de mogelijkheid van herroeping niet gold voor adoptieverzoeken, doch de Hoge Raad heeft in zijn uitspraak van 20 april 2001 duidelijk gemaakt dat ook in adoptiezaken om herroeping kan worden verzocht.

Dit buitengewoon rechtsmiddel kan worden ingesteld door belanghebbenden (i.c. de biologische ouders en het kind vanaf 12 jaar). In geval van herroeping verzoekt de belanghebbende de rechtbank de eerder gedane uitspraak te herroepen (ongedaan te maken) omdat:

- a. De uitspraak naar nu duidelijk is geworden, blijkt te zijn gebaseerd op bedrog van de wederpartij,
- b. De uitspraak mede is gebaseerd op stukken waarvan de valsheid na het vonnis is erkend of bij vonnis is vastgesteld, of omdat
- c. De belanghebbende na het vonnis stukken van beslissende aard in handen heeft gekregen die door toedoen van de wederpartij waren achtergehouden.

In de zaak die Meiling aan ons heeft voorgelegd, vallen de gronden genoemd onder a en c af omdat aangenomen mag worden dat de adoptiefouders (i.c. de wederpartij) geen aandeel hebben in het mogelijke bedrog.

Blijft als grond voor herroeping alleen over de grond genoemd onder b. Bij *valsheid van stukken* dient te worden gedacht aan stukken die bestemd zijn om als bewijs te dienen en waarin opzettelijk verklaringen worden gedaan of feiten worden genoemd die in strijd zijn met de waarheid. Bovendien stelt art. 382 Wetboek van Burgerlijke Rechtsvordering als voorwaarde dat de valsheid is erkend of bij vonnis is vastgesteld. Voorwaarde is, anders gezegd, dat officieel wordt vastgesteld dat bijvoorbeeld de afstandsverklaring van de moeder of een ander cruciaal stuk is vervalst. Dat zou voor de belanghebbenden, de ouders en het kind, de mogelijkheid bieden om de rechter te verzoeken het adoptievonnis te herroepen.

Meent de rechter dat de gronden voor herroeping zich voordoen, dan heropent hij de procedure en stelt hij alle belanghebbenden (ook de adoptiefouders en het kind) in de gelegenheid stukken aan te leveren en hun mening te geven. Komt de rechter na de zitting tot een ander oordeel dan het oordeel uit het eerste vonnis, dan doet hij een (gedeeltelijk) nieuwe uitspraak met (gedeeltelijke) herroeping van het oorspronkelijke vonnis.

Een verzoek om herroeping moet in gang worden gezet binnen *drie maanden* nadat de grond voor de herroeping is ontstaan. In dit geval betekent dit dat de biologische ouders drie maanden de tijd hebben om de procedure in gang te zetten, nadat de valsheid van bijvoorbeeld de afstandsverklaring officieel komt vast te staan bijvoorbeeld door een uitspraak van de Indiase (straf)rechter.

De kans dat het tot een herroeping komt lijkt op dit moment tamelijk klein vanwege de eis van de officiële erkenning van precies de stukken die één bepaalde adoptie betreffen. Bovendien moeten de afstandsouder(s) zich dan binnen drie maanden daarna met hun herroepingsverzoek melden bij de rechter.

Mocht het toch tot een herroeping komen, dan betekent dit zeker niet automatisch dat de adoptie ongedaan wordt gemaakt. Zoals eerder gezegd adoptie is van oorsprong en in zekere zin nu nog steeds gericht op kindbescherming. Er moet door de adoptie zekerheid aan het kind worden geboden v.w.b. het gezin waarin hij opgroeit. Vandaar ook de bepaling dat de adoptie zijn gevolgen blijft behouden ook als na de rechterlijke uitspraak blijkt dat niet aan alle voorwaarden voor adoptie is voldaan. Ook in een herroeping dient de rechter zich daarom door de belangen van het kind te laten leiden. Bovendien bepaalt het Internationaal Verdrag voor de Rechten van het Kind zijn dat (ook) rechters verplicht zijn om bij hun uitspraken de belangen van het kind als eerste overweging te laten gelden, deze belangen dienen, anders gezegd, het zwaarst te wegen. Het gegeven dat het kind van jongs af aan is opgegroeid in het adoptiegezin in ons land en zich heeft gehecht aan zijn adoptiefouders is een zwaarwegend belang dat moet worden afgewogen tegen de belangen die het kind heeft bij terugkeer naar het gezin waaruit het afkomstig is. In het algemeen kan worden gezegd dat aan de hechting en settling van het kind in het adoptie gezin zeer veel waarde wordt toegekend. Daarom mag in het algemeen worden aangenomen dat een mogelijk verzoek om herziening niet snel zal leiden tot het ongedaan maken van de adoptie.

Voor de volledigheid wijzen we nog op een andere, algemene mogelijkheid van herroeping van een adoptie. Ieder adoptiekind heeft vanaf zijn 20^e jaar tot aan zijn 23^e jaar het recht om de rechtbank te verzoeken om herroeping van zijn adoptie (art. 1:231 BW). Het verzoek wordt alleen toegewezen indien de herroeping in het kennelijk belang is van de geadopteerde en de rechter van de redelijkheid van het verzoek overtuigd is. Deze mogelijkheid tot herroeping bedreigt overigens *iedere* adoptiebeschikking en niet alleen adoptie uitspraken waarvan later kan worden vastgesteld dat er zich zaken voor hebben gedaan die tot herroeping kunnen leiden.

3. Erkenning van de adoptie in het land van herkomst

Een tweede punt, als het om de status van de adoptie gaat, is de erkenning van de adoptie door het donorland, in dit geval India, indien de misstanden waarvan MSS nu beschuldigd wordt, kunnen worden aangetoond.

India en Nederland zijn beide lidstaten van het Internationaal Adoptieverdrag. Dit adoptieverdrag verplicht een lidstaat onder andere om een adoptie uitspraak van een andere lidstaat te erkennen, indien deze is gedaan door de bevoegde autoriteiten en volgens de regels van het verdrag (art. 23 Adoptieverdrag). De autoriteiten van India zijn daarmee verplicht om de adoptie uitspraak gedaan door een Nederlandse rechter te erkennen. Dit wil zeggen dat zij de familierechtelijke banden die door de uitspraak zijn ontstaan moeten respecteren, ook bijvoorbeeld als adoptiefouder en kind voor vakantie of anderszins in India verblijven.

Echter, art. 24 van het Verdrag bepaalt dat de lidstaten niet zijn gehouden een adoptie te erkennen als deze, gelet op het belang van het kind, in strijd is met de openbare orde. Dit laatste wil zeggen dat er door de adoptie fundamentele beginselen van de erkennende staat zijn geschonden.

Het is denkbaar dat, indien in India vast komt te staan dat bij een bepaalde Nederlandse adoptie die een oorspronkelijk Indiaas kind betreft, fundamentele beginselen zijn geschonden bij de totstandkoming van de afstandsverklaring, de Indiase autoriteiten van mening zijn dat zij erkenning van de adoptie kunnen of moeten weigeren omdat deze adoptie, gelet op de belangen van het kind, in strijd is met de openbare orde. Of de Indiase autoriteiten van een dergelijke bepaling, ook in geval van een adoptie die al vijf of zes jaar geleden tot stand kwam en die, met de kennis van toen, rechtmatig tot stand is gekomen, gebruik kunnen en zullen maken, kunnen wij, onbekend met het Indiaas rechtstelsel en met de juridische gebruiken in dat land, niet overzien.

Echter, in verband met de bepaling van art. 24 van het Verdrag kan geen garantie worden gegeven dat, indien zou blijken dat er in een bepaalde adoptieprocedure fundamentele fouten zijn gemaakt, India de adoptie uitspraak toch erkent of blijft erkennen. Wel zou een dergelijke weigering, althans gezien vanuit onze Nederlandse rechtsopvatting, alleen mogelijk zijn als inderdaad blijkt dat er bij een concrete adoptie fundamentele fouten zijn gemaakt. Het in het algemeen bekend worden van fundamentele fouten tijdens een aantal procedures in de periode van de afstandsverklaring, zou, naar onze rechtsopvatting, onvoldoende grond bieden voor het weigeren van een erkenning van een concrete adoptie.

Woerden, 28 juni 2006

Woerden, 26 juni 2006

Adviesbureau Van Montfoort

A/B
17/6/14

Wereldkinderen

Ministerie van Justitie

Dossier A07/2577/100006uz

Datum 25 MEI 2007

Nummer 07/5486919

MvJ/DGPG

2

Door Reg. DIV kon. gezonder
aan DGPG

Ministerie van Justitie

T.a.v. De Minister van Justitie

Mr. E.M.H. Hirsch Ballin

Postbus 20301

2500 EH DEN HAAG

9
25/5

20773075

Gracy Speedy
sent to
aan de
orgaan
subc.

→ [Redacted]

DIR/074/07

Den Haag, 24 mei 2007

Excellentie,

U heeft een grondig onderzoek aangekondigd naar adopties vanuit India. Wereldkinderen hecht grote waarde aan een gedegen onderzoek. Adoptie door professionele organisaties wordt ten onrechte in een kwaad daglicht gesteld.

In het belang van het door u aangekondigde onderzoek naar adopties uit India, melden wij u dat Wereldkinderen in 1990 heeft bemiddeld bij de adoptie van een kind met een zwaar medisch dossier via de organisatie Malaysian Social Service Centre (MSSC). Wereldkinderen heeft geen twijfels over de juistheid van de gevolgde procedure met betrekking tot dit kind.

Echter, Wereldkinderen heeft na deze adoptie bewust besloten niet meer met deze organisatie te werken, omdat deze naar onze mening niet betrouwbaar werkte. De normale gang van zaken destijds was dat het Ministerie van Justitie een lijst bijhield met de contacten van de diverse vergunninghouders. Als een vergunninghouder stopte met een contact werd een reden opgegeven. Het stopzetten van dit contact en de motivatie daartoe is destijds (in 1990) aan het Ministerie van Justitie gemeld door de [Redacted] Wereldkinderen [Redacted]

Hoofachtend.

[Redacted Signature]

Wereldkinderen

projecthulp en adoptie / project aid and adoption / proyecto de ayuda y adopción

dgpg
25/5/14



Wereldkinderen

Riouwstraat 191
2585 HT Den Haag
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AB
1/6/13

MVJ/DGPJS



Ministerie van Justitie
 Dossier A07/25.77/6008
 Datum **25 MEI 2007**
 Nummer 07/5406920
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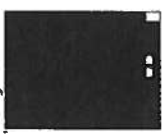
Door Reg. DIV kopie gezonden
 aan DGPJS

Ministerie van Justitie
 T.a.v. De Minister van Justitie
 Mr. E.M.H. Hirsch Ballin
 Postbus 20301
 2500 EH DEN HAAG

woord
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25/5

projecthulp en adoptie / project aid and adoption / proyecto de ayuda y adopción

DIR/075/07
 Den Haag, 24 mei 2007



1/6 → 077 d 30/5
W

Excellentie,

Hierbij verzoek ik u een officieel onderzoek in te stellen naar mogelijke adoptieschandalen in India in de plaats Hyderabad en omgeving. In 2005 en 2006 zijn er in India diverse adoptieschandalen in de openbaarheid gekomen. Dit betrof schandalen in diverse deelstaten van India.

Wereldkinderen is korte tijd werkzaam geweest in Hyderabad en omgeving. In totaal zijn 15 kinderen in Nederland geplaatst bij Nederlandse adoptiegezinnen, de bemiddelingen zijn via twee Indiase organisaties gelopen. Het betreft de volgende organisaties:

- John Abraham Memorial Bethany Home in Tandur (Andhra Pradesh): 3 kinderen geplaatst in 1996.
- Tender Loving Care Home in Hyderabad (Andhra Pradesh): 11 kinderen geplaatst in 1999 en 2000.

Met beide organisaties hebben wij slechts korte tijd gewerkt. Jaren later hebben wij via websites geruchten vernomen omtrent vele organisaties in Hyderabad en omgeving.

In het belang van de geadopteerden en hun families, verzoek ik u een onderzoek in te stellen naar de gevolgde procedures en naar de achtergronden van de door ons geplaatste kinderen, teneinde elke mogelijke twijfel bij de ouders en geadopteerden weg te nemen.

Wij hebben geen twijfels over de gevolgde procedures en de juistheid van de achtergronden van de kinderen, maar willen graag dat dit door het Ministerie van Justitie formeel wordt onderzocht en bevestigd, teneinde aan mogelijke twijfels bij ouders en geadopteerden een einde te maken.

Natuurlijk ben ik altijd bereid om een toelichting te geven op dit schrijven.

Hoogachtend,

Wereldkinderen



Wereldkinderen

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DGPJS
25/5/5



Bijlage bij nota

Verantwoordelijkheidskader bij de toetsing van de zuiverheid en zorgvuldigheid van buitenlandse contacten

Procedure bij interlandelijke adoptie:

Op grond van het Haags adoptieverdrag dient elk land een Centrale autoriteit aan te wijzen. In Nederland is dat de minister van Justitie. De Centrale autoriteiten dienen met elkaar samen te werken. In het verdrag is ook de te volgen procedure neergelegd, welke procedure in Nederland ook bij adoptie uit niet-verdragslanden gevolgd wordt.

In het land van opvang dient beoordeeld te worden of personen geschikt zijn voor adoptie (in Nederland is de minister van Justitie hiervoor verantwoordelijk). In het land van herkomst dient beoordeeld te worden of een kind adoptabel is.

Vervolgens volgt de bemiddeling: bij het kind moeten geschikte ouders worden gezocht. In Nederland is de rol van bemiddelaar neergelegd bij zogenoemde vergunninghouders; de vergunninghouder legt de contacten met het buitenland en begeleidt de procedure in het buitenland. De minister van Justitie vervult hierbij geen rol.

De bemiddeling mondt uiteindelijk uit in een plaatsingsvoorstel: de matching. Drie situaties kunnen worden onderscheiden:

- Indien een kind geadopteerd wordt uit een niet-verdragsland en er geen afwijking van de wettelijke leeftijdsregels is, beoordeelt de vergunninghouder een plaatsingsvoorstel. De minister van Justitie speelt hierbij geen rol;
- Indien een kind geadopteerd wordt uit een niet-verdragsland en er een afwijking van de wettelijke leeftijdsregels is, dient de minister van Justitie in te stemmen met het plaatsingsvoorstel (bekeken wordt aan de hand van het gezinsrapport of de aspirant-adoptiefouders geschikt kunnen worden geacht voor het betreffende kind. Zo nodig wordt nader onderzoek door de raad voor de kindbescherming gevraagd.);
- Indien een kind geadopteerd wordt uit een verdragsland, dient de minister van Justitie in te stemmen met het plaatsingsvoorstel (bekeken wordt aan de hand van het gezinsrapport of de aspirant-adoptiefouders geschikt kunnen worden geacht voor het betreffende kind. Zo nodig wordt nader onderzoek door de raad voor de kindbescherming gevraagd.).

Vergunning om te mogen bemiddelen: om te mogen bemiddelen is een vergunning van de Minister van Justitie vereist. Eén van de voorwaarden waaraan een vergunninghouder moet voldoen is dat hij alleen bemiddelt in de gevallen waarin de adoptie in het belang van het betrokken kind kan worden geacht (art. 16 Wobka). Het belang van het kind brengt met zich dat er toegezien moet worden op een zuiver en zorgvuldig verloop van de procedure (vergelijk ook het Haags adoptieverdrag). De wet bevat hierover geen nadere regels. Tot 1 juni 2004 waren er evenmin regels in een lagere regeling neergelegd.

Sinds 2002 wordt de Inspectie Jeugdzorg telkens verzocht onderzoek te doen als om een vergunningverlen(g)ing wordt verzocht.

Sinds 1 juni 2004 wordt bij vergunningverlen(g)ing gewerkt met een protocol waarin is aangegeven hoe een aanvraag ingediend moet worden, welke de vereisten zijn waaraan voldaan moet worden en hoe de procedure van behandeling van en beslissing op de aanvraag verloopt (zie bijlage). In het protocol is o.m. neergelegd dat de vergunninghouder de wijze moet aangeven waarop hij zich zal vergewissen of de procedure waarbij het kind voor interlandelijke adoptie in aanmerking is gebracht zorgvuldig en zuiver is geschied. De vergunninghouder moet uiteenzetten hoe hij de controle ten aanzien van een bepaalde staat van herkomst in het algemeen zal uitvoeren en hoe hij dit in ieder concreet dossier afzonderlijk zal doen.

Toezicht op vergunninghouder:

- In de periode vóór 1996 waren het de door de minister van Justitie aangewezen ambtenaren van het ministerie van Justitie die belast waren met het toezicht op de naleving van de voor vergunninghouders geldende voorschriften (alleen bemiddelen in die gevallen waarin de adoptie in het belang van het betrokken kind kan worden geacht, geen winstoogmerk hebben en zodanig toegerust zijn dat een zorgvuldige en doeltreffende uitvoering van de werkzaamheden zijn gewaarborgd). Door die ambtenaren werd jaarlijks een bezoek aan de vergunninghouders gebracht, werden ervaringen uitgewisseld en steekproefsgewijs werden dossiers onderzocht.
- De Inspectie jeugdzorg is sinds 1996 belast met het toezicht op de naleving van deze voorwaarden door de vergunninghouder.
- Indien er in individuele gevallen aanleiding toe is, kan de CA de Inspectie jeugdzorg inschakelen om nader onderzoek te doen (incidenten).

Ontwikkelingen:

Het toezicht is de laatste jaren verscherpt (Inspectie is ingeschakeld, er zijn schriftelijke normen vastgelegd). Dit toezicht zal nog verder verscherpt worden:

- bij de procedure inzake de verlenging van de geldigheidsduur van de vergunningen in 2005 is door de Inspectie onderzoek verricht naar de kwaliteit van de matching. Overeenkomstig de aanbevelingen van de Inspectie is in 2006 een traject gestart tot verbetering van de kwaliteit van het bemiddelingsproces en het vastleggen van normen daarin. Dit moet in overleg met de VG's eind dit jaar resulteren in concrete kwaliteitsnormen (bijv. afspraken over periodieke controle door de VG van de zuiverheid en zorgvuldigheid van handelen van het contact in het buitenland, afspraken of een contact door bevoegde autoriteiten in land van herkomst goedgekeurd moet zijn, wanneer op officiële stukken van de autoriteiten in het land van herkomst kan worden afgegaan, gegevens waar men minimaal over moet beschikken bij de matching etc.).

- In een in voorbereiding zijnd wetsvoorstel zijn wijzigingen m.b.t. het toezicht opgenomen:

- Toespitsing van de toezichtstaak van de inspectie op de kwaliteit van de werkzaamheden van de vergunninghouders (analoog aan de Wet op de jeugdzorg)
- Het financiële toezicht op de vergunninghouders wordt bij het ministerie van Justitie ondergebracht.
- Wijziging van het preventieve toezicht doordat vergunninghouders nog slechts met een machtiging van de minister van Justitie hun bemiddelingswerkzaamheden in landen die niet zijn aangesloten bij het Haags Adoptieverdrag zullen mogen uitoefenen (machtiging is nu alleen vereist voor bemiddeling in verdragslanden). Dit wetsvoorstel ligt stil in afwachting van de aanbevelingen van een door u in te stellen commissie.

**Protocol Werkwijze Bureau Centrale autoriteit
bij de verlening van een vergunning om
te bemiddelen inzake interlandelijke adoptie
of verlenging van de geldigheidsduur
van die vergunning**

Inhoudsopgave

Lijst van afkortingen

Inleiding

Hoofdstuk I	Algemeen
Hoofdstuk II	De aanvraag van een vergunning
Hoofdstuk III	Bij de aanvraag te verstrekken gegevens betreffende de aanvrager/(aspirant-)vergunninghouder
Hoofdstuk IV	Bij de aanvraag te verstrekken gegevens betreffende de aard en de uitvoering van de werkzaamheden
Hoofdstuk V	De behandeling van de aanvraag
Hoofdstuk VI	De beslissing op de aanvraag
Hoofdstuk VII	Verlenging van de geldigheidsduur van de vergunning Evaluatie van de werkzaamheden van de vergunninghouder
Hoofdstuk VIII	Opheffing van de aan de vergunning verbonden voorwaarden.
Hoofdstuk IX	Rechtsmiddelen
Hoofdstuk X	Slotbepalingen
Bijlagen	("Basis-pakket wetgeving" + overige documentatie die wordt verstrekt aan organisatie die voornemens is een aanvraag in te dienen (zie p. 5).

Lijst van afkortingen

Awb	Algemene wet bestuursrecht;
Bemiddeling	elke activiteit van een vergunninghouder gericht op totstandkoming van, of ondersteuning bij, de plaatsing van een buitenlands kind met het oog op adoptie bij aspirant-adoptiefouders;
Bobka	Besluit opneming buitenlandse kinderen ter adoptie;
Inspectie jeugdzorg	de Inspectie houdt toezicht op de kwaliteit van de jeugdhulpverlening en de jeugdbescherming. Inspectie jeugdzorg is met ingang van 1 januari 2004 de nieuwe naam voor de Inspectie jeugdhulpverlening en jeugdbescherming (als bedoeld in artikel 54 van de Wet op de jeugdhulpverlening);
Regeling ex 16,2	Ministeriële regeling van 17 augustus 1998 ter uitvoering van artikel 16, tweede lid, Wobka (Stcrt. 171);
Regeling ex 20,5	Ministeriële regeling van 17 augustus 1998 ter uitvoering van artikel 20, vijfde lid, Wobka (Stcrt. 171);
SAV	Stichting Adoptievoorzieningen, die onder andere door middel van cursussen de algemene voorlichting omtrent de opneming en adoptie van een buitenlands kind aan de aspirant-adoptiefouders verzorgt (SAV wordt in artikel 4 van het Bobka (nog) Bureau voorlichting interlandelijke adoptie, Bureau VIA, genoemd);
Uitvoeringswet	Wet van 14 mei 1998 tot uitvoering van het Verdrag inzake de bescherming van kinderen en de samenwerking op het gebied van interlandelijke adoptie, en in verband daarmee tot wijziging van de Wet opneming buitenlandse kinderen ter adoptie (Stb. 302);
Verdrag	Verdrag inzake de bescherming van kinderen en de samenwerking op het gebied van interlandelijke adoptie, 's-Gravenhage, 29 mei 1993 (Trb. 1996, 94);
Vergunninghouder	de rechtspersoon die houder is van een vergunning te bemiddelen inzake de opneming van een buitenlands kind in een Nederlands gezin (een vergunning als bedoeld in de artikel 15 van de Wobka);
Wobka	Wet opneming buitenlandse kinderen ter adoptie.

Inleiding

De opnemng van een buitenlands kind in een Nederlands gezin ten behoeve van de adoptie van het kind is een zeer ingrijpende gebeurtenis. Mede daarom voelt de Nederlandse overheid die bij deze opnemng is betrokken hierbij een grote verantwoordelijkheid. Die verantwoordelijkheid komt tot uiting in het feit dat de interlandelijke adoptie met de nodige wet- en regelgeving is omringd die moet verzekeren dat daarbij bepaalde uitgangspunten en waarborgen in acht worden genomen. Zo is er regelgeving met betrekking tot de organisaties die bemiddelen inzake de opnemng van een bepaald buitenlands kind in een bepaald Nederlands gezin. Deze bemiddelende organisaties kunnen hun werkzaamheden niet uitoefenen dan nadat zij hiervoor vergunning hebben gekregen van de Minister van Justitie.

De wijze waarop een aanvraag voor een vergunning moet worden ingediend, de vereisten waaraan moet worden voldaan, de behandeling van de aanvraag en de beslissing daarop, al deze punten worden nader uitgewerkt in dit Protocol. Het beschrijft hoe het Bureau Centrale autoriteit, het dienstonderdeel van het Ministerie van Justitie dat is belast met de uitvoering van de betreffende wet- en regelgeving, te werk moet gaan. Tegelijkertijd biedt het Protocol voor de aanvragers zekerheid en vormt het voor hen een soort checklist van de vereisten waaraan zij dienen te voldoen, en van de gegevens en de stukken die zij dienen over te leggen ten bewijze dat zij aan die vereisten voldoen.

Het Protocol, dat beoogt helderheid te brengen over de werkwijze en het beleid van het Bureau Centrale autoriteit door de regels die in verschillende instrumenten verspreid zijn neergelegd bijeen te brengen in één document, kan naar verwachting zo een bijdrage leveren aan een adequate, snelle besluitvorming bij de vergunningverlening.

1 juni 2004

De Minister van Justitie
namens deze

N.P. Levenkamp
Directeur Jeugd en Criminaliteitspreventie

Hoofdstuk I. Algemeen

1. Personen of instellingen die het Bureau Centrale autoriteit om informatie verzoeken omtrent de mogelijkheden te bemiddelen inzake de opnemning van een buitenlands kind in een Nederlands gezin met het oog op de adoptie van het betreffende kind, zal een documentatie pakket worden toegezonden met daarin, onder andere,
 - het Protocol Werkwijze Bureau Centrale autoriteit bij de verlening van een vergunning,
 - de tekst van de relevante nationale en internationale wetten en regels,
 - de brochure: "U wilt een kind uit het buitenland adopteren"
 - en andere bij het Ministerie van Justitie beschikbare relevante informatie.
2. Na ontvangst van de aanvraag om een vergunning wordt deze geregistreerd onder een OBP nummer.
3. De aanvrager van een vergunning of de verzoeker van de verlenging van de geldigheidsduur van een vergunning of van de opheffing van aan de vergunning verbonden voorwaarde(n) wordt onverwijld de ontvangst van zijn aanvraag of verzoek bevestigd. Indien zich reeds onmiddellijk laat aanzien dat het verlangde besluit niet binnen de in de Algemene wet bestuursrecht voorgeschreven termijn van acht weken zal kunnen worden genomen, wordt de aanvrager of verzoeker hiervan in kennis gesteld. Daarbij wordt een redelijke termijn genoemd waarbinnen de beschikking wel tegemoet kan worden gezien (art. 4:14).

Indien het om de aanvraag van een vergunning gaat, wordt de aanvrager er in de ontvangstbevestiging op attent gemaakt, dat hij om daadwerkelijk in de staat van herkomst van zijn keuze werkzaam te mogen zijn, doorgaans (tevens) de toestemming van de autoriteiten van de betreffende staat behoeft, althans bij hen moet zijn geïntroduceerd als Nederlandse vergunninghouder of wanneer het om een verdragstaat gaat, een machtiging behoeft (art. 4 Uitvoeringswet; art. 12 Verdrag). Hij wordt uitgenodigd om tijdig op een later tijdstip in de procedure betreffende bedoelde toestemming, introductie of machtiging contact op te nemen met het Bureau Centrale autoriteit.

4. Voor nadere, meer gedetailleerde informatie betreffende de formele vereisten voor de aanvraag van een vergunning of de verzoeken tot verlenging van de geldigheidsduur van een vergunning of tot opheffing van aan de vergunning verbonden voorwaarde(n), betreffende de bij de aanvraag of een verzoek over te leggen stukken, betreffende de behandeling van de aanvraag of een verzoek en de beslissing daarop, wordt verwezen naar de Hoofdstukken II tot en met VIII.
5. De beslissing op de aanvraag of op een verzoek vormt een besluit in de zin van artikel 1:3 van de Algemene wet bestuursrecht. De aanvrager of de verzoeker kan tegen dit besluit bezwaar indienen. Stemt ook het besluit op bezwaar hem niet tevreden, dan staat hem verder beroep op de bestuursrechter open. Voor nadere informatie over de indiening van een bezwaarschrift wordt verder verwezen naar Hoofdstuk IX.

Hoofdstuk II. De aanvraag van een vergunning

1. Een aanvraag om een vergunning te mogen bemiddelen inzake de opnemng van een buitenlands kind in een Nederlands gezin met het oog op de adoptie van dat kind dient schriftelijk te worden ingediend en te zijn gedateerd en ondertekend (art. 15 Wobka; artt. 4:1, 4:2, Awb).
2. De aanvraag dient duidelijk te vermelden op welke staat of staten van herkomst zij betrekking heeft (art. 1, letters e en f, Regeling ex 16,2).
3. De aanvraag zal vergezeld gaan van aanvullende (schriftelijke) informatie waaruit kan blijken dat de aspirant-vergunninghouder heeft voldaan en tijdens de uitoefening van zijn werkzaamheden zal kunnen blijven voldoen, aan de gestelde vereisten betreffende zijn eigen persoonlijkheid, inrichting en organisatie (zie hiervoor verder Hoofdstuk III) en betreffende de aard en de wijze waarop hij zijn werkzaamheden zal uitvoeren (zie hiervoor verder Hoofdstuk IV) (art. 1 aanhef Regeling ex 16,2).
4. De aanvraag moet worden gericht tot:
De Minister van Justitie,
t.a.v. het Hoofd Bureau Centrale autoriteit,
Postbus 20301,
2500 EH 's-GRAVENHAGE.

Hoofdstuk III. Bij de aanvraag te verstrekken gegevens betreffende de aanvrager/(aspirant-)vergunninghouder

In Hoofdstuk II, nr. 3, werd vermeld dat de aanvraag om een vergunning vergezeld moet gaan van aanvullende (schriftelijke) informatie. Voor zover deze informatie de persoonlijkheid, de inrichting en de organisatie van de *aspirant-vergunninghouder* (doorgaans de aanvrager van de vergunning) betreft, dient zij de volgende gegevens te bevatten:

1. een afschrift van de statuten waaruit blijkt dat de aanvrager een rechtspersoon is met volledige rechtsbevoegdheid en dat zijn zetel zich in Nederland bevindt (art. 16, eerste lid, Wobka; art. 1, letter a, Regeling ex 16,2). Iedere latere wijziging van zijn statuten dient de aanvrager onverwijld ter kennis te brengen van de Minister van Justitie (art. 13 Bobka) onder overlegging van een kopie van de nieuwe akte.
2. een nauwkeurige beschrijving van de wijze waarop de aanvrager zich ervan vergewist dat de opnemings van een buitenlands kind ter adoptie in Nederland in het belang van dat kind kan worden geacht (art. 1, letter b, Regeling ex 16,2). De beschrijving moet de uitwerking vormen van het vereiste dat de aanvrager krachtens zijn statutaire doelstellingen uitsluitend bemiddelingswerkzaamheden zal uitvoeren indien deze in het belang van de betrokken kinderen kunnen worden geacht (art. 16, tweede lid, Wobka). Voorzover de hier bedoelde gegevens de aard en de uitvoering van zijn werkzaamheden betreffen, wordt verwezen naar Hoofdstuk IV).
3. een beschrijving waaruit blijkt dat de werkzaamheden van de aanvrager niet gericht zijn op het maken van winst. Zijn non-profit karakter kan behalve uit zijn statuten (art. 16, derde lid, Wobka), blijken uit andere, aanvullende informatie, zoals de hierna onder nr. 5 genoemde stukken.
4. een opgave van de samenstelling van het bestuur van de aanvrager - het zal uit ten minste drie leden bestaan - en een beschrijving van de wijze waarop door die samenstelling de behartiging van de belangen van de buitenlandse kinderen en van de aspirant-adoptiefouders is gewaarborgd. Binnen het bestuur zal ten behoeve van die belangenbehartiging voldoende deskundigheid met betrekking tot de financiële, de juridische en de maatschappelijke aspecten van de werkzaamheden zijn vertegenwoordigd (art. 16, 4, Wobka; artt. 12, 13 Bobka; art. 1, letter c, Regeling ex 16,2). Iedere wijziging van het bestuur zal de Minister van Justitie ter kennis worden gebracht (art. 16, 4, Wobka; artt. 12, 13 Bobka; art. 1, letter c, Regeling ex 16,2).

Ter voldoening aan het onderhavige vereiste kan aanvrager naast zijn statuten het bestuursreglement, het reglement van de raad van toezicht, het huishoudelijk reglement of andere soortgelijke (interne) regelingen overleggen.

5. een beschrijving waaruit blijkt dat de aanvrager zodanig is toegerust dat een zorgvuldige en doeltreffende uitvoering van zijn werkzaamheden is gewaarborgd. De aanvrager kan tot dit doel een organisatie- en formatierapport of een soortgelijk document overleggen waaruit kan blijken op welke wijze (met behulp van welke personen, aangesteld in dienstverband of meewerkend als vrijwilligers, en met welke middelen) hij zijn werkzaamheden zal uitvoeren.

Uit bij voorbeeld bestellingen/opdrachten, rekeningen en dergelijke bewijsstukken kan verder blijken dat de aanvrager beschikt over de nodige facilitaire en kantoorvoorzieningen en moderne communicatieapparatuur, dat hij een kantoorruimte heeft waarin in ieder geval de vertrouwelijkheid van besprekingen kan worden gewaarborgd en dat hij in het bezit is van een voldoende beveiligde, niet voor derden toegankelijke en tegen brand beschermde archiefkamer (art. 16, vijfde lid Wobka; art. 15 Bobka).

Uit een raming van de exploitatiekosten, van de bureaunkosten en/of een begroting van lasten en baten kan blijken hoe de werkzaamheden worden gefinancierd. De financiële gegevens moeten aantonen dat de aanvrager een continue bedrijfsvoering kan verzekeren.

Hoofdstuk IV. Bij de aanvraag te verstrekken gegevens betreffende de aard en de uitvoering van de werkzaamheden

Hoofdstuk II, nr. 3, van dit Protocol bepaald dat de aanvraag vergezeld moet gaan van aanvullende (schriftelijke) informatie. Voor zover deze informatie de aard en de uitvoering van de *werkzaamheden* van de aspirant-vergunninghouder betreft, dient zij de volgende gegevens te bevatten:

1. een schriftelijke toelichting betreffende de wijze waarop, de vorm waarin de aanvrager zich voorneemt uitvoering te geven aan zijn verplichting tot samenwerking met de andere vergunninghouders, onder andere op het terrein van de algemene voorlichting van de aspirant-adoptiefouders (art. 16, zesde lid, Wobka). De verplichting tot samenwerking strekt ertoe dat de verschillende vergunninghouders in het belang van alle bij de bemiddeling betrokken personen en instellingen hun werkzaamheden optimaal kunnen uitoefenen en dat zij daarbij niet gehinderd worden door onoirbare onderlinge concurrentie. In dit verband zullen zij vooral ook elkaars buitenlandse contacten, elkaars "kanalen", respecteren (art. 20, vierde lid, Wobka).

De vergunninghouders hebben hun samenwerkingsverplichting op het punt van hun buitenlandse contacten in hun geïnstitutionaliseerd vergunninghoudersoverleg uitgewerkt in het "Convenant omgang met Adoptiekanalen" van 12 december 1995. Een nieuwe vergunninghouder die toetreedt tot het vergunninghoudersoverleg en aan dezelfde samenwerkingsverplichting onderhevig is als de andere deelnemers, moet bereid zijn de tot dan toe met betrekking tot de samenwerking gemaakte afspraken, zoals bij voorbeeld het Convenant, na te komen. Indien hij zich niet met die afspraken niet (geheel) kan verenigen, zal hij zijn bezwaar binnen het overleg ter tafel brengen en proberen ter zake een minnelijke regeling te bereiken.

De samenwerking op het gebied van de algemene voorlichting aan de aspirant-adoptiefouders zal vooral die onderwerpen omvatten die buiten de door de SAV verstrekte voorlichting zoals omschreven in artikel 11 van de Bobka vallen. Deze overige algemene voorlichting behelst doorgaans het in de gekozen staat van herkomst gevoerde beleid inzake de plaatsing van kinderen, bijzonderheden over de juridische vormgeving van de afstand(sverklaring) en de adoptieprocedure, voorlichting omtrent het beleid van de (Nederlandse) Minister van Justitie (nu de vergunninghouder toch vooral optreedt als belangenbehartiger van de aspirant-adoptiefouder). De doeltreffendheid van de communicatie kan meebrengen dat de vergunninghouders zich gezamenlijk tot de buitenwereld richten.

2. een nauwkeurige beschrijving van de wijze waarop de aanvrager in de uitvoering van zijn werkzaamheden zich ervan zal vergewissen dat de opnemings van een buitenlands kind in een Nederlands gezin in het hoogste belang van het betrokken kind kan worden geacht (art. 1, letter b, Regeling ex 16,2 - zie ook Hoofdstuk III, nr. 2). De aanvrager zal hierbij niet alleen uiteenzetten hoe hij de controle ten aanzien van een bepaalde staat van herkomst in het algemeen zal uitvoeren, maar ook hoe hij dit in ieder concreet dossier afzonderlijk zal doen.

Het belang van het kind in het algemeen wordt geacht te liggen omschreven in de uitgangspunten en waarborgen voor interlandelijke adoptie zoals deze onder andere zijn verwoord in de artikelen 3 en 21 van het Verdrag inzake de rechten van het kind en bij voorbeeld in de preambule en de artikelen 4 en 29 van het Verdrag. Met het oog op bedoelde uitgangspunten en waarborgen moet de aanvrager onder meer gegevens verstrekken over de volgende onderwerpen:

a. de wijze waarop hij zal nagaan of de biologische ouder(s) afstand van het te adopteren kind hebben gedaan. De aanvrager zal in dit verband beschrijven welke stappen hij zal ondernemen om zekerheid te krijgen over de vraag of de ouder(s), na te zijn geïnformeerd over de consequenties van afstand, in vrijheid en eerst na de geboorte van het kind, hun beslissing hebben genomen en of zij daarbij gedurende een periode van een à drie maanden de gelegenheid hebben om desgewenst op hun afstandverklaring terug te komen.

Wanneer het kind te vondeling is gelegd mag niet automatisch worden aangenomen dat zijn ouder(s) afstand van hem of haar hebben gedaan. De aanvrager zal daarom beschrijven hoe

hij bij vondelingkinderen zal nagaan of een procedure is gevolgd waarbij de ouders, familieleden, dorpsgenoten of andere lokale belanghebbenden (alsnog) gedurende een bepaalde periode in de gelegenheid worden gesteld de zorg voor de vondeling op zich te nemen. Bedoelde procedure kan bij voorbeeld inhouden dat een publieke kennisgeving wordt gedaan die erop is gericht mogelijke geïnteresseerden te informeren en de gelegenheid te geven zich als verzorger te melden.

b. de wijze waarop hij zich ervan zal vergewissen of de procedure waarbij het kind voor interlandelijke adoptie in aanmerking is gebracht zorgvuldig en zuiver is geschied. Relevant is in dit verband dat de aanvrager beschrijft hoe hij zal nagaan of het subsidiariteitsbeginsel is toegepast en het kind dus eerst voor interlandelijke adoptie in aanmerking is gebracht, nadat is gebleken dat het in de staat van herkomst geen toekomstmogelijkheden heeft en dat de kans dat het aldaar in een gezin kan worden opgenomen nagenoeg uitgesloten moet worden geacht.

c. de wijze waarop hij zal onderzoeken of de medisch-sociale rapportage omtrent een kind redelijkerwijze in de staat van herkomst tot de conclusie heeft kunnen leiden, dat het kind in aanmerking kan worden gebracht voor interlandelijke adoptie. De aanvrager zal in dit verband informatie verstrekken over de wijze waarop hij onderzoekt of de persoonlijke kenmerken en eigenschappen van het kind aannemelijk maken dat het zowel lichamelijk als geestelijk geschikt moet worden geacht voor opnemning in een Nederlands gezin en dat de bevoegde autoriteiten in de staat van herkomst het kind voor interlandelijke adoptie hebben vrijgegeven.

De aanvrager zal in dit verband bijzondere aandacht schenken aan de geboorteakte. Hij zal aangeven hoe hij de betrouwbaarheid van die akte en de juistheid van de daarin vermelde geboortegegevens onderzoekt daarbij in aanmerking nemend het tijdstip waarop de akte werd opgemaakt - in de periode kort na de geboorte of eerst enige tijd later - , de autoriteiten ten overstaan van wie de aangifte is gedaan en die bij het opmaken van de akte betrokken waren, de aangever en de omstandigheid of voor het opmaken van de akte enige tegenprestatie werd verlangd - betaling van een bedrag in geld (leges) of in natura.

d. de wijze waarop hij zich ervan zal vergewissen dat geen van de bij de adoptie- en plaatsingsprocedure betrokken personen of instellingen daarbij ongepast financieel voordeel geniet of medewerking verleent slechts in ruil voor een bepaalde tegenprestatie. Essentieel is hier dat de aanvrager aangeeft hoe hij algemene en gespecificeerde informatie zal verzamelen over de geldbedragen die door hemzelf of door de Nederlandse aspirant-adoptiefouders moeten worden betaald, en over de aanwending van de betreffende middelen in de staat van herkomst.

e. de wijze waarop hij erop zal toezien dat het contactverbod van artikel 29 van het Verdrag wordt gerespecteerd. Bedoeld contactverbod houdt in dat er tussen de aspirant-adoptiefouders en de (biologische) ouders of verzorgers van een kind geen contact is totdat is voldaan aan de hiervoor onder de nrs. a - d genoemde algemene vereisten betreffende de afstandsverklaring, het subsidiariteitsbeginsel, het ongepast voordeel of de tegenprestatie, en totdat de aspirant-adoptiefouders geschikt zijn bevonden voor de verzorging en opvoeding van een buitenlands kind en hun een beginseltoestemming is verleend.

f. de wijze waarop hij zijn specifiek bemiddelende werkzaamheden, de "matching", zal uitvoeren. De aanvrager zal in dit verband aangeven hoe hij bij aanvang van een concrete bemiddelingsopdracht om te beginnen telkens per kind dat voor opnemning in een Nederlands gezin wordt voorgesteld zich ervan vergewist dat ten aanzien van dit bepaalde kind de onder nrs. a - e, genoemde algemene uitgangspunten en waarborgen voor adoptie in acht zijn genomen.

g. de wijze waarop hij met gebruikmaking van alle voorhanden informatie omtrent de identiteit, het karakter, de aanleg en de persoonlijke achtergronden, gezinssituatie en medisch verleden, sociale milieu en de levensomstandigheden van zowel de aspirant-adoptiefouders als het voor adoptie en plaatsing beschikbare kind, voor dit bepaalde kind de juiste adoptiefouder(s) zal proberen te vinden. De aanvrager moet dus beschrijven hoe zijn bemiddelingswerkzaamheden gericht zijn op het bereiken van een goede en optimale "match" tussen ouders en kind (art. 1, letter d, Regeling ex 16,2).

3. een beschrijving van de procedure die de aspirant-adoptiefouders dienen te volgen om na de "matching" tot de daadwerkelijke opnemning van het buitenlands kind te komen. De aanvrager

moet per staat van herkomst beschrijven hoe de procedure na aanvaarding van het plaatsingsvoorstel verloopt en hoe hij de aspirant-adoptiefouders daarin zal bijstaan.

In bedoelde vervolprocedure in de staten van herkomst kan voorgeschreven zijn dat aan bepaalde formele vereisten moet worden voldaan (zoals legalisatie van stukken); dat bepaalde juridische procedures worden gevolgd, zoals afstand van het kind door de biologische ouders en adoptie door de aspirant-adoptiefouder(s) naar plaatselijk recht; dat een bepaalde ceremonie zal plaats vinden waarbij het kind wordt overgedragen aan de aspirant-adoptiefouder(s). De aanvrager heeft ook een taak bij de feitelijke overkomst van het kind naar Nederland (art. 1, letter d, Regeling ex 16,2; art. 17a, letters e, f, Wobka).

4. een opgave per staat van herkomst waar de aanvrager activiteiten wenst te gaan ontplooiën van de personen en instanties, met wie en waarmee hij in die staat betrekkingen heeft in verband met de bemiddeling. In ieder geval zullen onder die contacten figureren de gerechtelijke of andere bevoegde instanties, kindertehulzen, advocaten en andere personen en/of instellingen en organisaties welke bij de bemiddeling betrokken zijn. Ingeval personen en/of instellingen met elkaar samenwerken zal de aanvrager daarvan mededeling doen (art. 1, letter f, Regeling ex 16,2).
5. een beschrijving van de wijze waarop de aanvrager uitvoering zal geven aan het verzorgen van begeleiding nadat het kind in Nederland is opgenomen (art. 1, letter g, Regeling ex 16,2; cfm. ook art. 17a, letter g Wobka).

Hoofdstuk V. De behandeling van de aanvraag

1. Indien de aanvrager niet heeft voldaan aan artikel 4:2 Algemene wet bestuursrecht of aan enig ander wettelijk voorschrift voor het in behandeling nemen van de aanvraag, of indien de verstrekte gegevens en bescheiden onvoldoende zijn voor de beoordeling van de aanvraag, kan de Minister van Justitie besluiten de aanvraag niet te behandelen, mits de aanvrager de gelegenheid heeft gehad binnen de gestelde termijn de aanvraag aan te vullen (art. 4:5 Awb).
2. De aanvraag die voldoet aan de daaraan gestelde formele vereisten, of de genoegzaam aangevulde aanvraag, wordt door het Bureau Centrale autoriteit in behandeling genomen, waarbij wordt onderzocht of aan de vereisten voor het verlenen van de gevraagde vergunning zoals bij of krachtens artikel 16 Wobka vastgesteld, wordt voldaan.
3. De uitvoering van het onderzoek kan ook worden verzocht aan de Inspectie jeugdzorg of een andere in aanmerking komende instantie of extern bureau. De bevindingen van dit onderzoek zullen worden neergelegd in een rapport, met aanbevelingen en conclusies, dat vergezeld gaat van een advies over het door de Minister van Justitie op de aanvraag te nemen besluit.
4. De aanvrager wordt in het bezit gesteld van een kopie van het onder 2 en 3 bedoelde onderzoeksrapport.
5. De aanvrager wordt in de gelegenheid gesteld zijn aanvraag toe te lichten en zijn opmerkingen te maken over het onder nrs. 2 en 3 bedoelde onderzoek. Hij wordt daartoe door het hoofd van het Bureau Centrale autoriteit uitgenodigd voor een gesprek. Er wordt daarbij naar gestreefd om over eventuele punten van geschil tot een minnelijke regeling te komen die recht doet aan de in nationale en internationale wet- en regelgeving voor de vergunningverlening gestelde vereisten (zie Hoofdstukken III en IV).
6. Indien wenselijk, wordt de aanvrager (opnieuw) een bepaalde termijn gegund voor aanvulling van de overgelegde stukken of voor het voldoen aan de nodige verdere formaliteiten (zoals bij voorbeeld een noodzakelijke of wenselijk geachte wijziging van zijn statuten).
7. Zodra het onderzoek voltooid is en/of er geen reden (meer) bestaat om (verdere) aanvulling van de stukken te verzoeken, wordt het afgesloten en de beslissing op de aanvraag voorbereid.

Hoofdstuk VI. De beslissing op de aanvraag

1. De beslissing op de aanvraag wordt genomen op zo kort mogelijke termijn. Nu er rekening mee dient te worden gehouden dat, alvorens een besluit kan worden genomen, de aanvrager aanvullende inlichtingen dient te verstrekken of de uitkomst van een onderzoek naar de situatie in een bepaalde staat van herkomst (door H.M. Ambassade aldaar) moet worden afgewacht, brengt de redelijkheid mee dat met betrekking tot de beslistermijn hiermee rekening wordt gehouden. De aanvrager zal geïnformeerd worden over het tijdstip waarop het besluit tegemoet kan worden gezien (artt. 4:13, 4:14, 4:15 Awb; zie ook Hoofdstuk I, nr. 3).
2. De aanvraag zal worden afgewezen indien hetzij gegronde vrees bestaat dat de aanvrager het bij of krachtens de Wobka ten aanzien van vergunninghouders bepaalde niet zal naleven, hetzij hij naar verwachting te weinig toekomstmogelijkheden heeft met betrekking tot bemiddeling inzake de opnemng van buitenlandse kinderen (art. 17 Wobka).
3. De vergunning zal met inachtneming van het in artikel 16a Wobka bepaalde, worden verleend voor een eerste periode van drie jaren, indien aanvrager aan alle bij of krachtens de Wobka gestelde vereisten voor vergunninghouders heeft voldaan, met dien verstande dat behoudens bijzondere omstandigheden, aan die vergunning steeds voorlopig de voorwaarde zal zijn verbonden dat zij beperkt blijft tot twee staten van herkomst. De vergunning kan echter nooit mede staten van herkomst omvatten ten aanzien van welke de aanvrager niet genoegzaam heeft voldaan aan de in de Wobka en de Regeling ex 16,2 gestelde vereisten voor zover die inhouden dat per staat van herkomst gegevens dienen te worden verstrekt.

De voorlopige beperking van het werkterrein van de vergunninghouder is het resultaat van de afweging van belangen: het belang van het betrokken kind dat er een Nederlandse vergunninghouder bij de bemiddeling is betrokken met voldoende deskundigheid en ervaring om zich ervan te kunnen vergewissen of daarbij ook in de staat van herkomst de uitgangspunten en waarborgen voor interlandelijke adoptie worden gerespecteerd, en het belang van de betrokken vergunninghouder bij een economisch verantwoorde bedrijfsvoering, financiële onafhankelijkheid van zijn buitenlandse contacten en continuïteit van zijn werkzaamheden.

4. Indien en zolang er bij voorbeeld op grond van het in Hoofdstuk V, nrs. 2 en 3 bedoelde rapport en advies (enige) twijfel blijft bestaan of de aanvrager het bij of krachtens de Wobka bepaalde betreffende zijn functioneren (art. 17a - 23) wel volledig en naar behoren zal of kan naleven, kunnen aan de vergunning behoudens de onder nr. 3 bedoelde voorwaarde verdere, aanvullende voorwaarde(n) worden verbonden.
5. De beslissing op de aanvraag vormt een besluit in de zin van artikel 1:3 van de Algemene wet bestuursrecht, waartegen aanvrager bezwaar kan indienen. Hiervoor wordt verwezen naar Hoofdstuk IX.

Hoofdstuk VII. Verlenging van de geldigheidsduur van de vergunning Evaluatie van de werkzaamheden van de vergunninghouder

1. De aanvrager die de geldigheidsduur van de verleende vergunning wenst te verlengen, kan een daartoe strekkend verzoek richten tot de Minister van Justitie. Op dit verzoek zijn de Hoofdstukken I, II, III en IV zoveel mogelijk van overeenkomstige toepassing, met dien verstande waar het punt 3 van Hoofdstuk II betreft, dat, nu de verzoeker reeds als vergunninghouder werkzaam is, hij in ieder geval tevens het (jaar)verslag van zijn werkzaamheden, de balans en de staat van lasten en baten, met toelichting, over het voorafgaande jaar zal overleggen (art. 1, letter e, Regeling ex 16,2).
2. Het verzoek moet uiterlijk twaalf weken voor het verstrijken van de geldigheidsduur van de bestaande vergunning worden ingediend (art. 16a Wobka). Het is echter zeer wenselijk dat om praktische redenen in verband met de werkdruk voor het Bureau Centrale autoriteit het verzoek wordt gedaan omstreeks *zes maanden* voor het verstrijken van de geldigheidsduur.
3. Bij de behandeling van het verzoek is Hoofdstuk V van overeenkomstige toepassing. Het in Hoofdstuk V onder nrs. 2 en 3 bedoelde onderzoek zal in het kader van de verlenging van de geldigheidsduur van de vergunning vooral gericht zijn op de evaluatie van het functioneren van de verzoeker in de afgelopen periode, waarbij onderzocht zal worden of hij onverkort voldoet aan de vereisten voor het verlenen van een vergunning (zie Hoofdstukken III en IV).
4. De aanvrager wordt in de gelegenheid gesteld zijn verzoek toe te lichten en zijn opmerkingen te maken over het evaluatierapport. Hij wordt daartoe door het hoofd van het Bureau Centrale autoriteit uitgenodigd voor een gesprek. Er wordt daarbij naar gestreefd om over eventuele punten van geschil tot een minnelijke regeling te komen die recht doet aan het in nationale en internationale wet- en regelgeving betreffende de werkzaamheden van een vergunninghouder bepaalde (zie Hoofdstukken III en IV).
5. Indien wenselijk, wordt de verzoeker (opnieuw) een bepaalde termijn gegund voor aanvulling van de overgelegde stukken of voor het voldoen aan de nodige verdere formaliteiten.
6. Bij de beslissing over de verlenging van de geldigheidsduur en het daartoe te verrichten onderzoek naar de kwaliteit van de werkzaamheden van verzoeker wordt mede in aanmerking genomen of hij al dan niet een ISO-9001 certificering (of een soortgelijk kwaliteitscertificaat) heeft verworven. Het wordt wenselijk geacht dat de vergunninghouders de kwaliteit van hun werkzaamheden bewaken en daarbij kwaliteitsborgingsystemen hanteren. Het beleid van het Bureau Centrale autoriteit is erop gericht te bevorderen dat een vergunninghouder binnen drie tot vijf jaren na verlening van de vergunning het ISO-9001 certificaat verwerft en dit vervolgens behoudt.
7. De beslissing op het verzoek vormt een besluit in de zin van artikel 1:3 van de Algemene wet bestuursrecht, waartegen aanvrager een rechtsmiddel kan aanwenden. Hiervoor wordt verwezen naar Hoofdstuk IX.

Hoofdstuk VIII. -- Opheffing van de aan de vergunning verbonden voorwaarden

1. De vergunninghouder die opheffing wenst van de aan zijn vergunning verbonden voorwaarde(n) kan een daartoe strekkend verzoek richten tot de Minister van Justitie. Op dit verzoek zijn de Hoofdstukken I en II van overeenkomstige toepassing, met dien verstande wat Hoofdstuk II, punt 3 betreft, dat verzoeker aanvullende (schriftelijke) informatie zal overleggen waaruit kan blijken dat er niet langer reden bestaat voor de handhaving van de voorwaarde(n) waarvan hij opheffing verzoekt.
2. Het verzoek tot opheffing van de beperking van het buitenlandse werkterrein als bedoeld in Hoofdstuk VI, nr. 3, kan worden ingediend tegelijk met het verzoek tot verlenging van de eerste periode van de geldigheidsduur van de vergunning (Hoofdstuk VII, nr. 2) of indien, dit tijdstip eerder valt, vanaf twaalf weken voorafgaand aan het tijdstip waarop de vergunninghouder de afronding van het vijfde door hem behandelde verzoek tot bemiddeling verwacht. Een bemiddeling kan als afgerond worden beschouwd wanneer na de grondige beoordeling van een plaatsingsvoorstel dit wordt afgewezen, omdat het niet in het belang van het betreffende kind wordt geacht.
3. Overige verzoeken tot opheffing van aan de vergunning verbonden voorwaarde(n) kunnen worden ingediend vanaf twaalf weken vóór ommekomst van de periode waarvoor de voorwaarde(n) ten minste zal/zullen gelden. Bij het ontbreken van enige tijdsbepaling zal het verzoek worden gecombineerd met het verzoek om verlenging van de eerste periode van de geldigheidsduur van de vergunning. Ook daarna zal een dergelijk verzoek zoveel mogelijk worden gecombineerd met een verzoek om verlenging van de geldigheidsduur (zie Hoofdstuk VII).
4. Bij de behandeling van het verzoek is Hoofdstuk V van overeenkomstige toepassing. Het in Hoofdstuk V onder nrs. 2 en 3 bedoelde onderzoek zal in het kader van de opheffing van een of meer opgelegde voorwaarden vooral gericht zijn de evaluatie van het functioneren van de verzoeker in relatie tot die voorwaarde(n), waarbij vooral onderzocht zal worden of de redenen die tot het opleggen van de voorwaarde(n) aanleiding gaven inmiddels zijn opgeheven. Met betrekking tot de onder nr. 2 bedoelde voorwaarde zal in ieder geval nauwkeuring worden getoetst of het belang van het kind in de werkwijze van de vergunninghouder voldoende is geoperationaliseerd (Hoofdstuk IV, nrs. 2 en 3).
5. De aanvrager wordt in de gelegenheid gesteld zijn verzoek toe te lichten en zijn opmerkingen te maken over het evaluatierapport. Hij wordt daartoe door het hoofd van het Bureau Centrale autoriteit uitgenodigd voor een gesprek. Er wordt daarbij naar gestreefd om over eventuele punten van geschil tot een minnelijke regeling te komen die recht doet aan de in nationale en internationale wet- en regelgeving voor de vergunningverlening gestelde vereisten (zie Hoofdstukken III en IV).
6. Indien wenselijk, wordt de verzoeker (opnieuw) een bepaalde termijn gegund voor aanvulling van de overgelegde stukken of voor het voldoen aan de nodige verdere formaliteiten.
7. De beslissing op het in dit hoofdstuk aan de orde komend verzoek vormt een besluit in de zin van artikel 1:3 van de Algemene wet bestuursrecht, waartegen aanvrager bezwaar kan indienen. Hiervoor wordt verwezen naar Hoofdstuk IX.

Hoofdstuk IX. — Rechtsmiddelen

1. De beslissing op de aanvraag als bedoeld in Hoofdstuk VI en op de verzoeken als bedoeld in de Hoofdstukken VII en VIII vormt een besluit in de zin van artikel 1:3 van de Algemene wet bestuursrecht. Aanvrager (en een ieder wiens belang rechtstreeks bij dit besluit is betrokken) kan tegen dit besluit bezwaar maken door het indienen van een bezwaarschrift gericht tot de Minister van Justitie (Voor de adressering wordt verwezen naar Hoofdstuk II, nr 4). Voor het overige wordt verwezen naar Hoofdstuk 7 van de Algemene wet bestuursrecht.
2. Aanvrager zal overeenkomstig artikel 3:45 Awb erop worden gewezen dat hij bezwaar kan maken en bij welk bestuursorgaan en binnen welke termijn hij dit dient te doen.

Hoofdstuk X. Slotbepalingen

1. Het Protocol geldt voor zoveel mogelijk ook voor de vergunninghouders die reeds vóór of omstreeks de inwerkingtreding van de Wobka op 15 juli 1989 een vergunning is verleend. Op hun verzoeken tot verlenging van de geldigheidsduur van hun vergunning of tot opheffing van mogelijk aan hun vergunning verbonden voorwaarden zijn de Hoofdstukken VII en VIII van toepassing.
2. Het Protocol zal bij wijziging van de relevante nationale en internationale wet- en regelgeving telkens op zo kort mogelijke termijn daaraan worden aangepast.
3. Dit Protocol geldt voor onbepaalde duur, tot nader order, met ingang van 1 juni 2004.

4c

Meiling steunt adoptieonderzoek Justitie

PERSBERICHT

Meiling steunt adoptieonderzoek justitie

Leidschendam, 24 mei 2007 - Meiling, Stichting voor Adoptie en Projecthulp, zal haar volledige medewerking en steun verlenen aan het door de minister van Justitie aangekondigde onderzoek naar de gang van zaken bij adopties van kinderen naar Nederland via het Indiase kindertehuis Malasyan Social Services (MSS).

Meiling betreurt het dat commotie is ontstaan rond het adoptieproces van buitenlandse kinderen in Nederland. Voor alle betrokken partijen, niet in de laatste plaats voor de ouders en kinderen, is zorgvuldigheid in dit proces van het grootste belang. Op korte termijn zal Meiling ten behoeve van bovengenoemd onderzoek een volledig feitenrelaas met onderliggende documenten overhandigen aan het ministerie van Justitie. Meiling hoopt dat dit onderzoek duidelijkheid verschaft en de geringste twijfel over de zorgvuldigheid van het adoptieproces wegneemt.

Meiling hecht grote waarde aan de zorgvuldigheid en betrouwbaarheid van het interlandelijke adoptieproces. Interlandelijke adoptie komt tot stand in een keten van betrokken organisaties. Alleen wanneer alle instanties toestemming geven vindt de adoptie ook feitelijk plaats. Deze procedure biedt Meiling en de Nederlandse adoptiefouders zekerheid over de legitimiteit van de adoptie.

In ieder land waar Meiling actief is, stelt zij zich volledig op de hoogte van de werking van de volledige adoptieketen waarlangs kinderen naar Nederland komen. Adopties worden getoetst aan de nationale adoptieautoriteit, de kinderbescherming en de rechtbank in het betreffende land en aan de internationale normen voor interlandelijke adoptie. Zowel met de verschillende partners in bovengenoemde keten, als met officiële instanties en collega's uit andere landen wordt op regelmatige basis overleg gevoerd en ervaringen uitgewisseld. Indien er vanuit die contacten of door gesprekken met ouders serieuze signalen komen die erop zouden kunnen wijzen dat zaken niet in orde zijn, zet Meiling zich in verbeteringen tot stand te laten komen. Als dat niet mogelijk is beëindigt Meiling de relatie met de desbetreffende instelling of het desbetreffende land. De stop van adopties uit Brazilië in 1992 en het recent niet opstarten van contacten in India zijn daarvan voorbeelden.

Adoptievergunning

Meiling is in 1994 met het kindertehuis MSS in India in contact gekomen. De adoptie-activiteiten zijn in 2002 beëindigd met het aflopen van de adoptievergunning. MSS heeft in 2002 zelf aangegeven niet verder te willen gaan met interlandelijke adopties, maar zich toe te leggen op dagopvang en onderwijs van kinderen in eigen land. MSS besloot hiertoe vanwege de steeds langer wordende adoptieprocedures. Niet zelden duurde het wel twee jaar voor een kind bij zijn of haar adoptieouders geplaatst kon worden. Gezien de vaak wat oudere leeftijd van de kinderen in het tehuis vond MSS dit niet wenselijk.

Via Meiling zijn vanuit kindertehuis MSS in de periode 1994-2002 circa 50 kinderen naar Nederland gekomen. Veelal oudere kinderen die vanwege hun leeftijd moeilijker plaatsbaar zijn. Voor deze kinderen werd in eerste instantie naar adoptiefouders in het binnenland gezocht, pas in tweede instantie in het buitenland, waaronder Nederland.

Informatievoorziening

Ten tijde van de adoptiecontacten tussen Meiling en MSS beschikte het tehuis steeds over de noodzakelijke vergunningen voor interlandelijke adoptie. Het kindertehuis kreeg halverwege de periode 1994 -2002 een nieuwe vergunning voor buitenlandse adopties vanuit de centrale autoriteit in New Delhi. Ook is nauwlettend gekeken naar de financiële geldstromen. Het tehuis besteedde in die tijd al veel geld en energie aan niet-adoptie gerelateerde zaken, zoals onderwijs en dagopvang.

Bij het kindertehuis MSS was geen sprake van een bovenmatig aantal negatieve signalen. Wel hadden ouders behoefte aan een betere informatievoorziening over het te adopteren kind. Dit is door Meiling in gang gezet: adoptiefouders kregen meer, betere en frequentere informatie over hun kind, ook tijdens de veelal lange procedures.

Bij het bekend worden van verdenkingen in de richting van MSS - in 2005 via berichten in de Indiase media - heeft Meiling onmiddellijk en actief navraag gedaan bij de Indiase autoriteiten. Dat gebeurde zowel schriftelijk (per brief en e-mail) als persoonlijk, via bezoeken van Meiling-medewerkers aan de verschillende organisaties in India. De Indiase autoriteiten hebben Meiling geen informatie gegeven waaruit zou kunnen blijken dat onregelmatigheden in het adoptieproces hebben plaatsgevonden.

Nadat in 2007 het adoptiegezin in Nederland een brief uit India ontving, heeft Meiling het ministerie van Justitie en de Nederlandse ambassade in India in kennis gesteld. Ook navraag van de Nederlandse ambassade ter plaatse heeft vervolgens geen duidelijkheid verschaft. Mede om die reden steunt Meiling het door het ministerie aangekondigde onderzoek.

EINDE PERSBERICHT

Voor meer informatie (niet voor publicatie):
Bijl, partners in public relations & voorlichting
Mieke Plaschek,
T: 010 284 29 29
M: 06 53 23 82 88

[Redacted header line]

Van: [Redacted]
Verzonden: vrijdag 25 mei 2007 14:34
Aan: [Redacted]
CC: [Redacted]

Onderwerp: Aanvullende informatie india-dossier

Urgentie: Hoog

Heren,

Vanmiddag bereikte [Redacted] het bericht van [Redacted] (Wereldkinderen) dat in de uitzending van NOVA hedenavond melding zal worden gemaakt van de brief van Wereldkinderen die in het dossier voor de minister is opgenomen. Meer specifiek zal worden gemeld dat deze organisatie reeds in 1990 wegens twijfel al de contacten met de organisatie in India heeft stopgezet. Ik zal het dossier traceren en dit erbij vermelden. Leek mij voor jullie van belang dit afzonderlijk te weten. **Wereldkinderen heeft ons nadrukkelijk verzocht om niet naar buiten te communiceren, dat wij dit bericht m.b.t. NOVA van hun hebben vernomen.** Houden jullie er rekening mee?

Groeten,
[Redacted]

[Redacted]
Directie Justitieel Jeugdbeleid

tel. 070 370 [Redacted]
fax 070 370 [Redacted]
email [Redacted]

Endo
aan
Ju heeft
gemeld!

Vergaderjaar 2006–2007

28 457

Regeling van het conflictenrecht inzake adoptie en de erkenning van buitenlandse adopties (Wet conflictenrecht adoptie)

Nr. 28

BRIEF VAN DE MINISTER VAN JUSTITIE

Aan de Voorzitter van de Tweede Kamer der Staten-Generaal

Den Haag, 29 mei 2007

Recente berichtgeving in de Netwerk-uitzendingen van 22 en 23 mei jl. en andere media maakt duidelijk dat mogelijk sprake is van ernstige misstanden met betrekking tot adopties uit India. Ik ben verontrust over de informatie die naar voren is gebracht. Het heeft grote impact op adoptie-ouders en -gezinnen. Ik heb de ouders die in het verleden via het in opspraak geraakte contact in India een kind hebben geadopteerd vandaag een brief gestuurd, waarin ik hen informeer over de stappen die ik zal zetten.

De beweringen die naar voren zijn gebracht zijn zeer ernstig. Ik neem deze zaak dan ook hoog op en zal deze grondig laten onderzoeken. Van belang is dat alle relevante feiten met betrekking tot deze affaire en de rol die alle betrokken partijen daarbij hebben gespeeld op onafhankelijke en objectieve wijze op tafel komen en worden beoordeeld, en dat op basis daarvan aanbevelingen worden gedaan voor maatregelen die noodzakelijk worden geacht in aanvulling op verbeteringen die reeds door mij in gang zijn gezet. Ik heb de Inspectie jeugdzorg inmiddels gevraagd de rol van de betrokken vergunninghouder tegen het licht te houden. Over de planning zal ik in overleg met de inspectie nadere afspraken maken. Het spreekt voor zich dat ook de rol van het ministerie van Justitie dient te worden onderzocht. Deze zal ik door een onafhankelijke derde laten beoordelen. Daarnaast zal duidelijkheid moeten komen over hetgeen zich in India heeft afgespeeld.

Ik heb mij met het oog op dit onderzoek verzekerd van de steun van mijn ambtgenoot van Buitenlandse Zaken voor het verkrijgen van informatie.

Voorts heb ik het Openbaar Ministerie (OM) verzocht mij te informeren of het OM voornemens is een (strafrechtelijk) onderzoek te starten naar de onderhavige zaak. Het OM heeft mij heden schriftelijk bericht dat het bij ontbreken van daartoe strekkende informatie vooralsnog geen aanleiding ziet tot het instellen van een oriënterend dan wel een strafrechtelijk onderzoek. Het spreekt voor zich dat indien uit vorengenoemd onderzoek aanwijzingen voor c.q. vermoedens van strafbare feiten naar voren

komen, het OM op basis van de alsdan beschikbare informatie zal bezien of een (oriënterend dan wel strafrechtelijk) onderzoek op zijn plaats zal zijn.

In mijn brief aan de ouders heb ik aangegeven dat ik hen van nieuwe ontwikkelingen op de hoogte zal houden.

De Minister van Justitie,
E. M. H. Hirsch Ballin

29.MEI.2007 11:56

0703399854
COLLEGE PAG
Openbaar Ministerie

NR. 414 P.1

0011111
3.56

AB 5/6/2

College van procureurs-generaal
Voorzitter

Bestuurlijke
Indicatie

J
23/5

7

→ D77
3115

Postadres: Postbus 20305, 2500 EH Den Haag.

Minister van Justitie
dr. E.M.H. Hirsch Ballin
Postbus 20301
2500 EH 'S-GRAVENHAGE



Bezoekadres:
Prins Clauslaan 18
2595 AJ Den Haag
Telefoon +31 70 33 99 600
Telefax +31 70 33 99 854

4/6/07

15 AUG. 2007

Bij beantwoording de
datum en ons kenmerk
vermelden. Wilt u slechts
één zaak in uw brief
behandelen.

Onderdeel
Contactpersoon
Doorkiesnummer(s)
Datum
Ons kenmerk
Onderwerp

Bestuurlijke en Juridische zaken
070 339
29 mei 2007
PaG/BJZ/21214
adoptie kinderen uit India

notificeren

10/18-07

Ministerie van Justitie
Ons kenmerk
Onderwerp <u>A09/2577/1048642</u>
Datum <u>31 MEI 2007</u>
Nummer <u>07/5487009/PAG</u>

Kopie in India dossier

Geachte heer Hirsch Ballin,

In de Telegraaf van 28 mei jongstleden werd de advocaat mr. G.Knoops geciteerd die van mening is dat het gerechtvaardigd is dat het Openbaar ministerie "eigen naspeuringen gaat verrichten" naar de gang van zaken rond de adoptie van kinderen uit India.

U vroeg mij vanochtend telefonisch of het OM voornemens is een onderzoek dienaangaande te starten. Ik heb u daarop meegedeeld dat het OM bij het ontbreken van daartoe strekkende informatie - het enige wat het OM van de kwestie weet, is afkomstig van berichten uit de media - vooralsnog geen aanleiding ziet tot een oriënterend dan wel een strafrechtelijk onderzoek. Alleen op basis van de berichten in de media kan de noodzaak van een dergelijk onderzoek niet worden gebaseerd. Daaruit vloeit immers niet voort de aanwijzing c.q. de verdenking dat er sprake is geweest van strafbare feiten die in ons land tot vervolging kunnen leiden.

Ik heb - eveneens uit de media - begrepen dat u inmiddels opdracht hebt gegeven na te gaan hoe een concreet geval van adoptie van een kind uit India destijds in zijn werk is gegaan. Het spreekt voor zich dat indien uit dat onderzoek aanwijzingen voor c.q. vermoedens van strafbare feiten naar voren komen, het OM op basis van de alsdan beschikbare informatie zal bezien of een (oriënterend dan wel strafrechtelijk) onderzoek op zijn plaats is.

OLMJS
30/5/07

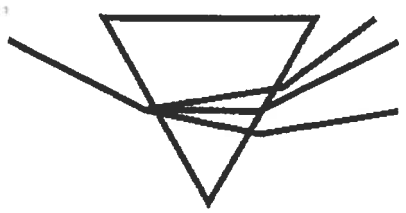
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Ik vertrouw u voor dit moment voldoende te hebben geïnformeerd.

Het College van procureurs-generaal,



AB
30/5/2



8

Prisma

Ministerie van Justitie	
Dossier	#07/2577/15041862
Datum	30 MEI 2007
Nummer	07/5487052/1D11

Development work

Enschede, 29 mei 2007

Aan: Min. van Justitie / dir. Justitieel Jeugdbeleid / afd. Besturing / [redacted]

Betreft: Malaysian Social Services / India

→ [redacted] 30/5 mei

L.S.,

Bijgaand brengen wij u op de hoogte van onze contacten in het verleden met de Malaysian Social Services (MSS) te Chennai in India.

○ Ondergetekenden vertegenwoordigen de vereniging Prisma te Enschede. Prisma is een kleine vereniging die projecten in de derde wereld subsidieert. De inkomsten van Prisma zijn vrijwel geheel afkomstig van de leden.

In het verleden heeft Prisma subsidies verleend aan MSS; in het bijzonder financiële bijdragen aan een schoolgebouw (althans: onder die conditie zijn de gelden aan MSS beschikbaar gesteld). Wij hebben regelmatig contact gehad met [redacted] van MSS en hebben hem in het verleden 2 maal in Nederland ontmoet.

In die periode hadden wij ook contact met de St. Meiling die ons van informatie voorzag hoe de MSS fungeerde. Prisma was op de hoogte van het feit dat St. Meiling zich bezig hield met adoptie; Prisma zelf heeft daar overigens geen enkele betrokkenheid bij gehad.

Enige jaren geleden kregen wij signalen dat er "iets niet klopte" bij de MSS; sindsdien hebben wij geen subsidies meer aan MSS verstrekt. Twee jaar geleden werd bekend dat politie / justitie in India bij MSS hadden ingegrepen vanwege onoirbare praktijken bij adoptie. Wij hebben dat als schokkend ervaren.

○ Vorige week werd in Nederland via de media bekend dat het mogelijk / waarschijnlijk zelfs allemaal nog erger was dan wij tot nu toe dachten (ontvoering van kinderen, kindermishandeling, extreme zelfverrijking).

Gaarne bieden wij aan de Nederlandse (en Indiase) autoriteiten al onze kennis en medewerking aan voor diepgaand onderzoek. Wij beschikken over uitgebreide correspondentie met MSS; in het bijzonder met [redacted]

De praktijken waar het mogelijk omgaat zijn schokkend en gaan elk voorstellingsvermogen te boven. Alleen al voor de toekomst moet de samenleving een sterk signaal geven dat deze praktijken door geen enkel land worden geaccepteerd of oogluikend worden toegelaten.

In afwachting van uw reactie,

[redacted signature]

[redacted signature]

[redacted signature]



Postadres: Postbus 20301, 2500 EH Den Haag

Aan het Bestuur van de Vereniging Prisma

[Redacted]

Bezoekadres

Schedeldoekshaven 100

2511 EX Den Haag

Telefoon (070) 3 70 [Redacted]

Fax (070) 3 70 79 75

www.justitie.nl

Onderdeel
Contactpersoon
Doorkiesnummer(s)
E-mail
Datum
Ons kenmerk
Uw kenmerk
Onderwerp

afdeling Besturing

[Redacted]

1 juni 2007

5487987/07/DJJ

uw brief d.d. 29 mei 2007

Malaysian Social Services/India

Bij beantwoording de datum en ons kenmerk vermelden. Wilt u slechts één zaak in uw brief behandelen.

Geacht Bestuur,

Hiermee bevestig ik de ontvangst van uw brief van 29 mei jl. waarin u mij op de hoogte stelt van de contacten welke uw vereniging in het (recente) verleden had met Malaysian Social Services te Chennai, India.

In uw brief geeft u aan kennis te hebben genomen van hetgeen zich twee jaar geleden in India heeft afgespeeld rond een onderzoek door politie/Justitie bij MSS, alsook van wat onlangs via de media naar buiten is gekomen over mogelijke ernstige misstanden met betrekking tot adopties uit India, waarbij mogelijk MSS is betrokken.

Zoals u inmiddels ook uit de media bekend is, zal ik een diepgaand onderzoek laten instellen. Ik acht het van belang dat alle relevante feiten met betrekking tot deze affaire en de rol die alle betrokken partijen daarbij hebben gespeeld op onafhankelijke en objectieve wijze op tafel komen en worden beoordeeld. In dit verband stel ik uw aanbod om al uw kennis met betrekking tot dit contact beschikbaar te stellen en mee te werken aan dit diepgaande onderzoek zeer op prijs.

Ik heb de Inspectie jeugdzorg inmiddels gevraagd de rol van de betrokken vergunninghouder in deze zaak tegen het licht te houden. Uw aanbod heb ik dan ook aan de Inspectie jeugdzorg doorgegeven. Desgewenst zal door deze

inspectie contact met u worden opgenomen.

Ik vertrouw u hiermee voldoende te hebben geïnformeerd.

Hoogachtend,

De Minister van Justitie,

Namens deze,

Het hoofd van de afdeling Besturing.



UAI

United Adoptees International – NL

Ministerie van Justitie

T.a.v. de Minister

De heer **dr. E.M.H. Hirsch Ballin**Postbus 20301
2500 EH Den Haag

UAI - Netherlands

Datum : Utrecht, 31 mei 2007

Ref.nr. : Uw brief 5486812/07/DJJ

Onderwerp : Onderzoek naar adoptieschandaal India

C.c.

Zijne Excellentie,

Wij zijn u erkentelijk, dat u een onderzoek wilt starten naar de vermeende misstanden van de adoptie van de geadopteerde, in deze met de casusnaam; 'Rahul' en de betrokkenheid van de vergunninghouder Meiling.

Gezien de aard en de ernst van deze situatie, waar zoals het tot nu blijkt vele geadopteerden, vierenvijftig gezinnen in India en nog eens vierenvijftig adoptiegezinnen in Nederland mee zijn geconfronteerd, willen wij u graag onze zorg en verbazing laten merken. Zo verbaast ons uw keuze voor de uitvoering van het onderzoek. Tevens zijn er een aantal andere zaken waarover wij vragen en opmerkingen hebben.

- Wij vinden het uitermate spijtig, dat de getroffen geadopteerde en de geadopteerden in het algemeen, in deze situatie en in uw brief in het geheel niet worden genoemd. Wij zijn van mening, dat zij in deze als eerste worden getroffen. Nu wekt het de indruk, dat ook uw ministerie bij voorbaat de zijde van de adoptie-ouders kiest. Dit is een herkenbaar fenomeen: de adoptieouders (vraagzijde van de keten) hebben een

effectieve lobby en worden als zodanig vaak zeer serieus genomen. Dit geldt in veel mindere mate voor de geadopteerden. Hun invalshoek lijkt te worden veronachtzaamd. Ons inziens is dit niet conform afspraken volgens het Haags Adoptieverdrag.

- Wij vinden, dat er meer nadruk moet komen op de basisuitgangspunten bij adoptie. **Internationale adoptie is een laatste redmiddel** en geen voorziening, voorbehouden aan die kinderen waar geen andere goede gezinsopvoeding voor gevonden kan worden en op geen enkele andere passende wijze in het land van herkomst kan worden gezorgd. Subsidiariteitsbeginsel *artikel 21b VN Verdrag voor de Rechten van het Kind*. Dit maakt maar een invalshoek mogelijk: in deze namelijk het belang van het (adoptie) kind. Dit moet echter niet slechts een intentionele waarde zijn maar vooral in woorden en daden tot uitdrukking komen.
- Wij zijn van mening, dat Meiling haar vergunning tijdelijk ingetrokken dient te worden gedurende het onderzoek. Het verbaast ons dat bij eerdere calamiteiten zoals bij collega Vergunninghouder Flash - waar deze maatregel wel van toepassing was - Meiling nu geen tijdelijke Mortuarium opgelegd krijgt.
- We zijn van mening dat Inspectie Jeugdzorg te veel betrokken is bij - en eigen belangen heeft in het kader van de adoptieketen. Dien aangaande stellen wij grote vraagtekens bij de objectiviteit die zij in deze casus dienen te waarborgen. Tevens vragen wij ons af, indien zij worden ingezet in het buitenland, of zij voldoende zijn toegerust voor de werkzaamheden in een dergelijke werkomgeving.
- Tevens zijn we verbaasd dat er geen transparantie wordt gegeven over wie de derde partij in deze zou moeten zijn die de rol van Justitie zou moeten onderzoeken. In het kader van het waarborgen van de juiste rechtsgang en tevens om ethische en morele disputen te vermijden zouden wij graag zien, dat hierover zo spoedig mogelijk volledige openheid wordt gegeven. Dien aangaande zouden wij liever zien, dat het Openbaar Ministerie alsnog op basis van de nu bekende gegevens een vooronderzoek zou gelasten.
- Tevens zijn er vraagtekens betreffende de rol van de betrokken partijen die vallen onder de verantwoordelijkheid van het Ministerie van Buitenlandse Zaken. Zo is meer dan eens is gebleken dat Nederlandse Ambassades nauwelijks of niet zijn geïnformeerd zijn over de achtergronden van adoptie en over betrokken vergunninghouders in Nederland en andere instanties.

Voor de goede orde verzoeken wij u met klem ook de volgende onderwerpen ter harte te nemen.

1. Geadopteerden dienen voortaan als zelfstandig naamwoord opgenomen te worden in de correspondentie. De huidige status is, dat zij nog steeds in de meeste stukken worden voorzien van de titel kinderen, terwijl van de vijftig duizend geadopteerden in Nederland het overgrote deel de volwassen leeftijd heeft bereikt.
2. Het belang van geadopteerden dient voorop te staan en niet de wil en dwang van adoptie ouders in het algemeen noch t.a.v. het forceren van procedurele gang van zaken betreffende (interlandelijk) Adoptie en het

- verkrijgen van een voorrangpositie door Adoptie-ouders bij besluitvormingsprocessen zoals zij deze steeds plachten te realiseren¹.
3. De geadopteerden dienen voortaan structureel betrokken te worden en mede geïnformeerd over de gang van zaken in kader van besluitvormingsprocessen en beleidsvoorstellen van diverse ministeries.
 4. Wij zouden het aanbevelingswaardig vinden een structurele (advies) commissie van 'wijze mensen' aan te wijzen bestaande uit vooraanstaande experts en ervaringsdeskundigen (inclusief geadopteerden) in het veld van (interlandelijke) adoptie om (inter)nationale kwesties rondom adoptie op de juiste manier op de politieke agenda te krijgen en als adviesorgaan te dienen voor vergunninghouders en politieke en maatschappelijke organisaties.
 5. De rol van (vermeende) kinderhandel in het kader van adoptie en de betrokkenheid van vergunninghouders en overige instanties in Nederland dient grondiger te worden onderzocht. Dit naar aanleiding van eerdere zaken zoals;
 - De casus Haïti met betrekking tot vergunninghouder stichting Flash waarbij het Ministerie van Justitie de genoemde stichting de adoptiebemiddeling van Flash vanuit het genoemde land al eens stil gelegd heeft. Waarna zij na enige tijd de adopties uit Haïti hebben mogen hervatten.
 - Vermeende betrokkenheid bij kinderhandel en/of onzorgvuldige adopties van dezelfde stichting in Sri Lanka in de jaren tachtig.
 - Tevens de mogelijke betrokkenheid van dezelfde vergunninghouder bij adopties uit Roemenië in de jaren negentig etc.
 - De ontkenning van Meiling over de betrokkenheid en de eerder aangekaarte situatie rondom Malaysian Social Service door ██████████ de UAI en ██████████ Wereldkinderen de ██████████ in 1990 aan Meiling.
 - Mogelijke betrokkenheid van de vergunninghouder stichting Kind en Toekomst in kader van adopties uit Sri Lanka en Polen niet conform het Haags Adoptieverdrag
 - Bedenkelijke contacten van de Nederlandse Adoptie Stichting (NAS) die eerder werkten met kindertehuizen die foto's van kinderen uit Haïti op hun website plaatsten met de daarbijbehorende prijzen per adoptiekind en de promotie van deelbemiddeling waarbij grote vraagtekens zijn omtrent de zorgvuldigheid van localisatie en toetsing van betrokken contactpersonen in het buitenland.
 - De onmogelijkheid van Vergunninghouders om zogenaamde zelfdoenercontacten zorgvuldig te kunnen controleren. De tijd en vergoeding die hiertegenover staan is niet conform de tijd en moeite die zorgvuldige controle vereist. Gevolg is dat er te veel sprake is van een papieren exercitie, die misstanden in de hand werkt.

We zijn ervan overtuigd dat dit onderwerp dermate complex is dat eenvoudige antwoorden niet bestaan. Niet tegenstaande dat, zouden wij een reactie zeer op prijs stellen. Wij wensen u tevens veel wijsheid toe in de te nemen besluiten waarbij wij hopen dat u het belang van de geadopteerden, voorop zult stellen.

Hoogachtend,

United Adoptees International - Nederland

Bijlagen:

- ¹Brief - Adoptie Ouders Overleg aan het Ministerie van Justitie 26 mei jongstleden. Standpunten AOO t.a.v. wet en regelgeving Interlandelijke Adoptie.
- Standpunten Defence for Children International Nederland betreffende Adoptie.
- Overzicht Adopties van kinderen uit het buitenland door Nederlandse gezinnen – 50 jaar adoptie 1956-2006 (met dank aan [redacted]).

De UAI Nederland is de eerste onafhankelijke organisatie voor en door volwassen geadopteerden die de dialoog met betrekking tot (interlandelijke) adoptie in de breedste zin van het woord wil kunnen voeren. Zij wil daarnaast actief participeren in vraagstukken die het maatschappelijke, politieke en culturele hart raken met betrekking tot adoptie.

AB
6/6/7

10a

UAI	United Adoptees International - NL
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Notificatie
15 AUG. 2007

Ministerie van Justitie
T.a.v. de Minister
De heer **dr. E.M.H. Hirsch Ballin**

Postbus 20301
2500 EH Den Haag

UAI - Netherlands



*notificeren
1/19
-2007*

Ministerie van Justitie
Doss. [redacted]
Doss. **A07/2577/1048642**
Datum **08 JUNI 2007**
Nummer **07/5480525/011**

Datum : Utrecht, 02 juni 2007
Ref.nr. : Onze brief van 31 mei 2007
Onderwerp : Onderzoek naar adoptieschandaal India
C.c. : Bestuur UAI, [redacted] Wereldkinderen, [redacted] NAS

Zijne Excellentie,

Per abuis is er een onjuistheid in onze brief van 31 mei jongstleden vermeld waarbij hier de rectificatie.

Op pagina drie, de ene laatste punt van aandacht betreffende de Nederlandse Adoptie Stichting is het niet correct aangegeven dat het om de vercommercialisering van de NAS zou gaan maar om hun contacten. Dien ten gevolge hierbij de juiste formulering.

- o Bedenkelijke contacten van de Nederlandse Adoptie Stichting (NAS) die eerder werkten met kindertehuizen die foto's van kinderen uit Haïti op hun website plaatsten met de daarbijbehorende prijzen per adoptiekind en de promotie van deelbemiddeling waarbij grote vraagtekens zijn omtrent de zorgvuldigheid van localisatie en toetsing van betrokken contactpersonen in het buitenland.

Onze verontschuldiging voor dit ongemak.

Hoogachtend



United Adoptees International - Nederland

De UAI Nederland is de eerste onafhankelijke organisatie voor en door volwassen geadopteerden die de dialoog met betrekking tot (interlandelijke) adoptie in de breedste zin van het woord wil kunnen voeren. Zij wil daarnaast actief participeren in vraagstukken die het maatschappelijke, politieke en culturele hart raken met betrekking tot adoptie.

AB
6/6/3

Meiling

Stichting voor Adoptie en Projekthulp

Ministerie van Justitie

D.11 [redacted]

Dinsdag 07/2577/1048 642

06 JUNI 2007

Nummer 07/5488767/011

11

Aan:

Inspectie Jeugdzorg
tav [redacted]
Postbus 483
3500 AL Utrecht

[redacted] b/bun

CC: Ministerie van Justitie, Directoraat-Generaal Preventie, Jeugd en Sancties,
Directie Justitieel Jeugdbeleid
tav [redacted]
Postbus 20301
2500 EH Den Haag

Leidschendam, 5 juni 2007

Geachte heer/mevrouw,

Zoals reeds aangegeven is de stichting Meiling blij met het onderzoek naar een mogelijk adoptieschandaal India zoals dat door minister Hirsch Ballin is aangekondigd. Wij hopen dan ook dat dit onderzoek, en met name het onderzoek in India duidelijkheid geeft over de feitelijke gang van zaken bij deze adoptie en antwoord geeft op de vragen die vanuit Meiling meerdere malen aan de Indiase autoriteiten hierover zijn gesteld en tot nu toe praktisch onbeantwoord zijn gebleven. Wij achten het boven alles in het belang van het betreffende kind en zijn adoptiefouders en alle andere adoptiekinderen vanuit India en hun adoptiefouders dat er zo snel mogelijk duidelijkheid komt over de feitelijke gebeurtenissen en de status van hun adoptie. Daarnaast acht Meiling het van belang in het kader van ons verweer tegen de ons inziens onterechte aantijgingen zoals die in de uitzending van Netwerk tegen de stichting Meiling zijn gedaan. De stichting Meiling werkt dan ook graag en ten volle mee aan dit onderzoek.

Om hieraan invulling te kunnen geven beschikken wij graag over de formele informatievraag zoals u die in het kader van dit onderzoek bij Meiling wilt neerleggen. Aan de hand hiervan kunnen wij uw vragen dan zo exact mogelijk beantwoorden. In afwachting daarvan bied ik u hierbij een overzicht aan van de vergunningen en toetsen die Meiling heeft uitgevoerd bij het aangaan van contacten met Malaysian Social Service in Chennai (Madras), India. (Verder afgekort als MSS)

Hierbij wordt ingegaan op de volgende onderdelen:

1. Wettelijke toestemmingen voor bemiddeling
2. Extra controle en check t.a.v. MSS
3. Algemene informatie over het adoptieproces in India

Aan de hand hiervan vestigen wij graag uw aandacht op een aantal hoofdpunten:

- Zoals uit het overzicht blijkt heeft zowel Meiling als kindertehuis MSS steeds beschikt over de noodzakelijke wettelijke toestemmingen om voor buitenlandse adopties te bemiddelen.
- De primaire verantwoordelijkheid voor de vraag of een kind beschikbaar is voor buitenlandse adopties hoort thuis bij de Indiase overheid die daar een zgn. NOC voor afgeeft. Voor alle kinderen vanuit het MSS waarbij Meiling heeft bemiddeld is een NOC afgegeven en een volledige rechtbankprocedure doorlopen.
- Meiling heeft tijdens de samenwerking met MSS het als haar taak gezien om langs checks en balances de werkwijze van MSS te beoordelen. De checks die wij uitgevoerd hebben – zelfstandig maar ook in goed overleg met instanties als kindbescherming en centrale autoriteit in India – hebben ons geen aanleiding gegeven met dit tehuis te stoppen.
- Ook waar het gaat om morele verantwoordelijkheid heeft Meiling – als lid van Euradopt – het haar taak gevonden om in de loop der jaren kritisch te kijken naar MSS bijvoorbeeld waar het gaat om



Meiling

Stichting voor Adoptie en Projekthulp

de verzorging van de kinderen, de geldstromen en de overige activiteiten van de organisatie. Ook op dit punt hebben wij geen aanleiding gevonden met dit tehuis te stoppen. Juist de veelheid van initiatieven om anders dan via adoptie een bijdrage te leveren aan de kwaliteit van leven van een flink aantal kinderen en huishoudens (activiteiten die nu nog steeds doorgaan), heeft ons in de loop der jaren positie gestemd.

- De berichten van WK dat zij bij Meiling melding gemaakt zouden hebben van hun twijfels omtrent dit tehuis, ontkennen wij ten stelligste. Meiling heeft ruim 10 brieven kunnen vinden welke in de jaren 1990-1996 met WK gewisseld zijn waarin over tal van contacten bilateraal overleg is gepleegd, maar in geen van deze brieven en aantekeningen is sprake van contacten in India.

Aan de hand van de formele informatievraag aan de stichting Meiling zullen wij het dossier voor dit onderzoek verder vervolmaken en uw vragen terzake zo volledig mogelijk beantwoorden.

Met vriendelijke groet

Namens het bestuur van de Stichting Meiling



Feiten relaas

Wettelijke toestemmingen voor bemiddeling

In maart 1994 kreeg Meiling van de centrale regering in New Delhi (CARA) een vergunning (zonder einddatum) om in India te bemiddelen. > Bijlage 1

Vanuit CARA is Meiling in februari 1995 een lijst verstrekt met kindertehuizen waarmee samengewerkt kon worden, waarbij met name een aantal tehuizen in Tamil Nadu werden aangewezen > Bijlage 2 – pagina 13 (markerings in de kantlijn).

Er is contact gezocht met verschillende tehuizen, met name in Zuid India omdat collega vergunninghouder WK in Noord India actief was. Met kindertehuis MSS in Chennai kon samengewerkt worden. MSS had toestemming voor buitenlandse adopties, afgegeven in januari 1995 > Bijlage 3.

MSS had op dat moment ook een aanbeveling en toestemming (16 juli 1993) in huis om kinderen op te vangen (Fit Institution) van de Chennai Juvenile Welfare Board > Bijlage 4.

Meiling heeft met MSS samengewerkt vanaf 1995 tot en met 2002. De laatste kinderen zijn in Nederland gearriveerd in maart 2003, na een juridische procedure van bijna 2 jaar.

Tijdens deze samenwerking is de toestemming van MSS voor buitenlandse adopties driemaal vernieuwd, in juli 1997, november 1999 en maart 2001 > Bijlage 5 en 6 en 6a.

De vergunning van Meiling om in India te werken is in februari 2001 verlengd > Bijlage 6b.

De classificatie als "Fit Institution" vanuit de Tamil Nadu Juvenile Welfare Board is in 1998 vernieuwd > Bijlage 7.

Extra controle en check t.a.v. MSS

Bij de start van de samenwerking met MSS is grondig gekeken naar deze organisatie. Statuten zijn opgevraagd > Bijlage 8.

Ook is een tweetal aanbevelingsbrieven ontvangen van Indiase ouders (1995) > Bijlage 9.

Verder is een tweetal aanbevelingsbrieven ontvangen van parlementsleden (1994 en 1995) > Bijlage 10.

Ook uit de kranten (1992) en andere bronnen (1995) is een aantal positieve signalen naar voren gekomen over MSS. Belangrijk daarbij is een krantenfoto waarop de directeur van MSS een prijs uitgereikt krijgt van een Minister van Financiën > Bijlage 11.

Voorts zijn de jaarverslagen van MSS bestudeerd waaruit naar voren kwam dat deze organisatie veel meer activiteiten verzorgt dan alleen adopties: opvang voor kinderen die inwonen (1996 105 kinderen); een sponsor programma voor kinderen die thuis wonen (1996 448 kinderen); crèches (1996 55 kinderen); lagere scholen (1996 twee scholen met 598 kinderen); adoptieprogramma (1996 12 kinderen voor buitenlandse adoptie en 49 binnenlandse adopties); vakopleiding voor oudere kinderen (radio en tv reparaties); medisch centrum, vakopleiding voor volwassenen (kantoor opleiding, naaiwerk) etc. > Bijlage 12

In de loop der jaren is Meiling op een vergelijkbare wijze blijven controleren welke activiteiten MSS zoal verrichte. Het jaarverslag (1999) liet continuïteit in de programma's zien > Bijlage 13

Algemene informatie over het adoptieproces in India

De adopties vanuit India kennen een lange, gedegen procedure waarin bedenktijd zit voor natuurlijke ouders, waarin eerst gezocht wordt naar mogelijkheden voor plaatsing in eigen land, vervolgens een "No Objection Certificate" (NOC) wordt afgegeven door de centrale autoriteit, voordat een kind voorgesteld wordt voor buitenlandse adoptie. Daarna volgt een rechtbank procedure waarbij meerdere

instanties betrokken zijn. Deze procedure zou in theorie in enkele weken afgerond kunnen zijn; in de praktijk duurde een procedure een jaar en de laatste jaren zelfs langer > Bijlage 14 (schematisch overzicht adoptieproces)

Er zijn meerdere routes waarlangs een kind bij MSS voor adoptie aangemeld kan worden. Sommige kinderen werden rechtstreeks bij MSS gebracht. Andere kinderen kwamen via een ander tehuis.

- Ouders die een kind naar het kindertehuis brengen, tekenen een afstandsverklaring en ze krijgen 3 maanden de tijd om op hun besluit terug te komen. Het komt voor dat moeders een valse naam op geven omdat ze niet gevonden willen worden. De Indiase wet schrijft op dit punt geen procedure voor. MSS maakte van de moeder of ouders een foto voor het dossier van het kind.
- De Indiase wet voorziet erin dat een beperkt aantal tehuizen contacten hebben met het buitenland. Indien een tehuis een kind opvangt, dat niet binnen India geplaatst kan worden, wordt dit kind overgebracht naar een tehuis van waaruit wel buitenlandse adopties mogelijk zijn.

11b

"वसुधैव कुटुम्बकम्"

BY AIR MAIL

Telegam: WELFARE
T. No. 011-384918

FAX 011-384918

Central Adoption Resource Agency

भारत सरकार

कल्याण मन्त्रालय

GOVERNMENT OF INDIA

MINISTRY OF WELFARE

West Block 8, 2nd Floor

नई दिल्ली 110 001 ब्लक R.K.Puram, New Delhi

Dated. New Delhi - 110 001, the 7th March, 1994

Dear [REDACTED]

I am glad to inform you that the Government of India, Ministry of Welfare have enlisted M/s Meiling Foundation, Stichting Voor Adoptie en Projekthulp Secretariaat: Vilet 45 3421 CH Oudewater, The Netherlands for sponsoring cases of adoptive parents desirous of adopting Indian children. The enlistment shall be valid until further orders. It is, however, a condition of enlistment that you should hold a valid authorisation/licence from the Government Authorities in Netherlande for carrying on such work. You may also attach an attested copy of the authorisation or licence with all the inter-country adoption cases sponsored by you.

2. You must deal with only those Social/Child Welfare Agencies which have been recognised by the Ministry of Welfare. Names and addresses of recognised Indian Social/Child Welfare Agencies are enclosed for this purpose.

3. I enclose herewith two book-lets containing three judgements of the Supreme Court of India laying down the norms and procedures for inter-country adoption of children alongwith a copy of booklet containing guidelines to regulate matters relating to adoption of Indian children. You are directed to send quarterly data about Indian children with foreign adoptive parents for the period ending March, June, September and December on each calendar year in the enclosed prescribed proforma through India's Diplomatic Mission in The Hague, Netherlands.

4. Receipt of this letter alongwith its enclosures may be acknowledged.

With regards and best wishes for New Year, 1994.

Yours sincerely,
[REDACTED]

[REDACTED]

Stichting Voor
Adoptie en Projekthulp
Secretariaat: Vilet 45
CH Oudewater
Netherlands.



SECRETARY (CARA) / DIRECTOR
GOVT. OF INDIA
Tele: 605346

“सुखी संसार”

1. Telephone: "WELFARE"
Tel: 31-66250 NEW/IN
FAX: 011-384918
भारत सरकार

2

संस्कृत संस्थान
Central Adoption RESOURCES AGENCY
GOVERNMENT OF INDIA
MINISTRY OF WELFARE
West Block 8, Wing 2,
2nd Floor, R.K. Puram
New Delhi - 110 001, India Feb., 95

Dear Agency,

I enclose herewith the latest list of Indian recognised Agencies which are engaged in inter-country adoption of children. This is for your information and use.

With regards,

Yours sincerely,

[Redacted Signature]

INDIAN AGENCIES AS ON 31.3.95

(2)

1. ANDHRA PRADESH	4
2. DELHI	7
3. GOA	2
4. GUJARAT	3
5. HARYANA	1
6. KARNATAKA	11
7. KERALA	7
8. MAHARASHTRA	21
9. ORISSA	3
10. PONDICHERY	2
11. PUNJAB	1
12. TAMIL NADU	10
13. UTTAR PRADESH	1
14. WEST BENGAL	5

TOTAL: 78

2

S.No. Name & Address of the Agency

1. Guild of Service (Seva Sarajam)
Nalika Nilayam, 10-3-561/3A,
Vijaya Nagar Colony,
Hyderabad-500457
2. Indian Council of Social Welfare,
(Red Hills, Inside Cancer Hospital
Compound, Hyderabad-560004
3. Action for Social Development
Administrative Office,
1-3-133/40/46/6, Gandhi Nagar
Hyderabad-5000330
4. John Abraham Memorial Bethany Home
Vengur, Post Bag No.3
Vengur-52146, Ranga Reddy Distt.,
Andhra Pradesh

DELHI

(2)

S.No. Name & Address of the Agency

1. Delhi Council for Child Welfare
Goddia Garden, Yamuna Marg,
Civil Lines, Delhi-110054
2. Church of North India
Shishu Sangapan Griha,
St. Michael's Compound,
Hospital Road, Jangpura,
New Delhi-110014
3. Welfare Home for Children
53, Raja Garden, New Delhi
4. M/s Sewa Bharati(Matxi Chhaya)
100196-A, Sewa Kunj,
Chandewalan, New Delhi-56
5. S.O.S. Children's Villages
of India, A-33, Kailash Colony
New Delhi-110046
6. Holy Cross Social Services
No.34 Dr. Mukherjee Nagar(West)
Delhi-110009
7. Missionaries of Charity
Mirala Shishu Bhawan,
12, Commissioner Lane,
Delhi-110054

GOA

(2)

S.No. Name & Address of the Agency

1. Society for Child Development
Houses No. 830, Caranzalem,
GOA-400002

2. Caritas Goa
Baco Patricial, Altinho
Panji-403001, Goa

GUJARAT

(2)

S.No. Name & Address of the Agency

1. Sh. Kuthinwar Nirashric Dalashiram
Malviya Road, Rajkot-360002

2. Mahipatram Rupram Ashram
Outside Raipur Gate,
Ahmedabad - 380022 (Gujarat)

3. Sh. Kasturba Stri Vikas Griha
Kasturba Gandhi Marg,
Jamnagar-361 008

5
HARYANA

No. Name & Address of the Agency
of

(2)

1. The Haryana State Council for
Child Welfare
Bal Vikas Bhavan, 65-D,
Sector -16 -D
Chandigarh-160016

Name & Address of the Agency

1. Sishu Handic
17/11, Cambridge Road, Ulsoor,
Bangalore-560008
2. Ashraya
Gawari's Quarters, BDA
BDA Park, Double Road, Indiranagar
Stage-I, Bangalore-560038
3. Society of Sisters of Charity
Holy Angles Convent, C/o Stella Morris
Convent, Malleswaram, Bangalore-3
4. W/s Society of the Sisters of
St. Joseph of Garbes, 47
Promenade Road, P.B.555,
Prasor Town, Bangalore-560005
5. W/s Canara Bank Relief and Welfare
Society, 27th Cross, Banashankari
II Stage, Bangalore-70
6. Surabala Wilaya Sangha(R),
73B, 13th Cross, 7th Block,
Jayenagar West, Bangalore-560082
7. Society of Sisters of Charity
St. George Convent
C/o Sisters of Charity, Bolivedere,
Angalore, Bangalore-575002
8. Vidyanalya Charitable Trust
No.115/2, Bangalorealya, Main Road,
Maruthi, Swanagar, Bangalore-560033
9. St. Michael's Home
St. Michael's Convent
No.30, Roet Road,
Indira Nagar, Bangalore-560038
10. W/s Noech Ovi
22, Chinnaswamy Road,
Peeter Town,
Bangalore-560 051
11. W/s Child Foundation Karnataka
101 Shaugarassy Road
1st & 2nd Cross,
Bangalore-560005

(2)

KERALA

Name & Address of the
Agency

(2)

1. Holy Infant Mary's Girl Home,
Yayithiri,
South Wayanad District,
Kerala
2. The Director,
St. Joseph's Children Home,
Kumanoor, Cherpunkak,
P.O.686584
Kottayam District,
Kerala
3. Dinasevanasabha,
Snehanikatan,
Social Centre
Pattuvann,
Cannanore District,
Kerala
4. Bethal Foundation (Bethal Girl's
town/Bethal Boys' Town)
Bethal Foundation,
XLVII/631 Ashoka Road,
Kaloor Cochin - 17
Kerala
5. Kerala State Council for
Child Welfare, Thycad
Thiruvananthapuram - 695014
Kerala.
6. Foundling Home
(Shishu Bhawan)
Padupuram PO, Via Karukutty,
Distt.: Ernakulam, Kerala
7. International Child Welfare Service
(Karin Child Care Centre)
Vellore P.O.Paampady,
Kottayam, Kerala

MAHARASHTRA

S.NO. Name & Address of the Agency

1.

(2)

1. Bal Anand World Children Welfare Trust (India) Sai Krupa, 93, Ghatla Village, Chembur, Bombay-400 071
2. Missionaries of Charity, Church Road, Vile Parle(West), Bombay-400 056
3. Children of the World (India) Trust, 501, Arun Chambers, Tardoo, Bombay-400 034
4. Shri Sharadhanand Anathalaya Society, Shradhanand Path, Nagpur-440 022, Tele No.22959
5. Pushpawadi Foundling Home, C/o Nagpur Houses of Mary, Immaculate, Providence, School Compound, Civil Lines, Nagpur-440 001 Tele No.520951
6. Holy Cross Home for Babies C/o Holy Cross Convent Amravati (Camp)-444 602 Tele No.5139
7. Society of Friends of Sassoan Hospitals, Room No.80, Sassoan General Hospitals, Pune-411 001 Tele: 664 660
8. St.Catherine's Home, Veera Desai Road, Andheri (West), Bombay-400 058
9. The Hindu Womens Society, Shradhanand Mahilaashram Shradhanand Road, King's Circle Matunga, Bombay-400 019
10. Dhartiya Samaj Seva Kendra No.5, Korgaon Road, Pune-411 001
11. Shejhar Chhaye, Deodai Kaman: Post Office Taluka: Vasai, Distt.Thane Maharashtra-402202
12. Maharashtra State Womens Council, Asha Sadan, Asha Sadan Marg, Umerkhadi,
13. Bal Asha Trust Grand Petadi, N.H.11, August Kranti Marg, Bombay-400036

(2)

14. Bal Vikas
11/41, Yashwant Nagar,
Behind Filmistan Studio,
S.V.Road, Goregaon (West)
Bombay-400062
15. Shree Kanav Seva Sangh
255-257, Sion Road, Sion (West)
Bombay-400022, Maharashtra
16. M/s Balwant Kaur Anand
Memorial Welfare Society (Preet Mandir)
Anand Corner, 18,
Dr.Koyaji Road,
Pune-411001
17. M/s Matu Seva Sangh
(Institute of Social Work)
West High Court Road,
Bajaj Nagar, Nagpur-440010
18. M/s Mahila Seva Mandali
Kusumbai Motichand Mahila
Seva Gram,
25/20 Karve Road
Pune-411004
19. M/s Vivekanand Bal Sadan
Seth doga Dharamshala
Opposite Railway Station
Kamptee-441002
Nagpur (Maharashtra)
20. M/s St.Crispen's Home
pp.-10, CT.S -12
Karve Road, Erandawana
Pune-411004 (Maharashtra)
21. M/s Convent of St.Mary
(St.John's Home for Women
and Children)
Maharashtra

ORISSA

S.No. Name & Address of the Agency

(2)

1. Manoj Manjari Shishy Bhawan
at P.O.Keonjhargarh,
District Keonjhar,
Orissa - 758001
2. Basundhara,
Basundhara Nagar,
Bidanasi, Cuttack
Orissa
3. Subhadra Mahtab Seva
Sadan At/PO G.Udayagiri
Distt. Phulbani,
Orissa
Tele: 06347-7564/7574

PONDICHERRY

(2)

S.No. Name & Address of the Agency

1. The Immaculate Heart of
Mary's Convent Society,
(Joy Home)
Ariyankuppam,
Pondicherry
2. Cluny Children's Home
(Cluny Shishu Illam)
Pouponnier St. Joseph
No.8, Romain Rolland Street
Pondicherry

MUMBAI

(2)

1. M/s Anath Sewa Society (Pingle Char)
Gulab Devi Hospital Road
Jalandhar City - 144 008
(Punjab)

S.No. Name & Address of the Agency

1. Guild of Service (Central)
(Sevasamajam), 28,
Casa Major Road, Egmore
Madras-600008
2. Grade Kenett Foundation,
34, Kenette Road,
Madurai-625 010
3. Institute of the Franciscan
Missionaries of Mary Society
No.3 Holy Apostles Convent,
St.Thomas Mount Babies Hoime
Madras
4. Karva Prayag Trust,
Welfare Centre for Women &
Children, No.7, Raja Krishna
Rao Road, Alwarpet,
Madras-600 007
5. Concord House of Jesus
10, Venkaramma Samiti Street,
Purasawalkam, Madras-600 007
6. Congregation of the Sisters
On the Cross of Chavand,
P.O.Box No.395, Old Goods,
Shoo Road, Trichurapalli-620 002
7. Families for Children
'Sun Shine House'
98, Mettur Main Road,
Podamur, Coimbatore-641 023
(Tamil Nadu)
8. Malaysian Social Service,
No.27, Rajeshwari Street,
Maha Nagar, Aminjinarai
9. M/s Madras Social Service Guild
Nedungundram
P.O.Box-1, Yandalur post
Madras-45
10. M/s Emmanuel Gospel Mission
Family for Orphan, 47 G
Shanti Nagar, Mettupalayam
Coimbatore 641 301, Tamil Nadu

UTTAR PRADESH

②

Uttar Pradesh Council
For Child Welfare,
Moti Mahal, Rana Pratap Marg,
Lucknow (U.P.)

WEST BENGAL

S.No. Name & Address of the Agency

(2)

1. Missionaries of Charity,
54-A, Lower Circular Road,
Calcutta-700 016
2. Indian Societies for Sponsorship
and Adoption, 1, Palace Court
1, Kyd Street, Calcutta-700 016
3. Society for Indian Children's
Welfare, No.22.Col.Biswas Road,
Backbagan, Calcutta-700 019
4. International Mission of Hope
(India) Society 2, Nimak Mahal Road
Calcutta-700 043
5. Indian Society for Rehabilitation
of Children,
No.112-B, Kankulia Road,
Calcutta-700 029

GOVERNMENT OF INDIA
MINISTRY OF WELFARE
(CENTRAL ADOPTION RESOURCE AGENCY)
(ADOPTION CELL)

CERTIFICATE OF RECOGNITION

Number of Certificate 68/95

Date of Issue of Certificate 9th Jan., 1995

Purpose for which the recognition is granted by the Central Government.

Submission of applications to Competent Courts for declaration of foreigners as guardians of Indian Children under the Guardians & Wards Act, 1890.

Period of validity of Certificate : Two years w.e.f. 9.1.95 to 9.1.97

1. Name of the Organisation Malaysian Social Services

2. Particulars of the existing statutory registration of the organisation :

(a) Act under which registered Societies Registration Act XXI of 1860.

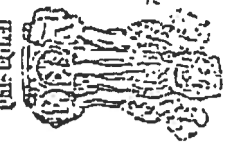
(b) Registering Authority Registrar of Assurances Madras (North) District

(c) Regn. Number, date and validity period of registration 92 of 1977 dated 19th April, 1977

3. ADDRESS : No.27, Rajeshwari Street, Mehta Nagar,
Aminjikarai, Madras - 600 0029
(Tamil Nadu)

4. State/Union Territory for which this Certificate of Recognition is valid :

This recognition is subject to the conditions stated in the Guidelines issued vide the Ministry of Welfare Resolution No. 13-33/85-CHR (AC) dated 4th July, 1989 and all other such conditions and directions as are issued from time to time. This recognition is liable to be revoked at any time for violation of any of the conditions or directions issued from time to time by the Government of India or on the grounds of any irregular practices by a recognised organisation, after a reasonable opportunity has been given to the concerned organisation to be heard before the recognition is revoked.



भारत सरकार
MAITA PRASAD
Tel. : 382683

D.O.No.1-2/94-CMIA

सचिव
भारत सरकार
कल्याण मंत्रालय
नई दिल्ली
SECRETARY
GOVERNMENT OF INDIA
MINISTRY OF WELFARE
NEW DELHI

2

Dear

January 9, 1995.

As you are aware that thousands of destitute, orphaned, abandoned children are living in the orphanages/statutory homes located in different parts of the country. Most of these children stay, grow up in these institutions and get shelter, food, clothing, educational facilities from the institutions well beyond their teens. Some of them get rehabilitated through this institutional approach whereas majority of them do not get proper rehabilitation even after they reach the age of 18-20 years.

2. Adoption has now come to be recognised as the best method of rehabilitating orphaned, destitute, abandoned children. This approach provides a permanent family and home to the child who is deprived of the love, care and affection of the parents.

3. It is indeed in the best interest of the child if the children upto the age of 7 years could be transferred from the orphanages/statutory homes to the recognised social/child welfare agencies which are engaged in the field of adoption so that these children could find an adoptive home from an early stage of life and they are not deprived of familial surroundings.

4. In this connection, I would like to draw your attention to the directions of the Supreme Court of India given in its judgement dated the 14th August, 1991 in the matter of [REDACTED] Vs. Union of India and others. The judgement inter-alia states that

"Only one aspect is left for consideration and that is the petitioner's prayer for transfer of children from statutory homes to recognised agencies for placement. The children who can be transferred for such purposes would be those whose parents are not known, orphans and perhaps those who

....2/-

(5)

are declared as abandoned children. We have pointed out already that the homes are not set up in several States and areas. Even Juvenile Boards have not been properly functioning and the recognised agencies do not have the facility of child care. In these circumstances-- to order transfer of children from statutory homes to recognised agencies can indeed not be accepted as a rule. We are prepared to observe that as and when such a request is received from recognised agencies, the Juvenile Court or the Board set up under the Act may consider the feasibility of such transfer and keeping the interest of the child in view, the possibility of an adoption within a short period and the facilities available in the recognised agency as also other relevant features, make appropriate orders. A strait-jacket formula may very often be injurious to the interest of the child."

5. In view of these directions of the Supreme Court it would be proper if appropriate orders could be issued by the State Government to the Juvenile Boards/Juvenile Courts functioning under the provision of Juvenile Justice Act in the State to the effect that they may, wherever feasible, transfer the destitute, orphaned and abandoned children upto the age of 7 years to the recognised social/child welfare agencies engaged in the field of adoption so that such children can be given in adoption and get their family and love and affection of the parents. A list of the recognised placement agencies engaged in the field of adoption is enclosed for your use.

With regards,

Yours sincerely,

[Redacted Signature]

Encl: As above

Chief Secretaries/Administrators of all States/UTs.

Copy forwarded to all Recognised Placement Agencies in India for information and follow-up action.

[Redacted Name]
Secretary (CARA)



4

JUVENILE WELFARE BOARD CHINGLEPUT

(Section 4 (1) of the Juvenile Justice Act 1986 Central Act 53 of 1986)

Chairman : [Redacted]

Chingleput

Members : [Redacted]

№. JWB/5
Date 16.2.93

Sub: Malaysian Social Services, Residential Boys Home at Pallikuppam Village in Thiruverkadu Madras - 77, and Residential Girls Home at Madaravedu Village in Thiruverkadu, Madras - 77 in Chengal MGR District - recognition as "Fit Institutions" - ordered.

Ref: Petition dated 7.6.93 from the Director, Malaysian Social Services, Madras 600 029.

* * * * *

On behalf of the Government Juvenile Welfare board, Chengal MGR District, the Residential Boys Home at Pallikuppam Village, in Thiruverkadu, Madras - 77, and the Residential Girls Home at Madaravedu Village, in Thiruverkadu, Madras - 77, run by Malaysian Social Service were personally inspected by the Chairman on 16.2.93 and the Board is satisfied that adequate facilities are available in these homes for the proper care and custody of destitute and abandoned children.

Hence it is ordered that the Residential Boys Home at Pallikuppam Village in Thiruverkadu, Madras - 77, and the Residential Girls Home at Madaravedu run by Malaysian Social Service are as fit institutions for the reception, custody and care of abandoned and destitute children.

[Redacted Signature]

Chairman,
GOVERNMENT JUVENILE WELFARE BOARD CHINGLEPUT.

GOVERNMENT OF INDIA
MINISTRY OF WELFARE
(CENTRAL ADOPTION RESOURCE AGENCY)
(ADOPTION CELL)

CERTIFICATE OF RECOGNITION

(5)

Number of Certificate 68/97

Date of Issue of Certificate JULY, 97

Purpose for which the recognition is granted by the Central Government.

Submission of applications to Competent Courts for declaration of foreigners as guardians of Indian Children under the Guardians & Wards Act, 1890.

Period of validity of Certificate: Two years w.e.f. 28.7.97 to 27.7.99

1. Name of the Organisation M/s Malaysian Social Services

2. Particulars of the existing statutory registration of the organisation:

- (i) Act under which registered Societies Registration Act XXI of 1860.
- (ii) Registering Authority Registrar of Assurances Madras (North) Distt.
- (c) Regn. Number, date and validity 92 of 1977 dated 19th April, 1977

3. ADDRESS: No.27, Rajeshwari Street, Mehta Nagar, Aminjikarai, Madras- 600 029

4. State/Union Territory for which this Certificate of Recognition is valid: TAMIL NADU

This recognition is subject to the conditions stated in the Guidelines issued vide the Ministry of Welfare Resolution No. 4-1/93-CWA, dated 29-5-1995 and all other such conditions and directions as are issued from time to time. This recognition is liable to be revoked at any time for violation of any of the conditions or directions issued from time to time by the Government of India or on the grounds of any irregular practices by a recognised organisation, after a reasonable opportunity has been given to the concerned organisation to be heard before the recognition is revoked.

SECRETARY (C.A.A.A.)

(S2323)

4/2

Min. Secy, Welfare Dept., No. 2

Welfare Dept., No. 2

(CENTRAL ADOPTION RESOLUTION AGENCY)
(ADOPTION CELL)

CERTIFICATE OF RECOGNITION

6

Number of Certificate

68/99

Date of Issue of Certificate

November, 1999

Purpose for which the recognition is granted by the Central Government.

Submission of applications to competent Courts for declaration of foreigners as guardians of Indian children under the Guardians & Wards Act, 1890.

Period of validity of Certificate :

One year w.e.f. 03.11.99 to 2.11.2000

Name of the Organisation

M/s Malaysian Social Service

Particulars of the existing statutory registration of the organisation :

- (a) Act under which registered Societies Registration Act XXI of 1860
- (b) Registering Authority Registrar of Assurances Madras (North) Distt.
- (c) Regn. Number, date and validity 92 of 1977 dated 19th April, 1977
period of registration

ADDRESS :

No. 77, Kalaswari Street, Mehta Nagar,
Aminjikeral, Madras - 600029

State/Union Territory for which this Certificate of Recognition is valid :

TAMIL NADU

This recognition is subject to the conditions stated in the Guidelines issued vide the Ministry of Welfare Resolution No. 4-1/93-CARW dated 29.5.95 and all other such conditions and directions as are issued from time to time. This recognition is liable to be revoked at any time for violation of any of the conditions mentioned therein issued from time to time by the Government of India or on the grounds that any irregular practices by a recognised organisation, after a reasonable opportunity has been given to the concerned organisation to be heard before the recognition is revoked.

Secretary (CAWA) (Gen) பி. வி. சிவசுந்தரன்

Secretary (CAWA)

Dy. Secy. to the Govt. of India
Ministry of Welfare

MALAYSIAN SOCIAL SERVICE
10, JALAN SRI MANGALAM,
MADRAS, INDIA - 600 029

GOVERNMENT OF INDIA
MINISTRY OF SOCIAL JUSTICE & EMPOWERMENT
(CENTRAL ADOPTION RESOURCE AGENCY)

CERTIFICATE OF RECOGNITION

Number of Certificate : No. 68/2001

Date of Issue of Certificate : 14.03.2001

Purpose for which the recognition is granted by the Central Government : Submission of applications to competent Courts for declaration of foreigners as guardians of Indian Children under the Guardians & Wards Act, 1890

Period of validity of Certificate : One year w.e.f. 13.3.2001 to 12.3.2002

1 Name of the Organisation : M/s Malaysian Social Services

2 Particulars of the existing statutory registration of the organisation

(a) Act under which registered : Societies Registration Act XXI of 1860
(b) Registering Authority : Registrar of Assurance - Madras (North) District (N within the Jurisdiction of Madras (Central) Dist. Madras - 600 018)

(c) Regn. Number, date and validity period of registration : Reg. No. 92 of 1977 dated 19th April, 1977

3 ADDRESS : M/s Malaysian Social Services
H. O. No. 6, Sengunthar Street,
Shenoy Nagar, Chennai - 600 030.

4 State/Union Territory for which this Certificate of Recognition is valid : Tamil Nadu

This recognition is subject to the conditions stated in the Guidelines issued vide the Ministry of Social Justice & Empowerment's Resolution No. 4-1/93-CARA dated 29.5.95 and all other such conditions and directions as are issued from time to time. This recognition is liable to be revoked at any time for violation of any of the conditions or directions issued from time to time by the Government of India or on the grounds of any irregular practices by a recognised organisation

[Redacted]
[Redacted]
[Redacted] (CARA)



65

Central Adoption Resource Agency

केन्द्रीय दत्तक बाल्य संस्थान एजेंसी

(An autonomous body under the Ministry of Social Justice & Empowerment, Govt. of India)

(भारत सरकार के सामाजिक न्याय और अधिकारिता विभाग के अधीन स्थापित: भारत सरकार)

No. No.2/198:CH(A/C)

Date: 2001

MEILING FOUNDATION
STICLING VOOR
ADOPTIE EN PROJEKTHULP
SECRETARIAAT: VILET 453421 CH OUDEWATER
THE NETHERLANDS

Subject: Information regarding foreign representatives in India.

Sir/Madam,

It has come to CARA's notice that some of the Foreign Enlisted Agencies have appointed local representatives in India who work on their behalf without either informing or taking the approval of Government of India/CARA

If you have appointed any such person in India, please submit the details of the appointment immediately.

This may be treated as most urgent.

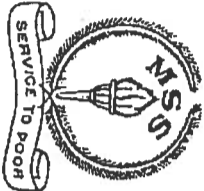
With regards,

Yours sincerely,

Secretary

MALAYSIAN SOCIAL SERVICES

H.O. : No.19, West Arasaramam St.,
Aminjikarai,
CHENNAI - 600 029.
S.India.



Fax : 91-44-6213371
Mobile : 9840020833
Phone : Off. 6449970
" " 6267519
" " 6273478
Res. 6272402
6272946

REGISTERED

TO

Date : . . . 5.12.98.

MELTING FOUNDATION,

The Netherlands.

Dear

I am much pleased to enclose herewith a copy of the "Fit Institution" Certificate issued to MSS by the Tamilnadu Govt. Juvenile Welfare Board for Chennai City District. This certificate of Recognition will entitle us to receive abandoned babies and children from Chennai (Madras) City District also.

Earlier we are also recognised as "Fit Institution" by the Tamilnadu Govt. Juvenile Welfare Board, Chengai MGR District.

Thanking you and with best wishes.

Yours sincerely,

DIRECTOR.

Encl : 1) Certificate of Recognition as Fit Institution, Chennai City District.

2) Certificate of Recognition to place children in In-Country Adoption by Tamilnadu State Govt. (Renewed).
(P.s. Please Note the Change in our H.O. Telephone No. From 614970 to 6449970)

Recognised by Govt. of Tamilnadu to place Children in "In-Country" Adoption.
Registered with Ministry of Home Affairs, Govt. of India to receive Foreign Contribution.
Recognised "Fit Institution" to receive abandoned babies by Tamilnadu Govt. Juvenile Welfare Board, Chengai M.G.R. District.
Donations exempted under 80G of the Income Tax Act 1961. (Govt. of India.)
Recognised by Govt. of India to place children in "In and Inter-Country Adoption."
Importer Exporter Code No : 0493020462 (Govt. of India)
Recognised "Fit Institution" to receive abandoned babies by Tamilnadu Govt. Juvenile Welfare " " " " "wai City District
Recognised Technical Educat " " " " " by Govt. of Tamilnadu.



(7)

JUVENILE WELFARE BOARD MADRAS

(Section 4 (1) of the Juvenile Justice Act 1986 Central Act 53 of 1986)

MADRAS-10.

Date:

Chairman: [v].
Members: [v].
[v].
[v].
[v].

BEFORE THE JUVENILE WELFARE BOARD : CHENNAI DIST.,

(Dated this 19th day of November, 1998)

(In the matter of Malaysian Social Service)

J.W.B. Ref. No. 180 of 1998

[Redacted]
Malaysian Social Service,
Chennai.

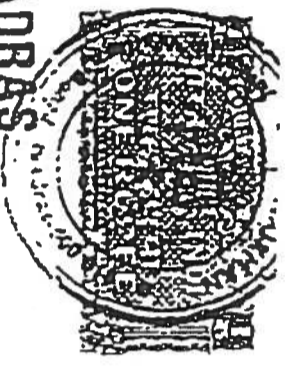
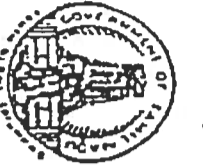
... Petitioner

The petitioner above named filed a petition on 22.9.98 before this Board to recognise his institution viz., Malaysian Social Service, (hereinafter called as The Institution) as fittest institution under Juvenile Justice Act.

The said petition was taken on file by this Board on 23.10.98, called for the reports of the Probation Officers, [Redacted] who are attached to Social Welfare Department and reported to the Chennai Juvenile Welfare Board.

The said Officers filed their joint report on 6.11.98. The diary on 6.11.98 and 12.11.98 recorded the sworn statement of the petitioner and marked 15 exhibits filed by the petitioner in support of his claim.

Pursuing the petition, joint report of the Probation Officers, sworn statement of the petitioner and the exhibits the said unanimously passed the following:



(7)

JUVENILE WELFARE BOARD MADRAS

(Section 4 (1) of the Juvenile Justice Act 1986 Central Act 53 of 1986)

Madras-10.

Order No. : 2 : Date:.....

ORDER

The perusal of the petition discloses that the petition was filed by the petitioner as the Director of the Institution to recognise his Institution by this Board as a fit Institution to receive abandoned babies and children for Chennai city and to issue necessary fit Institution certificate on the following grounds.

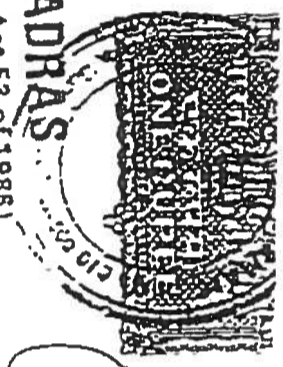
His Institution is a Registered society under Act XXI of 1860, having Import and Export Code Number, registered with the Ministry of Home, Government of India, to receive foreign contribution, recognised by the Government of India, to place children in Inter country adoption and by the Tamilnadu Government to place children In-country adoption. The Pallikuppam Village Unit was already recognised by the Juvenile Welfare Board, Chengelpet as fit Institution. In Chennai City, the Institution is having two centres for adoption programme maintained by professional staff to look after the babies with basic facilities like, phone, fan, ambulance and the two centres are as follows:

1. Malaysian Social Service Child Care & Foundling Home Centre (Unit One)
B-1223, Jayanthi Colony,
West Anna Nagar,
Chennai-600 040
2. Malaysian Social Service Child Care & Foundling Home Centre - Unit Two
Al no. 219, 14th Main Road,
Anna Nagar, Chennai - 600 040.



JUVENILE WELFARE BOARD MADRAS

(Section 4 (1) of the Juvenile Justice Act 1986 Central Act 53 of 1986)



7

Madras-10.

Chairman :

Members :

1 3 1

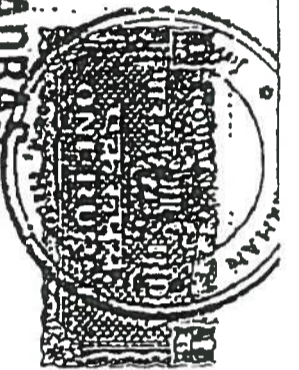
Date:.....

The joint report of the Probation Officers confirmed that the Institution is having two centres and having Head Office at No.19, West Arasu Mara Street, Aminthakara, Chennai-1, 29.

That are the grounds stated in the petition were not denied in the Probation Officer's joint report. On the contrary the Probation Officer's recommended that the recognition may be given if the Board satisfied that merits and demerits found in their reports. A careful perusal of the Probation Officer's report discloses no specific demerits has been pointed out by the Probation Officers. Further it does not disclose any strong or vehement objection on the part of the Probation Officers to certify the Institution as a fit one under Juvenile Justice Act.

The following are the exhibits marked during the sworn statement of the petitioner :

- Exhibits P.1. True copy of the certificate of Registration of Society.
- P.2. True copy of the certificate of recognition by the Department of Social Welfare and Nutrilius Meals Programme.
- P3. True copy of the memorandum of Association of Malaysian Social Service.
- P4. True copy of by-laws of the Malaysian Social Service.
- P.5. True copy of the certificate of Registration issued by the Ministry of Welfare, Central Adoption Resources Agency.
- P.6. True copy of Importer and Exporter Code Allocation letter.
- P.7. True copy of certificate issued by the



(7)

JUVENILE WELFARE BOARD MADRAS

(Section 4 (1) of the Juvenile Justice Act 1986 Central Act 53 of 1986)

Chairman :

Madras-10.

Members :

: 4 :

Date.....

Ticked
Director of Juvenile Education, Government
of Tamil Nadu.

P.8. True copy of the recognition certificate issued
by the J.W.U, Chengalpattu.

P.9. True copy of the annual report.

P.10. True copy of the certificate issued under
section 80 G of the Income Tax Act.

P.11. True copy of the letter from the Central
Government to raise funds by way of foreign
contribution.

P.12. List of Staff.

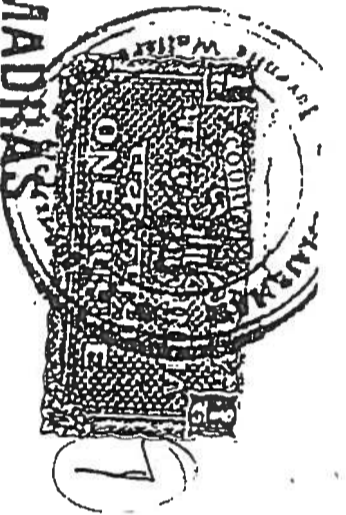
P.13. True copy of the resolution authorising the
petitioner to file petitions.

P.14. Declaration of the petitioner.

P.15. True copy of Form VII of Society Registration Act.

The perusal of the earlier petition filed by the petitioner
discloses that the claim of recognition was rejected by the
Board but it is not specifically barred in filling any
second application before the Board as per the J.J.Act.

1. of the sworn statement, the above exhibits and P.O's
thereby, we are clear that the institution is having sufficient
accommodation, finance, staff, medical facilities, etc. etc. of the
activities of the Society, recognised by the State and Central
Governments in various aspects, the recognition of their Unit is
merely a matter, namely Palliyappan Village, Tiruvorkadu as a



JUVENILE WELFARE BOARD MADRAS

(Section 4 (1) of the Juvenile Justice Act 1986 Central Act 53 of 1986)

Chairman :

Madras-10.

Members :

5

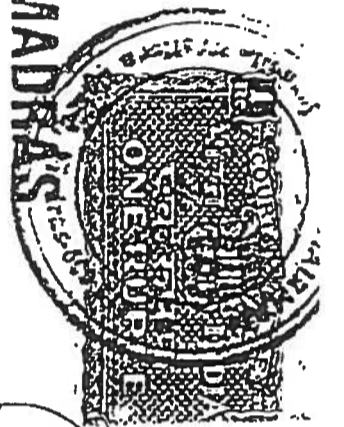
Date.....

FIT Institution as per J.J.Act by the Chenglepatu Juvenile Welfare Board. Considering the same we are satisfied that the petitioner Institution deserves to be certified as fit Institution as per J.J.Act. Accordingly we certify that the Malasian Social Service having Regd Office No. 19, Arasa Mara Street, Aminjikarai, Chennai., having two Units for child care and 'ounding Home Centre at

1. No.B 1223, Jayanthi Colony
2. AL No. 219, 14th Main Road,
West Anna Nagar, Chennai - 600 040.

As a FIT INSTITUTION to receive, take custody and care of abandoned and destitute children U/S 2d 2(f) of J.J.Act with the following conditions;

1. To abide by the conditions and orders of this Board
2. The Chairman, members or their authorised persons shall be permitted to inspect the Institution without any prior notice.
3. The Institution is purely responsible for the proper care, protection and maintenance or whatsoever of the juvenile entrusted by the Board.
4. Any change of address, aims, objectives and activities shall be informed to the Board with proper copy of the resolution within a month of the date of such resolution.



JUVENILE WELFARE BOARD MADRAS

(Section 4 (1) of the Juvenile Justice Act 1986 Central Act 53 of 1986)

7

Chairman :

Madras-10.

Members :

: 6 :

Date:.....

- 5. The Juvenile received and entrusted to the Institution shall not be subjected to any physical and mental ~~teaching~~ *teaching*.
- 6. Any deviation of the above order is liable for cancellation of the recognition.

Dated at Chennai the 18th day of November 1998.

Chairman

[Redacted Signature]

CHAIRMAN 29/11/98

JUVENILE WELFARE BOARD
108, Perambalur Road
MADRAS MADRAS-10

Members

[Redacted Signature] 1/11/98

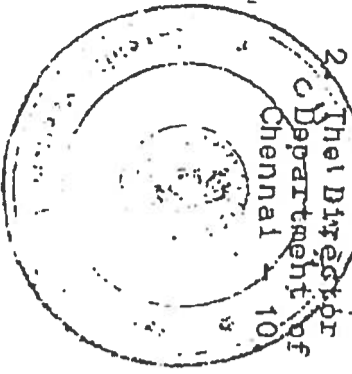
Copy to

[Redacted]

MEMBERS

1. The petitioner on payment of cost

2. The Director
Department of Social Defence
Chennai 10



D
18/11/98

(7)

GOVERNMENT OF TAMIL NADU

DEPARTMENT OF SOCIAL WELFARE AND NUTRITIOUS MEAL PROGRAMME

(ADOPTION CELL)

CERTIFICATE OF RECOGNITION.

Number of Certificate ... 6/1998

Date of issue of certificate ... 22-4-1998

Purpose for which the recognition is granted by the Government of Tamil Nadu... TO DO IN-COUNTRY ADOPTION.

Period of validity of Certificate -- THREE YEARS FROM THE DATE OF ISSU

1. Name of the Organisation ... MALAYSIAN SOCIAL SERVICES, CHENNAI - 29.

2. Particulars of the existing statutory registration of the organisation

a) Act under which registered ... Societies Act 21 of 1860

b) Registering Authority ... Registrar of Societies(Central Madras-18.

c) Number, date and validity Period of registration ... No.52 of 1977, Dated:19.4.1977

3. Address ... 19, West Arasaram Street, Aminjikarai, Chennai - 7600 029.

4. Territory for which this Certificate of Recognition is valid ... NIL

This recognition is liable to be revoked at any time for violation of any of the conditions of directions issued from time to time by the Government of Tamil Nadu or on the grounds of irregular practices by a recognised organisation, after a reasonable opportunity has been given to the concerned Organisation to be heard before the recognition is revoked.

Social Welfare & N.M.P.

MALAYSIAN SOCIAL SERVICES

BYE-LAWS

8

1. Name of the Institution : MALAYSIAN SOCIAL SERVICES
2. Address of the Registered Office : 27, Rajeswari Street,
R. R. Mehta Nagar,
Aminjikalai, Madras-600 029.
3. Date of formation of the Institution : 19-4-1977
4. Registrar of the District within whose jurisdiction the Office of the the Institution is situated : The Registrar of Societies,
Madras Central,
Madras-600 001.
5. The business hours of the Institution : 8-30 A. M. to 1-00 P. M.
2-00 P. M. to 5-30 P. M.

6. THE OBJECTS OF THE INSTITUTION :

- 1) To run the Society for the promotion of Social, Economic and Cultural development of the poor and needy people by,
 - a. Promotion of Children's Education.
 - b. Eradication of Adult Illiteracy,
 - c. Running of orphanages
 - d. Rehabilitation of the aged poor in the slums.
 - e. Nutritious food and milk distribution centres for school children.
 - f. Rehabilitation of the widows.
 - g. Social service activities in the slums like health, education, general cleanliness etc.,
 - h. Medical aid centre for the poor.
 - i. Running of Schools, Hospitals, Laboratories, Printing Presses. Training centres for Socio-economic programmes and Social Welfare Centres.
 - j. Rural Development and Agricultural Oriented Programmes.
 - k. Adoption of children, both In-country and Inter-country Adoption programmes.
 - l. To work for the upliftment of poor and down-trodden women.
 - m. To work for the maintenance and rehabilitation of destitute children.

ACTIVITIES

- 2) To raise funds by donations, both local and foreign to fulfil all the objects aforesaid by complying with the provisions of Societies Registration Act, 1975 and other statutes in force.

- 3) To do such other things as are conducive or incidental to the attainment of all or any of the objects said above.
- 4) To run the institution for carrying on the objects without any distinction of caste or creed and every member of the public will be eligible to apply for the benefits of the institution.
- 5) To invest the surplus funds of the Society in approved investment like investments in immovable property, Securities of the Government, National Saving Certificate, Post Office Savings Account, Bank Deposits and in such other modes of investment as may be prescribed and utilise the amounts and interest accrued for carrying out the above objects.
- 6) The activities of the Institution in furtherance of its objects : To carry on any other activity which is incidental to the Main Objects for the performance of the objects.
- 7) The name of the person or officer if any authorised to sue or to be sued on behalf of the Institution : The Secretary.
- 8) The name of the person or officer who is empowered to give directions in regard to the business of the Institution : The President.
- 9) *Enrolment of Members :*
- i) *Qualifications for membership, classification, restrictions and conditions, if any therefor :*
- Any member of the public who has completed 18 years of age shall be eligible to become a member of the Institution provided he agrees to abide by the Bye-laws of the Institution. There are five categories of members :
- ii) The entrance and other fees or subscriptions, if any, to be collected from five categories of members.
- a. *MEMBERS :* Members are full members of the Institution who pay an annual subscription of Rs. 60 -.
- b. *LIFE MEMBERS :* Life Members are full members of the institution who pay subscription of Rs. 500 - as life-membership fees.
- c. *DONORS :* Donors are well wishers who pay a donation of a minimum amount of Rs. 1000,- and who may or may not take part in the activities of the Institution.
- d. *PATRONS :* Patrons are men of eminence and elites of the State whose association with this Institution may enhance the prestige and status of the Institution.
- e. *HONORARY MEMBERS :* Honorary members are popular leaders in any walk of life who wish to encourage and promote the aims of the Institution and are nominated by Executive Committee for their moral support.
- No Honorary Members, Patrons or Donors shall be nominated to any of the Office of the Institution.

10. *Removal of Members :*

- i) The Executive Committee should be competent to remove any Member from the Register of Members :
 - a) Who has submitted his/her resignation in writing.
 - b) Who has failed to pay his/her annual subscription for a long period.
 - c) Whose conduct and behaviour, in the opinion of the committee or president, whose action shall be subject to approval of the next Executive Committee is found to be detrimental or prejudicial to the interests of the Institution or is in any way anti-social.
 - ii) Any person who is removed from membership may be re-admitted on such terms and conditions as they may deem fit.
 - iii) Any members so removed shall have the right to appeal his case to the President and later to the Executive Committee which shall have the power to rescind/confirm the decision of the President. Such a decision will be final and binding on the member and cannot be questioned in a Court of Law. However the member would be given another chance to prove his case to the President of the Institution.
- 11) *Rights, Obligations and Privileges of Members :*
 - i) The Members shall have the right to attend and vote at the Bi-annual General Body for any motion and have the equal right for contesting for the election to the Executive Committee. The rights and privileges of the members are equal.
 - ii) The members shall perform the duties as members diligently in carrying out the objects of the Institution on behalf of the Institution and have the obligations to keep up the name and render the purposes.
- 12) The Institution shall transact the business through the Executive Committee and carry on the objects of the Institution through the members of Executive Committee.

13) *Constitution of the Executive Committee :*

- a) The Executive Committee is constituted by one President, one Secretary, one Treasurer and other Executive Committee Members, whose number can be elected by the President, as he/she deems fit for the achievement of the objects of the Institution.
- b) The President and the Secretary are hereby authorised to act on behalf of Executive Committee jointly or severally in carrying out the activities of the Institution.
- c) All the Executive Committee Members shall be the members of the Institution and shall be elected at any General Meeting of the members.
- d) All the Office Bearers of the Executive Committee shall hold office for Three years or till successors are re-elected. A returning officer shall be elected in the Bi-annual General Body Meeting itself to conduct the election of office bearers. His decision shall be final and binding on all.
- e) The retiring office bearers are eligible for re-election. Interim vacancies, if any will be filled by nomination of the Executive Committee for the remaining period of the term.
- f) The Election to the Committee shall be done once in three years.
- g) The members of the Executive Committee/Office Bearers shall work gratuitously but any expenses actually incurred by them in doing the legitimate work of the Institution shall be reimbursed to such members' office bearers.

14) *Preparation and Filing of Records and Statement :*

- i) The Secretary or President shall prepare and file all the records and other statements annually on behalf of the Institution with the Registrar of Societies, which are specified in the Tamilnadu Societies Registration Act, 1975 and the rules, 1978.
- ii) The President or Secretary is hereby authorised to sign such records or Statements.
- 15) The account of the institution shall be audited by a qualified Chartered Accountant or a firm of Chartered Accountants to be appointed by the General Body annually and the Accounts shall be closed on 31st March of every year. The Income and Expenditure account and Balance Sheet shall be drawn from the accounts and shall be audited by such Chartered Accountant or a firm of Chartered Accountant.
- 16) Every member shall be supplied with a copy of Memorandum and Bye-laws at free of cost on becoming a member. A copy of receipts and payments of account and the Balance Sheet prepared every year shall be supplied free of cost to all the Members.
- 17) If it is proved that any member or officer has committed breach of the provisions of the Bye-laws, they shall be imposed with a fine which shall be decided by the Executive Committee from time to time.
- 18) The funds of the institution shall be under the custody of the Executive Committee which shall be kept in Bank Accounts in the name of the Institution or in each under the custody of the Treasurer or President which shall be decided by the Executive Committee from time to time. The funds may be invested in Government Securities or other Securities or in any other manner as the executive committee may decide from time to time. The bank accounts shall be operated by the President and the Secretary jointly. The Treasurer is authorised to keep a cash balance upto Rs. 9000/-.
- 19) There shall be no provision to be made for dependent of a deceased or disabled member out of the funds of the Institution.
- 20) Every member of this institution has the freedom to join any other institution which is not working in conflict with the causes of this institution.
- 21) The Executive Committee is authorised by these Bye-Laws to transact the day-to-day business of the Institution and the staff required shall be appointed on the satisfaction of the Executive Committee and conditions of service of such employee, emoluments, day to day expenditure etc, shall be decided by the Executive Committee from time to time.
- 22) *Meetings of the Institution :*
 - i. The Annual General Meeting of the Institution shall be held in every financial year before September to approve and adopt the audited statement of accounts and to do such other business, which the meeting is entitled to and prior notice not less than 21 days have to be given to all members of the Institution and the notice shall contain the Agenda of the Meeting.
 - ii. The Committee may at any time call an Extraordinary General meeting of the Institution on the receipt of a requisition in writing from at least 1/3 of the Members including the executive committee members within 30 days of the receipt. At least 21 days notice is required for further meeting.
 - iii. The Executive Committee shall meet every month or even more frequently to discuss and take decision on all matters affecting the institution and for the development of the institution.

iv. The Bi-annual General Body Meeting shall, among other business, elect New Office bearers for the succeeding period of 3 years.

v. The President of the institution shall preside over both the General Body and Executive Committee Meeting.

23) *Amendments in Memorandum or Bye-laws :*

Special resolution as defined in clause (j) of Section 2 of the Tamil Nadu Societies Registration Act of 1975 is required at the General Body Meeting with 3/4 the majority to change the name, modify, include or exclude any of the objects or Bye-laws of the Institution and for all the other business, ordinary resolution is sufficient.

The quorum for any General Body Meeting shall be 2/3 Members and that for the Executive Committee shall be 2/3 of Executive Committee Members including Office bearer.

24) *Borrowing Powers:*

a) The President and Secretary is empowered to borrow as working capital a sum not exceeding Rs. 15,000/- (Rupees Fifteen Thousand Only) for running of the tailoring unit with the prior approval of the Executive Committee for the development of the Institution in general.

b) The President and Secretary is empowered to borrow a sum not exceeding Rs. 40,000/- (Rupees forty thousand only) from Nationalised Banks for any of its Income Generating Programmes like Printing Press and T. V. Training Centres; with the prior approval of the Executive Committee for the development of the Institution in general.

c) The President and Secretary is empowered to borrow a sum either as loan or overdraft not exceeding Rs. 40,000/- (Rupees forty thousand only) from Scheduled Banks also for any of its income generating programmes like Printing Press and Radio and Television Training Centre and is also authorised to hypothecate the assets of the concerned programme if necessary for the loan availed with the prior approval of the Executive Committee for the development of the Institution in general.

d) The President and Secretary are empowered to borrow a sum not exceeding Rs. 1,00,000 -(Rupees One Lakh Only) as loan or overdraft for its Rural Development and Agriculture Oriented Programme with the prior approval of the Executive Committee for the development of the Institution in general.

25) The Register of Members, books of accounts and the minutes book shall be kept at the registered office of the Institution and the same shall be open to all the members for inspection during business hours, free of charge.

26) *Emergency Provisions and special powers of the President :*

Notwithstanding any of the provisions of these rules, the President of the Institution shall take appropriate steps to protect and preserve the interest of the Institution in the event of any untoward development threatening the common interest of members and shall have the power to suspend any of the office bearers or members and to institute any legal action as the situation warrants.



- 27) The Assets, Funds and the Income of the Institution shall be utilised only towards the objects of the Institution and no portion of the same can be utilised by any person or persons.
- 28) In the event of dissolution or winding up of the Institution, the assets of the Institution cannot be disbursed to any person or persons their individual capacities and the assets can be transferred only to one or more Institutions or Societies or Trusts carrying on the objects of Social, Economic, Cultural and Charitable Developments.
- 29) For all the matters not specifically provided or mentioned in these Bye-Laws the provisions of the Tamilnadu Societies Registration Act, 1975 and the Tamilnadu Societies Registration Rules, 1978 shall apply.

For MALAYSIAN SOCIAL SERVICES,



21-7-75

(9)

2 Reference letters from Indian Adoptive parents.

To
The Director
Malaysian Social Services
Madras - 600 029.

Dear sir,

We would like to express our joy in having completed the legal formalities in respect of our son Anand whom we have adopted from your organisation. We are really very happy to note that you and your staff have been very kind and co-operative at every stage in making us the proud parents of a smart intelligent and affectionate boy. The service you are rendering to couples like us is priceless. May God bless you and your organisation abundantly.

Yours sincerely,


Date : 18.4.75.
Place : Erode.

14.5.95.

10M1



(9)

To:
The Director
Malaysian Social Services
Nadras - 600 029.

Dear sir,

I and my wife wish to thank you and your organization for giving us a healthy and good female child which had brought great joy and happiness in our family. We are very much impressed by the child's intelligent behavior even within this short period of three months.

Above all we very much appreciate the way you and your staff treated us right from the day we approached you till the day the legal formalities were completed. Everything was done systematically and at every stage we were handled with utmost care and affection.

We sincerely wish you and your organization great success in the noble service you are rendering to childless couples like us.



Yours sincerely,

2 Reference letters from Member of Parliament,

(16)

10-08-94

TO WHOMSOEVER IT MAY CONCERN

I know [REDACTED]
Malaysian Social Services very well. This
organisation M.S.S. is based in Mauras and
have done commendable work in social welfare
activities especially in Women and Child
welfare programmes under the able leadership
[REDACTED]



111, 112 & 113, BANGSANGWANGYI STREET ROAD,
 AT SINGAPORE, SINGAPORE 050000
 TELEPHONE : 4993333, 4993369
 111 112 113 BANGSANGWANGYI STREET ROAD
 SINGAPORE 050000

09.08.1994.

10

TO WHOSOEVER IT MAY CONCERN

The Malaysian Social Services of
 India: is doing a lot of good work to
 help the helpless like old people and
 children.

This Organisation has been carrying
 on its work under great odds and press-
 ures but never fails to fight and
 secure justice for noble causes.

I wish this organisation all
 success.



The Malaysian Social Service, an organisation functioning in Madras since 1970 was started by Indian citizens working in Malaysia. Children who are abandoned by parents for various reasons are taken

under the wings of MSS. "The Child Care and Adoption Centre" of MSS in West Anna Nagar looks after 20 children. Little is one among them. This centre is ready to encourage adoption of children by Indian families. During 1990-91, the organisation had

concluded five in-country child adoptions. The organisation hands over a child for adoption only after carefully completing the legal procedures and also ensuring that the parents can take good care of the young one. self adopted a girl child, says the organisation also gives a clean bill on the health of the child by conducting an AIDS test in a reputed hospital before handing it over. M Staffer

Children frolicking at the Child Care and Adoption Centre



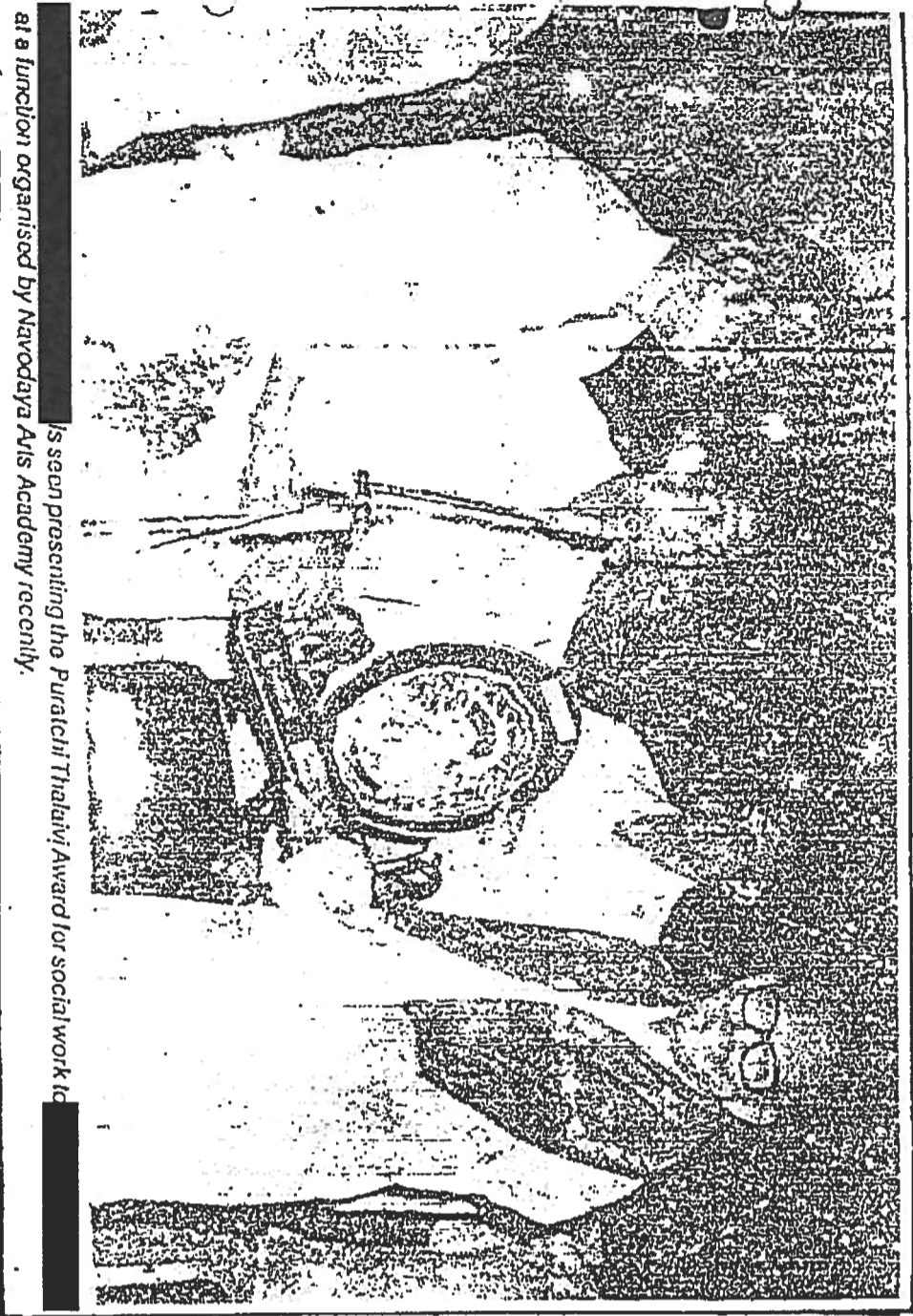
A home for waifs

Unable to bear the craving for food, he started begging for alms before the people around. A good Samaritan among the public took to "Malaysian Social Service" (MSS), a voluntary organisation run by its Director, where he is being looked after well. At the same time, MSS is trying to contact parents at Bombay, to safely return him to his

a seven year old boy was studying in the first standard in a school in a remote area of the city of Bombay. This lad had everything except affection and love from his parents. The frequent quarrels of his parents led to his being denied the world without parental love and one day little boarded a train to Madras. After reaching Central Station the boy was completely in the dark as to what to do next.

TIMES

THE MADRAS TIMES ON 6.4.92.



is seen presenting the Puratchi Thalaivi Award for social work to [redacted] at a function organised by Navodaya Arts Academy recently.

HOBARI, who trampled in
... who trampled in
... in the Bath
...

(11)

THE MADRAS TIMES

23 APRIL 1992



Film producer and director of Malaysian Social Services in Tiruvorkadu recently. Picture also shows South Madras District and Malaysian Social Services

(11)

Auditorium opened

EVENING
MADRAS
19.4.92

MADRAS, Apr. 19
An auditorium was opened
by film director [redacted]
[redacted] in the premises of
Saraswathi Vidyalaya in Pal-
lakkuppam, Tiruverkadu last
night. He paid rich tributes to
the services of [redacted]
[redacted] and his wife
[redacted] of the Mangasani sp-
cial services, which owns the
school.

MADRAS THURSDAY MAY 14, 1992

(11)

ADoption is the BETTER WAY

Madras, May 14

of a child. Valuable money, energy and time were wasted in the process.

has exhorted social welfare organisations to encourage adoption of orphaned and destitute children by childless couples rather than resort to superstitious methods such as Yagas to beget children.

regretted that in the present jet age many childless couples in Kerala had taken recourse to Yagas and other Superstitious rituals to appease the Gods and procure the 'boon'

quilt was not averse to religion or rituals but it advocated practicality. In India, he said there were millions of orphans. By becoming foster parents to such waifs, childless couples could bring happiness not only to themselves but to these unfortunate children.

It was upto society to efface the stigma attached to childlessness and find a rational solution to the problem.

Melancholus Times May 15 1992

THE HINDU CH: 21.2.92.

Adoption offer for childless Indian couples

MADRAS, Feb. 20
Here is good news for childless Indian couples willing to go in for adoption. The child care and adoption centre called 'The Malaysian Social Services' is ready to encourage adoption of children by Indian families.

Local reporters here on Thursday, that during 1990-91, the organisation had concluded five in-country child adoptions and at present the centre located in West Anna Nagar had 17 abandoned children...

He said the organisation handed over a child for adoption only after carefully undergoing the legal procedures and also satisfying that the parents could take good care of the young one. [redacted] who has himself adopted a girl child, said the organisation also gave a clean bill on the health of the child by conducting an AIDS test in a reputed hospital before handing it over.

Miss [redacted] said the Government of India had recognised the centre for undertaking child adoption programmes both within the country and outside.

(11)

20-11-52

அனைத்துத்தீர்மானம்
அண்ணா தி. மு. சூழலம்
அறிவிப்பு



(11)

23, சபுமாரி கோயில் தெரு
அண்ணா தி. மு. சூழலம்
சென்னை - 600029.

புதிதாக 18-7-95

சென்னை தி. மு. சூழலம்
அண்ணா தி. மு. சூழலம்



IT WAGES EVER I REY CONCERN

for the past

I have known [redacted] in founding the
25 years. He was instrumental in founding the
Organisation Malaysian Social Service. I have
personally seen all the activities of M.S.S. &
[redacted] has done a lot for children &
[redacted] he is very popular with the
women's activities. he is very popular with the
public and he is held in high esteem. he has been
successful in his activities even under great
pressure.

I wish

Member of the Headquarters
General Council
[redacted]



12

ANNUAL REPORT (1996)

Dear members,

Your Executive Committee Members have great pleasure in welcoming you all and to present the Annual Report for the year 1995/96.

Over All Results :

We have maintained steady progress and growth in all our programmes. The number of beneficiaries under child care have increased during the year. We were able to get sanction from our Donar Agencies for some more new programmes. We had many visitors from our Donar Agencies and also some sponserparents visited M. S. S. during the year and our efforts to help the needy have been much appreciated by them. We were also able to give training in V. T. P. to candidates through T. A. H. D. C. O., a Govt. of Tamilnadu agency promoting the welfare of Adi-Dravidar and schedule Castes. Two Training Programmes were conducted through T. A. H. D. C. O. (Radio & T. V. Mechanism Course and Training in Typewriting & Shorthand) to benefit 53 SC Candidates.

Printing Press Division :

We have maintained steady progress and were also able to secure good work orders. 6 physically handicapped persons were given training in Printing Press Line.

Micro Bus :

The Micro-Bus is now exclusively being used for the Primary School, Creches and Children's Home. The Micro-Bus has been overhauled and repainted recently. A School bus is being acquired during 1997.

Residential Childrens Home :

The present strength of the Residential Childrens' Home is 105 children. The children are provided with free boarding, lodging, clothing, medicare and education. The girls in the Childrens Home are housed in a separate building in another location in Madaravedu Village. Along with the co-operation of the Institute of Public Health at Poonamallee, a doctor visits the children weekly and looks to their health needs. The children are provided educational materials, books, uniform etc. All repairs to the existing buildings have been carried out and has also been repainted and whitewashed. Additional staff have been appointed to look to the needs of the children.

Non-Residential Child Sponsorship Programme :

The number of children at present being covered is 448 children. In this programme, the children will reside with their parents, guardians or foster parents. Support is mainly for education, nutrition, clothing, and medicare. We have many children on our waiting list and all efforts are being taken to include more children in the programme.

Creches :

The 2 Creche Centres aided by the Central Social Welfare Board benefiting 55 children are going on smoothly. All the children were provided with dresses and toys. The buildings have been repaired and repainted and additional equipments and play materials have been provided with matching grant from C. S. W. B. The 3rd Creche Unit at Madaravedu Village is functioning very well.

Primary Schools :

The strength of the 2 schools in Aminjikarai and Thiruverkadu has increased from 550 last year to 598 children this year. A new premises with adequate playground facilities have been acquired for the school at Thiruverkadu. Additional furniture and amenities have been provided. Additional land for the Aminjikarai School has also been acquired. A new playground has also been acquired for the Thiruverkadu School. 4 new toilets has also been provided

Adoption of Children Programme :

During 1995/96, 12 children have been placed in Inter-Country Adoption in Netherlands, and Australia. Most of the children were abandoned and special needs children. We have taken many steps to promote the adoption of children by Indian families mainly through newspaper interviews, articles, booklets, and seminars and we have so far placed 49 children with Indian families and 221 Indian couples have registered with us to adopt children.

Radio & T. V. Mechanism Training Programme :

Most of the trainees are well placed as demand for trained hands are very good as Radio and Television are now used even in remote villages and towns.

Dairy-Cum-Bio-Gas Project :

The Dairy commenced with 8 milch buffaloes. The excess milk is being distributed to children in the Creche Unit at Madaravedu and to the children in the Childrens Home. Training of 5 women are in progress in the Dairy Unit on maintaining buffaloes scientifically and on sound economic basis. The Bio-Gas Plant now provides gas for cooking purpose in M. S. S. Childrens Home.

Mini-Health Centre :

The Mini Health Centre is quite successful and has benefited the villagers in their health care "Australia for Children Society". Western Australia is meeting the recurring cost of the centre.

Distribution of Clothes, Medicines, and Toys to Children :

We had received clothes, tonics and multi-vitamin tablets with feeding bottles etc., as also some toys which were distributed to the children in the Creche Units as also to the children in the Childrens Home and for use in M. S. S. Child Care Centre in Anna Nagar.

Help to the Aged :

A monthly pension of Rs. 100/- is being given to 9 beneficiaries in Pallikuppam Village. The beneficiaries have nobody to care for them and are in diligent condition. We hope to increase the number of beneficiaries when more funds are available with us.

Help to Widows :

5 widows are being helped with Rs. 100/- each monthly until they are able to establish their own sources of income. M. S. S. is arranging for Bank loans for them to start their own business to enable them to earn their livelihood. 8 widows were also provided with sewing machines to enable them to earn their own income.

Securing Loans for Scheduled Caste People :

M. S. S. is co-ordinating with various Government Agencies and Banks to secure loans for Scheduled Caste people to start their own economic activity to enhance their income.

Export of Greeting Cards :

The number of Greeting Cards being exported to countries in Europe has increased and we are happy to inform you that we have also received orders from Canada, Finland, Australia and Netherlands. Efforts are under way to start a Production Unit for Greeting Cards to provide employment to 25 to 30 women belonging to the economically weaker sections. The demand for the hand-made cards both in India and abroad are quite good. The unit will be economically viable as our prices compare favourably with printed cards.

Training of Women Candidates in the Manufacture of Hand-Made Greeting Cards

2 batches totalling 28 women candidates have completed training with us in the manufacture of Hand-made Greeting Cards. The training programme was sponsored by T. A. H. D. C. O. (A Tamilnadu Government Agency).

V T P in Typewriting, Shorthand and Accountancy :

In the Centre, training is being provided to 60 adult candidates (Both Men & Women)

V T P in Tailoring :

12 women candidates are being trained in this centre. The women all belong to the economically weaker sections of society.

V T P in Typewriting & Shorthand (T. A. H. D. C. O.) Govt. of Tamilnadu :

15 trainees both men and women had undergone training in Typewriting and Shorthand through grants from T. A. H. D. C. O. (Govt. of Tamilnadu). The beneficiaries are all Adi-Dravidas. The trainees were entitled to Rs. 300/- as stipend per month. The Training was of one year duration. The Nursery & Tree Planting Project :

From the 1st year (1991) funds received, the fencing, gate, well, toilet, overhead tank, pipe connections, shed with building, site levelling, white washing, purchase of auto trailer, gardening tools, etc., were completed. With the funds received for the 2nd phase fruit bearing saplings and coconut saplings have been distributed to the villagers. Some funds have been received for the 3rd phase and was utilised towards maintenance of the saplings distributed.

Community Childrens Playground :

With funds from an Australian Agency the land for the Playground had been purchased in 1991. The compound wall, gate, toilets, well, overhead tank and purchase of play materials have been completed. The playground is now open to the community. A garden too has been established.

The Child Care and Foundling Home is well maintained and has helped abandoned babies and children find permanent and happy families. We are recognised by Govt. of India to place children in Adoption.

Bakery Unit :

The ground floor for the Bakery Unit has been completed and all machineries had been purchased and shifted to the new building. Single phase electricity connection has been acquired which is to be converted to 3 phase line shortly. The first floor of the Bakery Unit Building has been sanctioned and work is expected to start from May 1996.

Ministry of Welfare :

With grants from the Ministry of Welfare, Govt. of India 'Alcohol and Drug Abuse prevention' Programme was conducted. Organisational grant for maintenance of Central Office is also expected to be sanctioned for 1996-97.

We have from last year adopted a few villages near our Childrens Home in Pallikuppam Village. Most of the inhabitants are S. C. and of the most Backward Classes of people of the society. Most of them are living below the poverty line. Orientation Training Camps are being conducted where the benefit of the small family norms are being stressed. Medical Camps for the villagers were also conducted. We are planning to help these exploited classes of people by training them in gainful vocations. There are good scope for self-employment in the field of Dairy, Goatery, Piggery, Broiler Chicken Farm etc, as most of the people own backyard land which can be gainfully used. Efforts are already underway to start some of the above programmes through various Government Agencies, Banks and Donar Agencies.

Future Plans :

Housing, Sanitation, Drinking water supply. Village & Community Development Projects, Awareness camps, Establishment of more Creche Centres in slums, Establishment of Production Centre in Handmade Greeting Cards, Building for child care centre and health programmes are intended to be undertaken during 1996-98 Aids (HIV) awareness programme will also be given importance A Short Stay Home for Women, Day Care Centres for the Aged and Alcohol and Drug Abuse prevention programme has been recommended by Tamilnadu State Govt. and during 1996 these programmes will be taken up after funds are received from Govt of India. The Primary School at Tiruverkadu will be upgraded to a High School (Matriculation) with Job Oriented Vocational training in Computers, Catering technology, Vehicle mechanism etc., An ambulance is also expected to be acquired in 1996-97.

With Grants from the Ministry of Welfare, Govt of India, a "Working Womens Hostel" and a "Home for the Aged" is expected to be taken up in 1995-98. The land for these 2 centres have already been purchased in Tiruverkadu.

Our Executive Committee Members are grateful to the members, honorary workers and staff for their complete support given to M. S. S in carrying out its various programmes successfully. We are also thankful to all our Donar Agencies both Foreign and Indian, Patrons, Honorary Members and Supporters for all the help and support given to us.

Our grateful thanks to the Newspapers. "THE DAILY THANTHI", "DINAKARAN", "MALAI MALAR", "THE HINDU", "KUNNARI MURASU", "SALANGAI", "EVENING MADRAS", "MADRAS TIMES", "MALAI MURASU", "USHA", "BAGYA Weekly", "SUPER NEWS", "MADRAS TIMES", "THINA BOOMI", "MAKKAL KURAL", "NAMADU MGR", "NANGAI", "VETRI MALAI", "MALAI KATHIR", "PUDUMUDHAM", "MULLAI" for the wide coverage given to M. S. S. Our sincere thanks are also due to Madras Dooradshan Kendra for the T. V Coverage given to our programmes. These Press & T. V. Coverages were initiated and made by our Hon. Public Relations Officer, [REDACTED]. We place on record our thanks to the "District Social Welfare Officer", "Directorate of Social Welfare", "Tamilnadu State Social Welfare Board", "T. A. H. D. C. O.", "Ministry of Social Welfare", "C. A. R. A." Govt of India and to the State and Central Government authorities for the kind co-operation extended to us. We also sincerely thank our Auditors M/s P. T. Ponnaiiah & Co., our

(12)

Hon'y. Legal Advisor [redacted] and our Bankers M/s Federal Bank Ltd., Madras-29 for the co-operation extended to us. We also thank our advocates [redacted] and [redacted] for having taken up our fight for justice. Our special thanks also goes to our Patrons [redacted] for the guidance and patronage given to M. S. S. Programmes.

Our sincere thanks also goes to the beneficiaries, the children and all associated with M. S. S. for their kind co-operation.

For and on behalf of the Executive Committee.

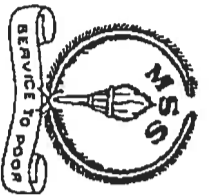
[redacted]

Madras - 600 029.

Date : 25-4-96.

MALAYSIAN SOCIAL SERVICES

H.O. : No. 6, Sengunthar Street,
Shenoy Nagar,
CHENNAI - 600 030.
S. India



Fax. : 91-44-6213371
Mobile : 9840020833
Phone : 6449970
OFF. : 6267519
" " : 6273478
" " : 6272402
" " : 6205792
Res. : 6272946

(13)

**ANNUAL REPORT
(1999)**

Date.....

Dear Members,

Your Executive Committee Members have great pleasure in welcoming you all and to present the Annual Report for the year 1998 - 1999.

Over All Results :-

We have maintained good progress and growth in all our programmes. The number of beneficiaries under child care have increased during this year also. We were able to get sanction from our Donar Agencies for some more new programmes. We had many visitors from our Donar Agencies and also some sponsor - parents visited M.S.S. during the year and our efforts to help the needy have been much appreciated by them. Some students from overseas had also undergone training at our centres.

Printing Press Division :-

We have maintained steady progress and were also able to secure good job orders. 2 physically handicapped persons were given training in Printing Press Line.

Vehicles :-

The Micro - Bus is now exclusively being used for the Primary School, Creches and Children's Home. The Micro - Bus has been overhauled and repainted. A Tempo Traveller bus and Mahindra van had been acquired during May 1998. A Maruti Ambulance have also been acquired for the childrens Programme during April 1998.

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Residential Childrens Home :-

The present strength of the Residential Childrens Home is 86 children. The children are provided with free boarding, lodging, clothing, medicare and education. The girls in the Childrens Home are housed in a separate building in another location in Madaravedu village. A doctor on regular basis have been appointed to look to the needs of the children in their health care. The children are provided educational materials, books, uniform etc. All repairs to the existing buildings have been carried out and has also been repainted and whitewashed. Adequate additional staff have been appointed to look to the needs of the children.

Non - Residential Child Sponsorship Programme :-

The number of children at present being covered are 551 children. In this programme, the children will reside with their parents, guardians, or foster parents. Support is mainly for education, nutrition, clothing, and medicare. We have many children on our waiting list and all efforts are being taken to include more children in the programme.

Creches :-

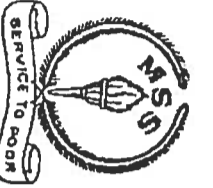
The 2 Creche Centres aided by the Central Social Welfare Board benefiting 56 children are going on smoothly and well. All the children were provided with dresses, toys and education items. The buildings have been repaired and repainted and additional equipments and play materials have been provided with matching grant from C.S.W.B. The 3 rd Creche Unit at Madaravedu village is functioning very well.

Mini - Health Centre :-

The Mini Health Centre is quite successful and has benefited the villagers in their health care. "Australia for Children Society" Western Australia is meeting the recurring

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Date.....

cost of the centre. A regular Doctor has been appointed for the Mini Health Centre.

Distribution of Clothes, Medicines, and Toys to Children :-

We had received clothes, blankets, tonics and multi vitamin tablets with feeding bottles etc, as also some toys which were distributed to the children in the Creche Units as also to the children in the Childrens Home and for use in M.S.S. Child Care Centre in Anna Nagar.

Help to the Aged :-

A monthly pension of Rs.200/- is being given to 20 beneficiaries in Pallikuppam Village and Madaravedu Village. The beneficiaries have nobody to care for them and are in diligent condition. We hope to increase the number of beneficiaries when more funds are available with us. The monthly help has been increased from Rs.100/- to Rs.200/-.

Help to Widows :-

15 widows are being helped with Rs.200/- each monthly until they are able to establish their own sources of income. M.S.S. has arranged for Bank loans for some of them to start their own business to enable them to earn their livelihood. 3 Widows were provided with sewing machines to enable them to earn their own income. The monthly assistance has been increased from Rs.100/- to Rs.200/-.

Securing Loans for Scheduled caste people :-

M.S.S. has co-ordinated with various Government Agencies and Banks to secure loans for scheduled caste people to start their own economic activity to enhance their income.

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Export of Greeting Cards :-

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The number of Greeting cards being exported to countries in Europe has increased and we are happy to inform you that we have also received orders from Canada, Finland, Australia, and Netherlands. Belgium has now been included to import our cards.

VTP in Typewriting, Shorthand, and Accountancy:-

In this Centre training is being provided to 50 adult candidates (Both Men & Women).

VTP in Tailoring :-

7 Women candidates are being trained in this centre. Women all belong to the economically weaker sections of society.

Child Care Centre & Foundling Home :-

The Child Care and Foundling Home is well maintained and has helped abandoned babies and children find permanent and happy families. We are recognised by Govt. of India to place children in Adoption. The State Govt. has also accorded recognition for placing children with families in India.

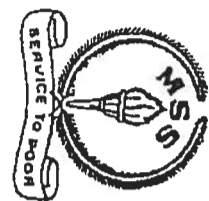
A Second Unit at Anna Nagar has been established and equipped. It commenced functioning from August 1998.

Schools :-

The strength of the 2 schools in Aminjikarai and Thiruverkadu have increased from 702 to 735 children this year . The Saraswathi Vidhyalaya Matriculation School is upgraded to a High school . The school now has additional classrooms, playmaterials, library, science lab, with the necessary equipments and furnitures. A compound wall

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(13)

and retaining wall has also been constructed including 4 new toilets.

Computer Section :-

The Computer section commenced functioning from June 1999.

Dairy Unit :-

The excess milk from the Dairy Unit is being used by the children in the Creche Unit at Madaravedu and also the children in the Childrens Home. Some women were also trained in Dairy management.

Radio & T.V. Mechanism Training Programme :-

A short term training of 6 months was conducted for 8 students, both boys and girls, and includes some of the children in our Childrens Homes.

Adoption of children Programme :-

During 1998/1999 a total of 25 children were placed with Indian families and 12 Children in International Adoptions. 66 Indian couples are registered with us to adopt children, under active waiting list.

Community Childrens Playground :-

The community childrens playground is being maintained well and a small garden is also being maintained. A full time watchman-cum-gardener has also been appointed. The school children of our Primary School also use the playground.

Bakery Unit :-

The Bakery Unit has now commenced production after a manual oven was

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(13)

constructed. This was necessary as the electric oven could not be operated due to very low voltage and fluctuation. We anticipate to have better electric supply in the near future to enable us to operate the electric oven also. The orders for breads and bakery products at present is adequate and production and sales are expected to increase in the near future. A few boys and girls from our Childrens Home have joined as parttime trainees in the Bakery Unit.

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Ministry of welfare :-

With grants from the Ministry of Welfare, Govt. of India " Alcohol and Drug Abuse Prevention " programme was conducted earlier.

Building of Classrooms :-

An additional 2 classrooms on 1st Floor of the existing building has been constructed. The classroom have all the necessary classroom furnitures, and equipments. The classrooms have been in use from June 1998 for the primary class section for Saraswathi Vidhyalaya Matriculation School. Two additional classrooms have been constructed on the 2nd floor and will be used from June - 2000.

Electrical Equipments and Utilities for Auditorium :-

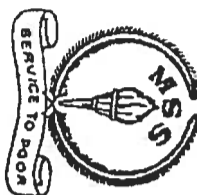
The Auditorium at the Childrens Home for Boys now have its own sound services, decoration lights, mikes, including curtains and utilities for conducting cultural programmes

Childrens equipments and utilities for " Child Care & Foundling Home Centre " :-

The CCFH Centre at Anna Nagar now have the facility of a diesel generator, emergency lights, additional cradles, and toys and playmaterials have been replaced.

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Date:.....

Child Care & Founding Home Building :-

The four storied Building has been completed and children from Unit 1 in Anna Nagar will be shifted to this Building from June 2000.

Appalam Manufacturing Unit :-

Partial funds have been donated by a Women 's group in the Netherlands for starting the Appalam Manufacturing Unit to provide training and employment opportunities for women at this Unit. This project will now be taken up from June 2000.

Catering Institute Vocational Training Centre Building :-

Construction work is expected to be completed by March 2000. After equipping the centre and electric supply is available the Catering Institute will commence functioning from June 2000.

Greeting Cards Manufacturing Centre :-

The production centre is functioning in a rented building and is fully equipped. Handmade Greeting Cards, Wall Pictures and Handicraft items are being manufactured at the centre. The centre provides employment for 8 women candidates.

Medical equipments and Childrens utilities :-

I am much to pleased to inform you all that we have received a container full of medical equipments, hospital utilities, office furniture, childrens utilities, toys, clothing, books etc, from our Donar Agency "ASIAAC"

Grants under " Shishu Greh"

I am pleased to inform you all that we have been accorded the full sanction of 8

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(13)

grant for the year 1998 - 1999 . Sanction for the year 1999 - 2000 to also expected to be approved.

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Future Plans :-

Housing, sanitation, drinking water supply, village & community development projects, awareness camps, establishment of more creche centres in slums, and health programmes are intended to be undertaken during 1999 -2002. Aids (HIV) awareness programme will also be given importance. A short stay home for women , day care centres for the aged and alcohol and drug abuse prevention programmes has been recommended by Tamilnadu State Govt. and during 1999/2002, these programmes will be taken up after funds are received from Govt.of India. A large scale project to help the cause of handicapped children is also being planned for the future.

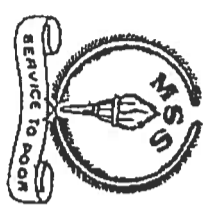
With grants from the Ministry of Welfare, Govt.of India , " a working womens hostel " and " home for the aged " is expected to be taken up in 2000 - 2002. The land for these 2 centres have already been purchased in Thiruverkadu.

Our Executive Committee Members are grateful to the Members, Honorary Workers and Staff for their complete support given to M.S.S. in carrying out its various programmes successfully. We are also thankful to all our Donar Agencies both Foreign and Indian, Patrons, Honorary Members and Supporters for all the help and support given to us.

Our grateful thanks to the Newspapers. "THE DAILY THANTHI", "DINAKARAN", "MALAI MALAR", "THE HINDU", "KUMARI MURASU", "SALANGAI", "EVENING MADRAS", "MADRAS TIMES", "THINA BOOMI", "MAKKAI KURAL", "NAMADUMGR", "MANGAI", "VETRI MALAI", "MALAI KATHIR", "PUDUJAMUDHAM", "MULLAI" for the wide coverage given to M.S.S. Our sincere thanks are also due to Madras Doodarshan Kendra and Raj T.V for the T.V. coverage given to our programmes. These press & T.V. coverages were initiated and made by our Hony. Public Relations Officer, [REDACTED]

MALAYSIAN SOCIAL SERVICES

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Res.	:	"	6272946

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Date.....

We place on record our thanks to the "District Social Welfare Office", "Directorate of Social Welfare", "Tamilnadu State Social Welfare Board", "T.A.H.D.C.O." "Ministry of Social Welfare", "C.A.R.A". Govt. of India and to the State and Central Government authorities for the kind co-operation extended to us. We also sincerely thank our Auditors M/s. P.T. Ponnaiyah & Co., Our Hon'y. Legal Advisor [redacted] and our Bankers M/s. Federal Bank Ltd., Chennai - 29 for the co-operation extended to us. We also thank our advocates [redacted] for having taken up our cause for justice. Our special thanks also goes to our Patrons [redacted] for the guidance and patronage given to M.S.S. programmes.

Our sincere thanks also goes to the beneficiaries, the children and all associated with M.S.S. for their kind co-operation.

For and on behalf of the Executive Committee,

[redacted signature]

CHENNAI - 600 030.

DATE : 16.8.1999.

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Adopt and give life to a child.

MSS is a Registered Society and is registered under the Societies Registration Act.

Registered with Ministry of Home Affairs to receive foreign Contribution.

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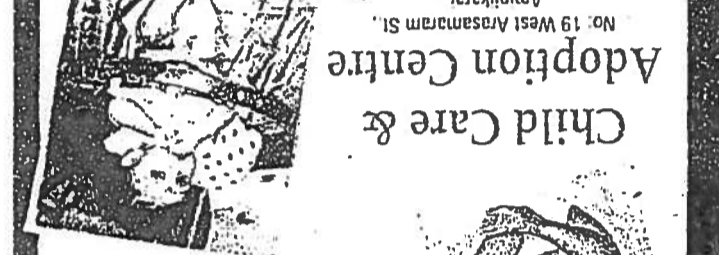
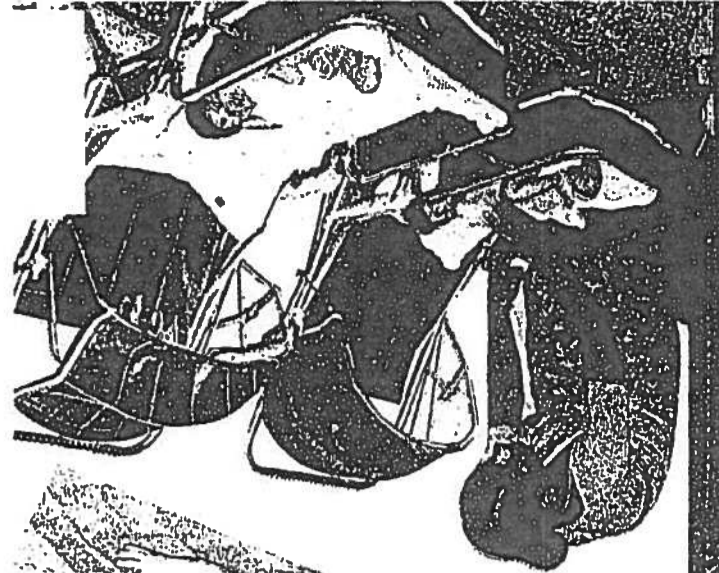
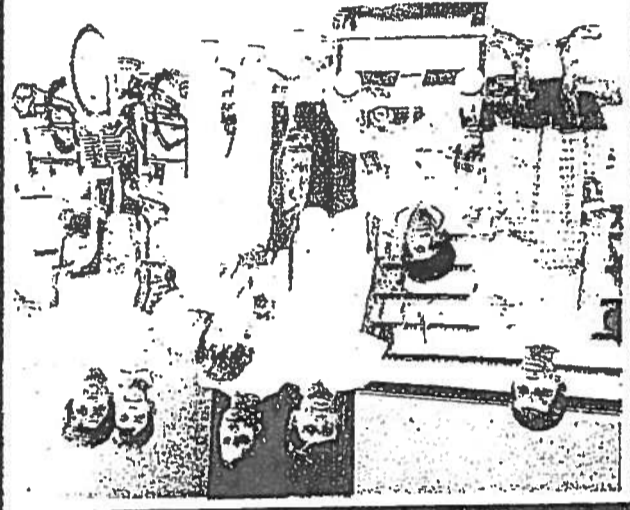
(Govt. of India)

Please donate liberally to help us find a loving family for abandoned and destitute children. Donations in kind are also welcome. Please sent Bank Draft or Cheque favouring "Malaysian Social Services". We acknowledge all donations and will issue our official stamped receipt.

5



For further information please contact:-
 The Director,
 Malaysian Social Services,
 No. 19 West Arsamam st,
 Aminjikarai, Madras-600 029 India.
 Office: 614970 (Aminjikarai)
 Child Care Centre 6267519
 Girls Home 6272402
 Boys Home 6273478
 6272946 (Residence)

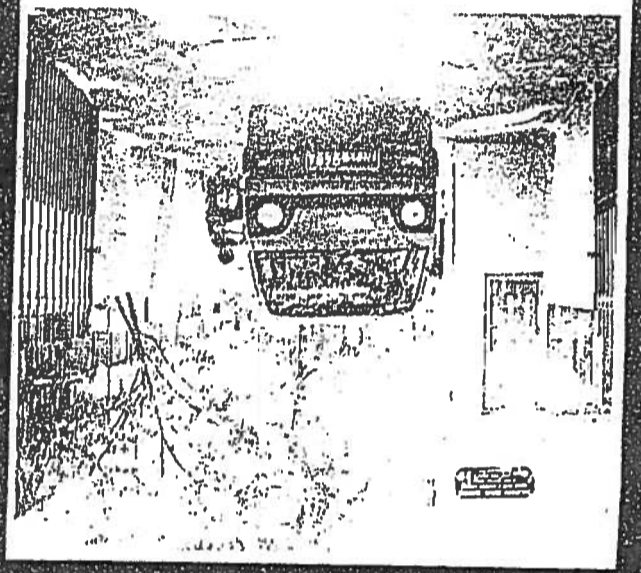


Malaysian Social Services

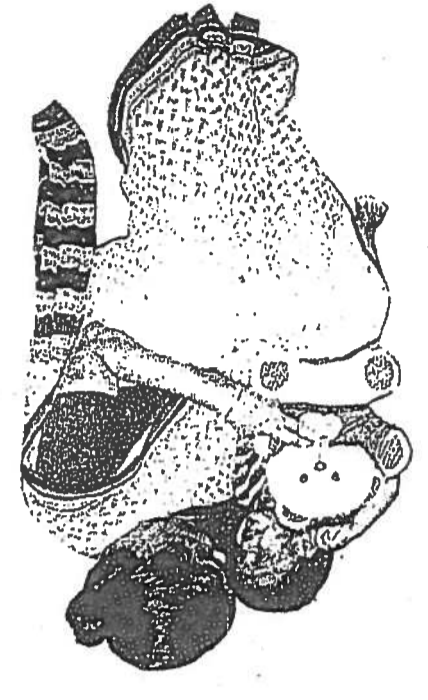
Child Care & Adoption Centre

No. 19 West Arsamam St, Aminjikarai, Madras - 6000 29 INDIA.

Malaysian Social Services was started in the year 1977 and its adoption Centre was started in 1991. MSS strives to help orphaned and abandoned children by providing them loving parents and a home. We at the same time fulfil the crying needs of childless couples who want to have a child they can call their own. MSS gives children in adoption to suitable couples. Adoptive couples are assisted in completing all the procedural formalities and helps them to attain Legal Custody of the child.



MSS Child Care & Adoption Centre functions in a spacious bungalow in West Anna Nagar with all facilities to care for babies, play nursery, vehicle facility, Phone facility with experienced and professionally qualified staff.

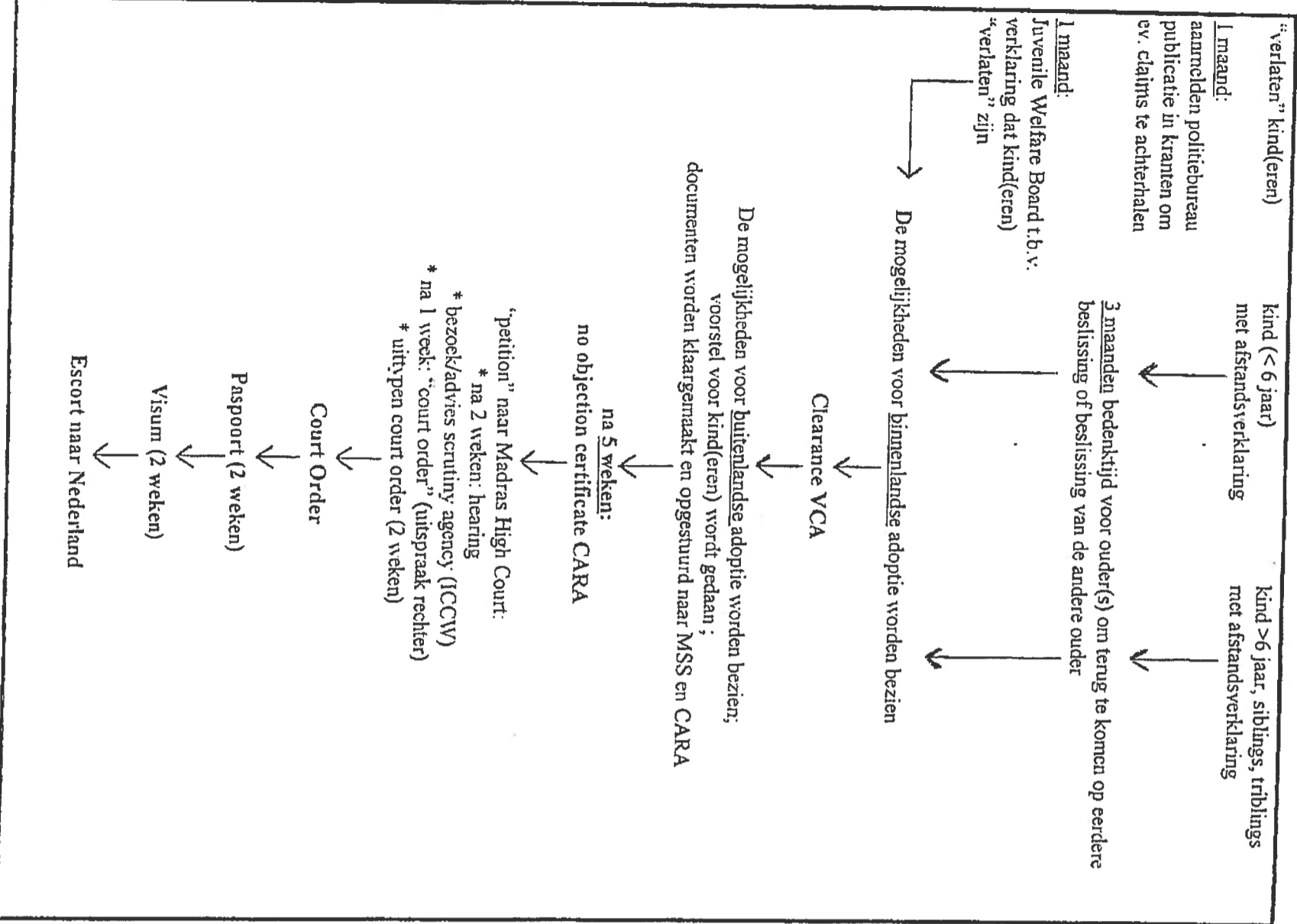


The programme is computerised. These babies and children received from hospitals and public places are provided good environment, good dresses, wholesome food and excellent medical aid. MSS also keeps children in transit.

- The other programmes being conducted by MSS are:
- ◆ Children's Home for Boys
 - ◆ Children's Home for Girls
 - ◆ Primary School ◆ Old age pension
 - ◆ Creches ◆ Widows Pension
 - ◆ Vocational training Programme in:
 - Printing Press
 - Radio & T.V. Mechanism
 - Typewriting Shortland
 - and Accountancy
 - Manufacture of hand-made greeting Cards
 - ◆ Nursery and Tree Planting Programme
 - ◆ Dairy Unit ◆ Bakery Unit
 - ◆ Non-residential child sponsorship programme
 - ◆ Export of Hand-made Greeting Cards
 - ◆ Community Children's Playground
 - ◆ Mini Health Centre ◆ Drinking-water wells
 - ◆ Awareness Programmes ◆ Rural Sanitation



Bijlage 1: Informatie procedure



Toelichting bij adoptieschema

14

- Na 3 maanden start het tehuis de procedure voor binnenlandse adoptie, er wordt een dossier gemaakt met: gegevens kind, medische verklaring, er wordt actief gezocht naar een Indiaas gezin. De overheid wil dat 75% van deze kinderen in India blijft, de overige 25% zijn de donkere kinderen, de oudere kinderen en de kinderen met een medisch rapport en kinderen die niet adoptabel zijn.
- Wanneer na weer 3 maanden geen gezin gevonden is gaat het dossier van dit kind naar de ICCW met de vraag of zij ermee akkoord gaan dat dit kind naar het buitenland gaat. De ICCW doet onderzoek en wil bijv. weten wat de redenen zijn waarom dit kind niet is geaccepteerd door Indiers, wanneer alle vragen beantwoord zijn geven zij een verklaring af dat dit kind naar het buitenland mag.
- Melting ontvangt dan het dossier van het kind en beoordeelt dit, bij medische vragen overleggen wij met de Medische Ius en stellen indien nodig extra vragen aan het tehuis.
- Melting zoekt ouders voor dit kind.
- Ouders maken papieren in orde. Alles wordt naar India verstuurd.
- Cara doet onderzoek, gezinsrapport ouders en dossier kind en alles wat de ouders hebben moeten meesturen wordt gescreeend, indien accoord dat wordt er een No Objection Certificate afgegeven (NOC)
- Daarna gaat alles weer terug naar het tehuis, de ICCW in de staat Tamil Nadu doet weer een scrutiny voor dat alle dossiers naar de rechtbank gaat, zij beoordeelt nogmaals of alles klopt en in orde is.
- Daarna vindt de rechtsspraak plaats.
- Indien positief, dan kan het paspoort en het visum aangevraagd worden en kan het kind opgehaald worden.
- Bij de reis vindt er nog een check plaats bij het verlaten van het land.



Postadres: Postbus 20301, 2500 EH Den Haag

Aan [redacted] Vereniging Wereldkinderen,
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 2585 HT DEN HAAG

Bezoekadres

Schedeldoekshaven 100
 2511 EX Den Haag
 Telefoon (070) 3 70 [redacted]
 Fax (070) 3 70 79 75
 www.justitie.nl

Onderdeel
 Contactpersoon
 Doorkiesnummer(s)
 E-mail
 Datum
 Ons kenmerk
 Uw kenmerk
 Onderwerp

afdeling Besturing

[redacted]
 7 juni 2007
 5489014/07/DJJ
 DIR/074/07 en DIR/075/07 d.d. 24 mei 2007
 Adoptie uit India

Bij beantwoording de
 datum en ons kenmerk
 vermelden. Wilt u slechts
 één zaak in uw brief
 behandelen.

Geachte [redacted],

In uw brief van 24 mei jl met het kenmerk DIR/074/07 maakt u, in het belang van het door mij aangekondigde onderzoek naar een mogelijk adoptieschandaal in India, melding van het feit dat uw vereniging in 1990 heeft bemiddeld bij de adoptie van één kind met een zwaar medisch dossier via de organisatie Malaysian Social Service Centre te Chennai, India. Ik ben u erkentelijk voor deze informatie en zal deze doorgeven aan degenen die zullen worden belast met het onderzoek.

In uw brief van eveneens 24 mei met het kenmerk DIR/075/07 verzoekt u mij een officieel onderzoek in te stellen naar mogelijke adoptieschandalen in de Indiase plaats Hyderabad en omgeving in verband met de bemiddeling door uw organisatie van een 15-tal kinderen via 2 Indiase organisaties uit dit gebied in 1996, respectievelijk de periode 1999-2000. Hoewel u aangeeft zelf geen twijfels te hebben over de gevolgde procedures en de juistheid van de achtergronden van de betrokken geadopteerden, beoogt u dit met een onderzoek formeel bevestigd te krijgen, teneinde iedere mogelijke twijfel bij zowel de geadopteerden als hun ouders weg te nemen.

Met betrekking tot uw verzoek bericht ik u dat het in te stellen onderzoek zich in eerste aanleg concentreert op de situatie in de staat Chennai en de vraag of daar inderdaad sprake is van een mogelijk adoptieschandaal. Niettemin zal de vraag of er redenen zijn om aan te nemen dat meer kinderen uit India met

valse verklaringen zijn geadopteerd door Nederlandse gezinnen, in het onderzoek worden betrokken.

Ik vertrouw u hiermee voldoende te hebben geïnformeerd.

Hoogachtend,

De Minister van Justitie,
Namens deze,





DCO Bestuur en Onderwijs
Commissie Justitie

Ministerie van Justitie
Aan de minister van Justitie
Postbus 20301
2500 EH DEN HAAG

Plaats en Datum Den Haag, 8 juni 2007
Betreft Onderzoek mogelijk adoptieschandaal India
Ons kenmerk 07-Just-B-039

Geachte heer Hirsch Ballin,



Namens de vaste commissie voor Justitie verzoek ik u aan te geven wanneer de Kamer zal worden geïnformeerd over de resultaten van het onderzoek naar het mogelijke adoptieschandaal in India, zoals u in uw brief van 29 mei 2007 heeft aangekondigd (Kamerstuk 28 457, nr. 28). Tevens verzoek ik u, namens de commissie, om aan te geven hoe en door wie het onderzoek zal worden verricht.

Hoogachtend,


de vaste commissie voor Justitie

Tweede Kamer
der Staten-Generaal
Lange Poten 4
Den Haag

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2500 EA Den Haag

Tel: 070-318 
Fax: 070-318 

E-mail: 



Postadres: Postbus 20301, 2500 EH Den Haag

Aan het Bestuur van de Stichting Meiling



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Fax (070) 3 70 79 75

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E-mail
Datum
Ons kenmerk
Uw kenmerk
Onderwerp

afdeling Besturing



12 juni 2007

5489481/07/DJJ

Uw brief d.d. 5 juni 2007

Onderzoek naar mogelijk adoptieschandaal in India

Bij beantwoording de datum en ons kenmerk vermelden. Wilt u slechts één zaak in uw brief behandelen.

Geacht Bestuur,

Hiermee bevestig ik de ontvangst van de kopie van uw brief d.d. 5 juni 2007 aan de Inspectie jeugdzorg.

Ik ga er van uit dat de Inspectie jeugdzorg het onderzoek vlot ter hand zal nemen en vertrouw op uw volledige medewerking daarin.

Hoogachtend,

De Minister van Justitie,
Namens deze,





Postadres: Postbus 20301, 2500 EH Den Haag

Inspectie Jeugdzorg

T.a.v. [REDACTED]

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Onderdeel
Contactpersoon
Doorkiesnummer(s)
Datum
Ons kenmerk
Bijlage(n)
Onderwerp

Afd. Besturing

[REDACTED]

19 juni 2007

5490184/07/DJJ

2

Onderzoek vergunninghouder Meiling bij adopties uit India

Bij beantwoording de datum en ons kenmerk vermelden. Wilt u slechts één zaak in uw brief behandelen.

Geachte [REDACTED],

Naar aanleiding van recente berichtgeving in de media over mogelijke misstanden met betrekking tot adopties uit India, heb ik in mijn brief aan de Tweede Kamer van 29 mei jl. grondig onderzoek aangekondigd. Van belang is dat alle relevante feiten op tafel komen en worden beoordeeld. Informeel heb ik u reeds verzocht daarbij de rol van de betrokken Nederlandse vergunninghouder, Stichting Meiling, tegen het licht te houden. Het gaat in het bijzonder om adopties die door Stichting Meiling via contact met Malaysian Social Service (MSS) in de staat Chennai tot stand zijn gebracht. Voor onderzoek door uw inspectie acht ik beantwoording van de volgende vragen van belang:

1. Heeft Stichting Meiling binnen de kaders die daarvoor destijds golden voldoende de zuiverheid en zorgvuldigheid van het bemiddelingscontact in India (MSS) gecontroleerd, zowel bij aanvang als bij voortdurende van het contact? (controle zowel in algemene zin als bij individuele dossiers).
2. Welke signalen heeft Stichting Meiling wanneer ontvangen over mogelijke onrechtmatigheden in India en heeft Meiling daar tijdig en adequaat op gereageerd (waaronder melding aan ouders, Justitie en andere relevante actoren)?

Daarnaast verzoek ik u om, indien de onderzoeksbevindingen daartoe

aanleiding geven, in uw eindrapportage aanbevelingen te doen met betrekking tot het huidige functioneren van Stichting Meiling.

Mogelijk relevant voor uw onderzoek zijn bijgevoegde brieven die ik onlangs heb ontvangen (brief d.d. 24 mei 2007 van [REDACTED] Wereldkinderen en brief d.d. 29 mei 2007 van de vereniging Prisma). In beide brieven wordt melding gemaakt van het beëindigen van een samenwerkingsrelatie met MSS.

Zoals u weet zal ik ook de rol van het ministerie van Justitie laten onderzoeken. Dit onderzoek zal plaatsvinden onder verantwoordelijkheid van mr. dr. M. Oosting, lid van de Raad van State. Voorts heb ik mij verzekerd van steun van mijn ambtgenoot van Buitenlandse Zaken voor het verkrijgen van informatie over hetgeen zich in India heeft afgespeeld.

Mocht de inspectie in haar onderzoek op zaken stuiten die van belang (kunnen) zijn voor het onderzoek naar de rol van Justitie en/of de situatie in India, dan is uitwisseling van deze informatie van belang. Een soortgelijke afspraak heb ik ook met de heer Oosting gemaakt. Ik wil u voorts verzoeken contact op te nemen met de heer Oosting over de afstemming van uw beider rapportages.

Mijn streven is om uiterlijk in september 2007 alle onderzoeksbevindingen in bezit te hebben. Ik verzoek u hiermee rekening te houden in uw plan van aanpak. Tot slot meld ik u dat ik de Tweede Kamer nog deze maand zal berichten over de opzet en planning van het onderzoek.

De Minister van Justitie,
Namens deze,





DCO Bestuur en Onderwijs
Commissie Justitie

Ministerie van Justitie
Aan de minister van Justitie
Postbus 20301
2500 EH DEN HAAG

Plaats en Datum Den Haag, 21 juni 2007
Betreft Adoptieprocedures
Ons kenmerk 07-Just-B-046

Geachte heer Hirsch Ballin,

Naar aanleiding van de mogelijke ernstige misstanden met betrekking tot adopties uit India verzoek ik u namens de vaste commissie voor Justitie de Kamer te informeren over de gevolgen voor lopende adoptieprocedures en over de mogelijke internationaal privaatrechtelijke implicaties daarvan.

Hoogachtend,

[Redacted signature]
de vaste commissie voor Justitie

Tweede Kamer
der Staten-Generaal
Lange Poten 4
Den Haag

Postbus 20018
2500 EA Den Haag

Tel: 070-318 [Redacted]
Fax: 070-318 [Redacted]

E-mail: [Redacted]



Nota

Retour
DJJ
2/7/07

Justitie Bureau Secretaris-Generaal Cluster Procesondersteuning

T/M Nieuw Afgedaan

mm Ontvangen _____

REG: DJJ AFGEDAAN

17

Aan Minister van Justitie

3753 04.07.07 12:42

Datum

Paraf

Door tussenkomst van

SG
DGPJS
DJJ

Van

Visie vooraf

Datum 25 juni 2007
 Kenmerk DDS 5492029
 Onderwerp Juridische implicaties Indiase adopties

Gevraagde beslissing:

1. Aan te geven of u op basis van onderstaande inventarisatie een deskundige wilt inschakelen en, zo ja, op welke punten;
2. akkoord met lijn van beantwoording vraag van de VKC als voorgesteld in deze nota.

Toelichting

1. *Juridische implicaties indien blijkt dat er sprake is geweest van misstanden bij adopties uit India*

In het kader van het onderzoek naar mogelijke misstanden bij adopties uit India heeft u aangegeven een externe deskundige te willen inschakelen om onderzoek te doen naar de juridische implicaties voor de adoptiefouders indien blijkt dat hun kind gestolen is of er een juridische fout gemaakt is in de procedure. Vanuit DJJ en DW zijn de juridische implicaties onderzocht. In het onderstaande worden die weergegeven om het u mogelijk te maken te

dgpjs
27/6/07

2/7/07

besluiten of u nog nadere juridische expertise wilt inzetten en, zo ja, op welke punten.

De adopties zijn tot stand gekomen in de periode voordat India partij was bij het Haags Adoptieverdrag (India werd partij op 1 oktober 2003). In het onderstaande wordt er van uitgegaan dat in die gevallen eerst in India een adoptie is uitgesproken en vervolgens in Nederland de adoptie naar Nederlands recht is uitgesproken.¹

a. Herroeping Nederlandse adoptie

De Wet conflictenrecht adoptie (hierna: Wcad) regelt -kort gezegd- de internationaal privaatrechtelijke gevolgen van niet-verdragsadopties met een internationaal aspect. Ingevolge artikel 3 lid 3 Wcad is op de herroeping van een in Nederland uitgesproken adoptie Nederlands recht van toepassing. Deze wet is op 1 januari 2004 in werking getreden en alleen van toepassing op adopties uitgesproken op of na deze datum. Aannemelijk is dat een rechter deze bepaling analoog zal toepassen op een voor de inwerkingtreding van de Wcad uitgesproken adoptie. Dit betekent het volgende.

Op grond van artikel 230 lid 2 van Boek 1 van het Burgerlijk Wetboek (hierna: BW) blijft de adoptie haar gevolgen behouden, ook al zou blijken dat de rechter de door artikel 228 van dit boek gestelde voorwaarden (bijv. dat geen der ouders het verzoek tegenspreekt) ten onrechte als vervuld zou hebben aangenomen. Verder is in artikel 231 Boek 1 BW -kort gezegd- bepaald dat de adoptie op verzoek van de geadopteerde kan worden herroepen tussen zijn 20^e en 23^e verjaardag.

Naast deze lex specialis kan worden gewezen op de algemene herroepingregeling in artikel 382 jo. 390 van het Wetboek van Burgerlijke Rechtsvordering (hierna: Rv). Zo kan op grond van artikel 382, onder b, Rv een vonnis dat in kracht van gewijsde is gegaan, op vordering van een partij worden herroepen indien *'het berust op stukken, waarvan de valsheid na het vonnis is erkend of bij gewijsde is vastgesteld'*. Artikel 390 Rv bepaalt: *'Een beschikking kan op verzoek van de oorspronkelijke verzoeker of van een belanghebbende worden herroepen op de gronden genoemd in artikel 382, tenzij de aard van de beschikking zich daartegen verzet.'* Het is niet uit te sluiten dat de algemene herroepingregeling wordt ingeroepen; zie HR 20 april 2001, NJ

¹ Stichting Meiling heeft laten weten dat alvorens een kind in die periode naar Nederland afreisde een adoptie in India uitgesproken werd. In die tijd was het nodig om in Nederland een zogenoemde adoptie dubbelop te laten uitspreken teneinde ook naar Nederlands recht familierechtelijke betrekkingen tussen het kind en de adoptiefouders te laten ontstaan.

2002, 392 (bijgevoegd). Het is echter de vraag hoe dit zich zal verhouden tot de regeling van artikel 231 Boek 1 BW. Bovendien moet eerst worden vastgesteld dat er sprake is geweest van vervalsing van afstandsverklaringen of andere cruciale stukken.

Als de algemene herroepingregeling ingeroepen zou worden, is het nog de vraag of dit kans van slagen heeft, nu in artikel 390 Rv wordt bepaald dat herroeping van beschikkingen mogelijk is '*tenzij de aard van de beschikking zich daartegen verzet*'.² Een rechter zal bij de beoordeling van een concreet verzoek het belang van het kind betrekken. Factoren die meegewogen zullen worden, zijn: de tijd die een kind al in Nederland verblijft, de hechting van het kind aan de adoptiefouders en de banden die het kind met Nederland heeft, het feit dat naar Nederlands recht de adoptie is uitgesproken e.d.

Mocht er door bijvoorbeeld biologische ouders op enig moment in Nederland een procedure worden gestart om hun kind terug te krijgen dan is het uiteraard aan de rechter om, rekening houdend met de individuele omstandigheden van het geval, uiteindelijk een oordeel te geven.

b. Herroeping Indiase adoptie

De Wcad laat de herroeping van een in het buitenland uitgesproken adoptie ongeregeld. In de MvT is opgemerkt dat indien de herroeping van een in het buitenland uitgesproken adoptie aan de orde is, het de voorkeur verdient de procedure te voeren in het land waar de adoptie is uitgesproken. Niet bekend is wat in het Indiase recht hieromtrent is geregeld, maar aangenomen mag worden dat ook de Indiase rechter het belang van het kind voorop zal stellen (India heeft immers inmiddels ook het HAV geratificeerd). Hetgeen voor de Nederlandse rechter van belang is bij de beoordeling (zie bovenstaande) zal dat waarschijnlijk ook zijn voor de Indiase rechter. Daar komt bij dat ook al zou de adoptie naar Indiaas recht herroepen worden feit blijft dat er ook een adoptie naar Nederlands recht is uitgesproken (die naar verwachting naar Nederlands recht niet herroepen kan/zal worden).

Bij de Indiase Centrale Autoriteit zal via het ministerie van Buitenlandse Zaken

² In de hiervoor genoemde uitspraak overweegt de Hoge Raad dat de aard van de adoptiebeschikking zich niet verzet tegen rekest-civiel (thans: herroeping), zie r.o. 3.3. Deze uitspraak is echter van voor de inwerkingtreding van het nieuwe burgerlijk procesrecht, waarbij artikel 390 Rv is geïntroduceerd. In de memorie van toelichting wordt over beschikkingen waarvan de aard zich tegen herroeping verzet, opgemerkt dat kan worden gedacht aan beschikkingen waarvan, indien zij berusten op onjuiste gegevens, steeds wijziging kan worden verzocht, zoals alimentatiebeschikkingen (Kamerstukken II 1999/2000, 26 855, nr. 3, blz. 171-175, bijgevoegd).

navraag worden gedaan naar hetgeen heeft te gelden naar Indiaas recht en hoe de rechter in dit soort gevallen het belang van het kind pleegt in te vullen. Zodra de informatie beschikbaar is, wordt u hierover separaat geïnformeerd.

2. Vraag Vaste Commissie voor Justitie

De Vaste Commissie voor Justitie (hierna: VKC) heeft te kennen gegeven geïnformeerd te willen worden over "de gevolgen voor lopende adoptieprocedures en over de mogelijke internationaal privaatrechtelijke implicaties daarvan".

De mogelijke misstanden ten aanzien van adopties uit India betreffen -voor zover op dit moment bekend- adopties die tot stand zijn gekomen in de periode van 1995-2002 (en dus niet recente adopties). Naar aanleiding hiervan is contact opgenomen met de in India werkzame vergunninghouders.

Vooralsnog zijn er geen aanwijzingen dat bij adopties uit India die op dit moment plaatsvinden er sprake is van misstanden. Opmerking daarbij verdient dat India inmiddels is aangesloten bij het Haags Adoptieverdrag welk verdragen eisen en waarborgen omvat ten aanzien van interlandelijke adopties.

Op dit moment is er geen reden om lopende adoptieprocedures op te schorten en vooralsnog zijn er dan ook geen consequenties voor de lopende adoptieprocedures. De betreffende vergunninghouders zijn overigens wel extra alert in het kader van de lopende procedures. Een concept-brief aan de VKC in lijn met het vorenstaande zal u separaat worden toegezonden.

Volledigheidshalve wordt opgemerkt dat in Denemarken naar aanleiding van de berichten over mogelijke misstanden eveneens een onderzoek bij de betreffende vergunninghouder aldaar is ingesteld en dat de adopties in afwachting van dat onderzoek zijn opgeschort. Gelet op hetgeen hiervoor is opgemerkt (berichten over misstanden betreffen adopties van jaren geleden, geen actuele signalen over misstanden, India is inmiddels bij het Haags Adoptieverdrag aangesloten), is door de 'DG-tafel' besloten om -in afwachting van de resultaten van het onderzoek- de adopties uit India niet op te schorten.

Afstemming

De Directie Wetgeving is akkoord met onderdeel 1, Juridische implicaties indien blijkt dat er sprake is geweest van misstanden bij adopties uit India).

Vergaderjaar 2006–2007

28 457

Regeling van het conflictenrecht inzake adoptie en de erkenning van buitenlandse adopties (Wet conflictenrecht adoptie)

Nr. 29

BRIEF VAN DE MINISTER VAN JUSTITIE

Aan de Voorzitter van de Tweede Kamer der Staten-Generaal

Den Haag, 27 juni 2007

In vervolg op mijn brief van 29 mei jl. (Kamerstuk 28 457, nr. 28), waarin ik een onderzoek heb aangekondigd naar aanleiding van de berichtgeving over mogelijke misstanden met betrekking tot adopties uit India, bericht ik uw Kamer hierbij over de opzet en planning van het onderzoek. Daarmee voldoe ik tevens aan het verzoek om informatie van de vaste commissie voor Justitie d.d. 8 juni jl. (kenmerk 07-Just-B-039).

Gegeven de berichtgeving in de Netwerk-uitzendingen van 22 en 23 mei jl., concentreert het onderzoek zich in eerste aanleg op adopties die door de betrokken Nederlandse vergunninghouder, Stichting Meiling, via contact met kindertehuis Malaysian Social Service (MSS) in de staat Chennai tot stand zijn gebracht. Stichting Meiling heeft op het terrein van adoptie met MSS samengewerkt in de periode 1995 tot en met 2002.

Het onderzoek onderscheidt drie sporen:

1. onderzoek naar het handelen van Stichting Meiling;
2. onderzoek naar de rol van het ministerie van Justitie;
3. onderzoek naar hetgeen zich in India heeft afgespeeld.

Zoals gemeld in mijn brief van 29 mei jl., zal het onderzoek naar het handelen van Stichting Meiling worden uitgevoerd door de Inspectie Jeugdzorg. De inspectie onderzoekt met name de controle door Stichting Meiling op het bemiddelingscontact MSS in India en de wijze waarop Stichting Meiling heeft gereageerd op signalen over mogelijke onrechtmatigheden in India. Daarnaast heb ik de inspectie verzocht om, indien de onderzoeksbevindingen daartoe aanleiding geven, aanbevelingen te doen met betrekking tot het huidige functioneren van Stichting Meiling.

Onafhankelijk onderzoek naar de rol van mijn ministerie zal plaatsvinden onder verantwoordelijkheid van mr. dr. M. Oosting, lid van de Raad van State. Dit onderzoek richt zich op het toezicht dat destijds door het ministerie is uitgeoefend op het functioneren van Stichting Meiling en de wijze waarop Justitie heeft gereageerd op eventuele signalen over mogelijke onrechtmatigheden in India en/of mogelijke tekortkomingen bij de Stich-

ting Meiling. Ook dit onderzoek kan aanleiding geven tot het doen van aanbevelingen met betrekking tot het huidige functioneren van mijn ministerie in de relatie tot de vergunninghouders.

Het onderzoek van de Inspectie Jeugdzorg en de heer Oosting zal in elk geval bestaan uit archief- en dossieronderzoek en gesprekken met relevante actoren. Waar dit door de onderzoekers van belang wordt geacht, vindt uitwisseling van informatie plaats.

Zoals aangegeven in mijn brief van 29 mei jl., heb ik mij verzekerd van de steun van mijn ambtgenoot van Buitenlandse Zaken voor het verkrijgen van informatie uit India. Relevant daarbij is de vraag welke feiten bekend zijn in India met betrekking tot MSS en de opnemings van kinderen in dit tehuis ten tijde van de overeenkomst van kinderen uit dit tehuis door tussenkomst van de Stichting Meiling. Daarnaast is van belang te weten of er redenen zijn om te twijfelen aan de juistheid van de aan Nederlandse vergunninghouders gepresenteerde achtergronden van kinderen die via andere tehuizen in India zijn geadopteerd door Nederlandse gezinnen.

Ik hoop in de loop van september 2007 de onderzoeksbevindingen in bezit te hebben. Niet uit te sluiten valt echter dat het beschikbaar krijgen van informatie uit India meer tijd in beslag gaat nemen. Ik streef ernaar uw Kamer in oktober van dit jaar te informeren over de uitkomsten en aanbevelingen van het onderzoek, voor zover op dat moment beschikbaar.

De minister van Justitie,
E. M. H. Hirsch Ballin



Postadres: Postbus 20301, 2500 EH Den Haag

Raad van State
T.a.v. mr. dr. M. Oosting
Postbus 20019
2500 EA DEN HAAG

Bezoekadres
Schedeldoekshaven 100
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Onderdeel
Contactpersoon
Doorkiesnummer(s)
Datum
Ons kenmerk
Bijlage(n)
Onderwerp

Afdeling Besturing

[REDACTED]
27 juni 2007

5492201/07/DJJ

1

Onderzoek rol Justitie bij adopties uit India

Bij beantwoording de
datum en ons kenmerk
vermelden. Wilt u slechts
één zaak in uw brief
behandelen.



Geachte heer Oosting,

Naar aanleiding van recente berichtgeving in de media over mogelijke misstanden met betrekking tot adopties uit India, heb ik in mijn brief aan de Tweede Kamer van 29 mei jl. grondig onderzoek aangekondigd. Van belang is dat alle relevante feiten op tafel komen en worden beoordeeld. U heeft zich inmiddels bereid verklaard daarbij de rol van mijn ministerie c.q. de Centrale Autoriteit tegen het licht te houden. Het gaat in eerste aanleg om de periode waarin adopties uit India door de Nederlandse vergunninghouder Stichting Meiling via contact met Malaysian Social Service (MSS) tot stand zijn gebracht. Stichting Meiling heeft op het terrein van adoptie met MSS samengewerkt in de periode 1995 tot en met 2002. Voor uw onderzoek acht ik beantwoording van de volgende vragen van belang:

1. Heeft het ministerie van Justitie binnen de kaders die daarvoor destijds golden voldoende toezicht gehouden op het functioneren van de Stichting Meiling?
2. Welke signalen heeft het ministerie wanneer ontvangen over mogelijke onregelmatigheden in India en/of mogelijke tekortkomingen bij de Stichting Meiling (met name waar het betreft adopties uit India) en heeft het ministerie daar tijdig en adequaat op gereageerd?

Daarnaast verzoek ik u om, indien de onderzoeksbevindingen daartoe aanleiding geven, in uw eindrapportage aanbevelingen te doen met betrekking

tot het huidige functioneren van mijn ministerie in relatie tot de vergunninghouders interlandelijke adoptie.

Relevant voor uw onderzoek is ook bijgevoegde brief d.d. 24 mei 2007 van   Wereldkinderen. Hierin wordt melding gemaakt van het beëindigen van de samenwerkingsrelatie tussen Wereldkinderen en MSS en het destijds (in 1990) melden en motiveren van stopzetting van dit contact aan het ministerie van Justitie.

In afstemming met u heb ik mr. drs. T. Dijkstra van de directie Wetgeving van de Raad van State bereid gevonden u te ondersteunen bij het onderzoek.

Zoals u weet zal de rol van Stichting Meiling worden onderzocht door de Inspectie Jeugdzorg. Voorts heb ik mij verzekerd van steun van mijn ambtgenoot van Buitenlandse Zaken voor het verkrijgen van informatie over hetgeen zich in India heeft afgespeeld.

Mocht u in uw onderzoek op zaken stuiten die van belang (kunnen) zijn voor het onderzoek naar de rol van Stichting Meiling en/of de situatie in India, dan is uitwisseling van deze informatie van belang. Een soortgelijke afspraak heb ik ook met de Inspectie Jeugdzorg gemaakt. Ik heb de Inspectie Jeugdzorg voorts verzocht contact met u op te nemen over de afstemming van uw beider rapportages.

Mijn streven is om uiterlijk in september 2007 alle onderzoeksbevindingen in bezit te hebben. Ik streef ernaar de Tweede Kamer op basis hiervan in oktober te informeren over de uitkomsten en aanbevelingen van het onderzoek.

De Minister van Justitie,
Namens deze,





Ministerie van Justitie

Directoraat-Generaal Preventie, Jeugd en Sancties

Directie Justitieel Jeugdbeleid

20

Postadres: Postbus 20301, 2500 EH Den Haag



Bezoekadres
Schedeldoekshaven 100
2511 EX Den Haag
Telefoon (070) 3 70 [redacted]
Fax (070) 3 70 79 75
www.justitie.nl

Bij beantwoording de datum en ons kenmerk vermelden. Wilt u slechts één zaak in uw brief behandelen.

Onderdeel
Contactpersoon
Doorkiesnummer(s)
Datum
Ons kenmerk
Bijlage(n)
Onderwerp

Afdeling Besturing



27 juni 2007
5491848/07/DJJ
1
Onderzoek adopties uit India

Geachte [redacted],

Naar aanleiding van recente berichtgeving in de media over mogelijke misstanden met betrekking tot adopties uit India, heb ik grondig onderzoek aangekondigd. Van belang is dat alle relevante feiten op tafel komen en worden beoordeeld. Over de opzet en planning van het onderzoek heb ik een brief aan de Tweede Kamer gezonden. Een afschrift van deze brief treft u bijgevoegd ter informatie aan.

Het wordt door de onderzoekers op prijs gesteld als u informatie die u zelf van belang acht voor het (deel)onderzoek aan de betreffende onderzoeker wilt doorgeven. Dat kan via onderstaande contactadressen.

Informatie t.b.v. het onderzoek naar het handelen van Stichting Meiling:

Inspectie Jeugdzorg

T.a.v. [redacted]

Postbus 483
3500 AL Utrecht

Informatie t.b.v. het onderzoek naar de rol van het ministerie van Justitie:

Raad van State

T.a.v. mr. dr. M. Oosting

Postbus 20019
2500 EA Den Haag

Met het ministerie van Buitenlandse Zaken is afgesproken dat informatie die u relevant acht voor het onderzoek naar hetgeen zich in India heeft afgespeeld naar mijn ministerie kan worden gestuurd:

Ministerie van Justitie

T.a.v. 

Directie Justitieel Jeugdbeleid

Postbus 20301

2500 EH Den Haag

Ik hoop u hiermee voldoende te hebben geïnformeerd.

Hoogachtend,

De Minister van Justitie,
namens deze,





Postadres: Postbus 20301, 2500 EH Den Haag



Bezoekadres
Schedeldoekshaven 100
2511 EX Den Haag
Telefoon (070) 3 70 [redacted]
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Onderdeel
Contactpersoon
Doorkiesnummer(s)
Datum
Ons kenmerk
Bijlage(n)
Onderwerp

Afdeling Besturing



27 juni 2007
5491848/07/DJJ
1
Adoptie uit India

Bij beantwoording de
datum en ons kenmerk
vermelden. Wilt u slechts
één zaak in uw brief
behandelen.

Geachte [redacted],

Onlangs heeft u van mij een brief ontvangen naar aanleiding van de berichtgeving in de media over mogelijke misstanden met betrekking tot adopties uit het kindertehuis van MSS te Chennai, India. In vervolg hierop stuur ik hierbij ter informatie een afschrift van de brief die ik vandaag aan de Tweede Kamer heb gezonden. Ik hoop u hiermee voor dit moment voldoende te hebben geïnformeerd over de stand van zaken met betrekking tot het onderzoek.

Hoogachtend,

De Minister van Justitie,
Namens deze,

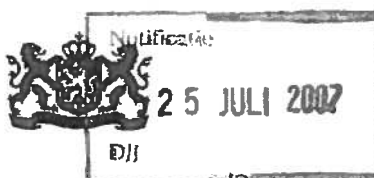


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MvJ / DGPJS

22

M 2007



Minister van Buitenlandse Zaken

Dr. E.M.H. Hirsch Ballin
Minister van Justitie
Postbus 20301
2500 EH DEN HAAG

Ministerie van Justitie

Dossier	A07/2577/1008 602
Datum	16 JULI 2007
Nummer	07/5496206
Acht	

Door Reg. Div. kopie gezonden
aan DGPJS

Den Haag, 11 juli 2007



24

Berth Ewert,

Je brief van 28 juni jl. inzake mogelijke misstanden met betrekking tot adopties uit India heb ik in goede orde ontvangen.

Zoals we eerder telefonisch bespraken, ben ik vanzelfsprekend bereid mijn medewerking te verlenen om informatie te verkrijgen betreffende hetgeen heeft plaatsgevonden in India en het huidige systeem van interlandelijke adoptie in India.

Gezien de noodzaak hierover op korte termijn duidelijkheid te verkrijgen, zal je verzoek prioritair worden behandeld. Daarbij moet ik echter wel aantekenen dat, omdat voor de meeste onderdelen van je verzoek de Indiase autoriteiten benaderd dienen te worden, ik van hun medewerking afhankelijk ben.

DGPJS
16/7/07

Zodra de Nederlandse ambassade te New Delhi informatie van de Indiase autoriteiten heeft verkregen, zal die aan jouw medewerkers worden aangeboden.

Met vriendelijke groet,

Verhagen

Drs. M.J.M. Verhagen

Vergaderjaar 2006–2007

28 457

Regeling van het conflictenrecht inzake adoptie en de erkenning van buitenlandse adopties (Wet conflictenrecht adoptie)

Nr. 30

BRIEF VAN DE MINISTER VAN JUSTITIE

Aan de Voorzitter van de Tweede Kamer der Staten-Generaal

Den Haag, 13 juli 2007

Naar aanleiding van de mogelijke misstanden met betrekking tot adopties uit India, heeft de vaste commissie voor Justitie mij d.d. 21 juni jl. (kenmerk 07-Just-B-046) verzocht uw Kamer te informeren over de gevolgen voor lopende adoptieprocedures en over de mogelijke internationaal privaatrechtelijke implicaties daarvan. Naar aanleiding hiervan bericht ik uw Kamer als volgt.

De berichtgeving over mogelijke misstanden met betrekking tot adopties uit India betreft adopties die tot stand zijn gekomen in de periode 1995 tot en met 2002. India was in die tijd nog niet aangesloten bij het Haags Adoptieverdrag. Er zijn momenteel 13 kinderen in procedure om uit India naar Nederland te komen, waarvan 12 via bemiddeling door Wereldkinderen en 1 via bemiddeling door Stichting Meiling. Bij deze lopende procedures zijn de vergunninghouders extra alert gelet op de recente berichtgeving in de media over adopties uit India. Er zijn op dit moment geen aanwijzingen dat bij deze procedures sprake is van misstanden. Ik zie op dit moment dan ook geen reden om lopende adoptieprocedures op te schorten en derhalve zijn er geen consequenties voor de lopende procedures. Mocht het onderzoek dat ik naar aanleiding van de berichtgeving over mogelijke misstanden in gang heb gezet¹ aanleiding geven tot heroverweging van dit besluit, dan zal ik dat uiteraard doen. Stichting Meiling heeft als voorzorgsmaatregel inmiddels besloten om hangende het onderzoek geen nieuwe bemiddelingen te starten van adoptiekinderen uit India. Wereldkinderen heeft laten weten daar voor wat betreft hun eigen activiteiten geen aanleiding toe te zien en in te staan voor de betrouwbaarheid van de tehuizen waarmee wordt gewerkt. Verder geeft Wereldkinderen aan stopzetting van lopende procedures niet wenselijk te vinden, omdat het allemaal special need kinderen betreft (met in de meeste gevallen een zwaar medisch dossier).

De juridische implicaties indien mocht blijken dat sprake is geweest van misstanden bij adopties uit India laat ik momenteel onderzoeken. Ik zal uw Kamer hierover gelijktijdig en in samenhang met de uitkomsten van het

¹ Zie mijn brief aan de Tweede Kamer van 27 juni 2007 (Kamerstuk 28 457, nr. 29).

onderzoek naar mogelijke misstanden met betrekking tot adopties uit India informeren.

De minister van Justitie,
E. M. H. Hirsch Ballin



Wereldkinderen

MvJ / DGPS
W 24

notificeren

Notificatie
17 AUG. 2007



Graag (ook) doorsturen naar

Door Reg. DIV kopie gezonden
DGPJS

Ministerie van Justitie
T.a.v. De Minister van Justitie
Mr. E.M.H. Hirsch Ballin

hr Oosthuy &

↓
20/7
gedaan per mail d.d. 31/7
31/7

Ministerie van Justitie
Postbus 20301
2500 EH DEN HAAG
Dossier A09/2577/104064
Datum 26 JULI 2007
Nummer 0715498224
Aanb.

DIR/094/07

Den Haag, 24 juli 2007

Excellentie,

Met referte naar onze brief d.d. 24 mei 2007, waarin wij melding maken van bemiddeling door Wereldkinderen bij een adoptie vanuit het tehuis van Malaysian Social Service in 1990, berichten wij u het volgende.

Nader archiefonderzoek heeft aangetoond dat Wereldkinderen heeft bemiddeld bij de adoptie van twee kinderen uit het tehuis van Malaysian Social Service Centre (MSSC) uit Madras, India. De eerste adoptie vond plaats in 1990. Het ging hier om een meisje met een zwaar medisch dossier. Hierover hebben we u geïnformeerd per brief d.d. 24 mei 2007. De tweede adoptie uit dit tehuis vond plaats in 1994 (kind geboren in 1991). Het ging hier om een gezonde jongen van 2 1/2 jaar.

Wereldkinderen heeft na deze adopties bewust besloten niet meer met deze organisatie te werken, omdat deze organisatie naar onze mening niet betrouwbaar was. Dit is door [redacted] destijds gemeld aan het Ministerie van Justitie, aldus [redacted] Wereldkinderen.

Tot nadere toelichting gaarne bereid.

Hoogachtend,



Wereldkinderen

projecto de ayuda y adopción / project aid and adoption / hulp en adoptie

DGPJS
27/7/07



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Ieder kind heeft recht op een thuis | every child has the right to a home | un hogar para cada niño

DTJ
30/7/07

AB bld/1



projecto de ayuda y adopción / project aid and adoption / proyecto de ayuda y adopción



Notificatie
17 AUG. 2007

Ministerie van Justitie

T.a.v. [redacted]

Postbus 20301

2500 EH DEN HAAG

DIR/099/07

Den Haag, 2 augustus 2007

notificatie

Ministerie van Justitie
DJI [redacted]
Dossier A07/2537/1048642
Datum 06 AUG. 2007
Nummer 07/5499721/AIJ

7/18-07

Geachte [redacted]

U heeft ons per brief van de Minister van Justitie d.d. 27 juni 2007 verzocht om informatie die wij relevant achten voor het onderzoek naar mogelijke misstanden rondom adopties vanuit India aan u te melden.

Alvorens wij u extra informatie geven, geef ik onderstaand nog even aan welke informatie u reeds van ons heeft ontvangen.

Wij hebben u op 24 mei 2007, laten weten dat wij in 1990 bemiddeld hebben bij adoptie van een kind vanuit het tehuis van Malaysian Social Service Centre (MSSC) uit Madras, India. Op 24 juli 2007 hebben we u laten weten dat er nog een tweede adoptie in 1994 heeft plaatsgevonden. Wereldkinderen heeft na deze adopties bewust besloten niet meer met deze organisatie te werken, omdat deze organisatie naar onze mening niet betrouwbaar was. Dit is door [redacted] destijds gemeld aan het Ministerie van Justitie, aldus [redacted] Wereldkinderen en dit ovrdt bevestigd door oud-medewerkers van Wereldkinderen.

Ook hebben wij u geïnformeerd over geruchten met betrekking tot mogelijke misstanden in tehuizen in Hyderabad en we hebben u derhalve op 24 mei 2007 per brief verzocht om de gevolgde procedures en de achtergronden van 14 kinderen uit Hyderabad nader te onderzoeken.



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Verder hebben wij per mail d.d. 4 juli 2007 bevestigd in te staan voor de betrouwbaarheid van de tehuizen waar wij mee werken. U heeft van ons als bijlage een overzicht ontvangen met daarin de tehuizen en de kinderen, alsmede de aard van de special need van de kinderen.

Voor meer informatie over misstanden rondom adopties uit India, verwijs ik u naar de bevindingen van [REDACTED]. Ook kan [REDACTED] u veel interessante informatie verstrekken. Tevens verwijs ik u naar de onderzoeken en bevindingen van David Smolin, van hem heb ik een artikel bijgevoegd.

Tot nadere toelichting gaarne bereid.

Met vriendelijke groet,

[REDACTED]
Wereldkinderen

Bijlage:

The two faces of Intercountry Adoption: The significance of the Indian Adoption Scandals
By David M. Smolin



From the SelectedWorks of David M. Smolin

June 2005

The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals

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The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals

David M. Smolin*

INTRODUCTION

Intercountry adoption has pressed into the public consciousness in two contradictory ways. On the one hand, intercountry adoption is presented as a heart-warming act of good will that benefits both child and adoptive family.¹ The child is characterized as a bereft orphan doomed to a dismal future within a poor country.² All the child needs is a chance and a home. The adoptive family's simple act of love in bringing the child to the promised land (the United States)³ brings to the adoptive parents a harvest of love from the child while

* Professor of Law, Cumberland Law School, Samford University. My interest in the Indian adoption scandals and adoption reform arose from my personal experience as an adoptive father of two children who came through several of the implicated orphanages. The stories that my children and other older adoptees have told spurred me to dig deeper into the murky world of Indian adoption. My greatest thanks under these circumstances must be to my family: my wife, Desiree Smolin, and our adoptive and birth children, who have all lived in different and profound ways some of the personal affects of these scandals. Desiree has been my partner in trying to understand the complex issues raised by these scandals, and insisted that we not accept reassuring platitudes as sufficient answers. Many with personal experiences in adoption have shared their experiences and viewpoints; while I often could not directly credit or describe those experiences, they clearly inform this work. I am also grateful to the participants of the Fall 2003 Intercountry Adoption Law Conference at Texas Wesleyan Law School, and those who attended my presentation to the Cumberland faculty, for their feedback on my initial attempts to present some of this material in oral form. Finally, I wish to thank two Cumberland students, Ashley Mims and Vickie Willard, who have worked extensively with me on researching and understanding the Indian adoption scandals, as well as a third Cumberland student, John Strohm, who has assisted me through research on legal issues relevant to the Hague implementation process.

¹ See Kim Clark & Nancy Shute, *The Adoption Maze*, U.S. NEWS & WORLD REP., Mar. 12, 2001, at 60, available at LEXIS, News Library.

² See Kathy Boccella, *Family Forged amid Tragedy Gives Girls, Parents Chance to Live, Love*, MILWAUKEE J. SENTINEL, Mar. 23, 2003, at 11L, available at LEXIS, News Library.

³ Jeff D. Opdyke, *Adoption's New Geography*, WALL ST. J., Oct. 14, 2003, at D1. ("The U.S. adopts more foreign children than all other nations combined.")

also enriching the nation with a dynamic diversity.¹

Contrasted with the positive face of adoption are numerous scandals and horror stories concerning intercountry adoption. Adoption is portrayed as child trafficking or baby selling.⁵ Shadowy figures buy, steal, or kidnap children from poor families in developing nations for sale to adoptive families in rich nations.⁶ Corrupt agencies within the United States collect fees from prospective adoptive families and then fail to produce a child.⁷ Pregnant women are shipped into United States territory in order to place children for adoption without coming under the jurisdiction of the immigration authorities.⁸ This face of intercountry adoption is more akin to organized criminal activity than an act of love.

This Article uses the recurrent adoption scandals in Andhra Pradesh, India, as a case study of these two faces of intercountry adoption. The Andhra Pradesh adoption scandals are significant in several ways. First, their recurrent nature illustrates the difficulty of "reforming" intercountry adoption.⁹ Second, the development within Andhra Pradesh of movements seeking to keep particular children within India, which have been engaged in legal and political conflict with prospective adoptive parents seeking to bring children to the United States, demonstrates the political and social hazards implicit in intercountry adoption.¹⁰ This trajectory from scandal to the development of activist movements within sending countries willing to publicly question the legitimacy of intercountry adoption bears watching.

¹ Karen S. Peterson, *Census Counts Adoptees: 1.6M Kids, USA TODAY*, Aug. 22, 2003, at 1A, available at LEXIS, News Library.

⁵ Ethan B. Kapstein, *The Baby Trade*, FOREIGN AFF., Nov.-Dec. 2003, at 115, available at LEXIS, News Library.

⁶ See generally Renuka Rayasam, *Special Overseas Delivery: U.S. to Simplify Rules on Foreign Adoptions*, ATLANTA-J. CONST., Dec. 3, 2003, at 1F, available at LEXIS, News Library.

⁷ Clark & Shute, *supra* note 1, at 60.

⁸ Walter F. Roche, Jr., *Playing on Mothers' Hopes*, BALT. SUN, Nov. 2, 2003, at 14A (reporting expectant mothers being flown to Hawaii to deliver their babies for adoption under the guise of preventing a life of poverty for the child), available at LEXIS, News Library.

⁹ Editorial, *Children as Chattel*, THE HINDU, Apr. 29, 2001 (summarizing the 1999 Andhra Pradesh adoption scandals), available at LEXIS, News Library; see also *Another AP Orphanage Raided, 61 Infants Rescued*, at <http://www.rediff.com/news/2001/apr/26ap1.htm> (Apr. 26, 2001) (reporting the 2001 scandal).

¹⁰ Raymond Bonner, *A Challenge in India Snarls Foreign Adoptions*, N.Y. TIMES, June, 23, 2003, at A3, available at LEXIS, News Library.

The questions raised by the two faces of intercountry adoption are factual, legal, political, and ideological. Factually, the Andhra Pradesh adoption scandals, like those occurring elsewhere, exemplify the grave difficulty of attaining transparency in intercountry adoption.¹¹ Years after allegations are made, facts remain elusive. Legally, the Andhra Pradesh scandals illustrate the wide gap between the laws of intercountry adoption and the actual practices. Politically, the scandals reveal the manner in which different interest groups within sending and receiving countries employ their varying capacities for political mobilization.¹² Ideologically, the scandals evidence the complex and deep-felt responses and perspectives that surface as a result of the supposedly "simple" act of placing a child from one nation within a family in another nation.

The thesis of this Article is that there are systemic vulnerabilities in the current intercountry adoption system that make adoption scandals, such as the ones in Andhra Pradesh, India, predictable. Further, this Article suggests that currently there are no actors in the intercountry adoption system with the requisite information, authority, and motivation to prevent abusive or corrupt adoption practices. Under these circumstances, "reform" of the intercountry adoption system remains elusive and illusory, leading to cyclic and repetitive patterns of scandal.

Finally, the Article asks about possible sources or paths of reform sufficient to prevent recurrent scandals such as those in Andhra Pradesh. The Article suggests that the United States government is well positioned to alter the system and bring about significant reform. If the political will can be found, the United States government could use the implementation of the Hague Convention on Intercountry Adoption to create an accountability structure for intercountry adoption. The key to this structure will be a chain of accountability under which United States adoption agencies become responsible for the acts of their partner agencies and facilitators in sending countries.

Part I of this Article surveys ideals and laws relevant to intercountry adoption. Part II presents an overview of the complex

¹¹ See generally Ravi Sharma, *Children as Commodities*, FRONTLINE (May 12–25, 2001), at <http://www.frontlineonnet.com/fl1810/18100350.htm> (last visited Feb. 5, 2005).

¹² See generally Gita Ramaswamy, *The Baby Harvest: Scandal over Westerners 'Shopping' for Children in India*, NEW INTERNATIONALIST, Aug. 2003, available at <http://www.newint.org/issue359/currents.htm> (last visited Feb. 5, 2005).

scandals which occurred in Andhra Pradesh, India. Part III analyzes the prospects for reform, and in particular, discusses the unique role that the United States government can play in reforming intercountry adoption.

I. IDEALS AND LAWS

A. *International Ideals*

Intercountry adoption is a subject of international law in several senses. First, because intercountry adoption involves the immigration of persons from one nation to another, it raises core national sovereignty issues with international law significance.¹³ Second, intercountry adoption as a humanitarian matter implicates human rights issues, which have become a significant focus of international law.

An exhaustive scope of international law applicable to intercountry adoption is beyond the scope of this Article. However, two treaties will be reviewed: the Convention on the Rights of the Child ("CRC")¹⁴ and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption ("Hague Convention").¹⁵ The CRC is probably the most relevant human rights convention applicable to intercountry adoption. With the exception of the United States, nearly every sovereign nation, including India, adheres to the CRC.¹⁶ The Hague Convention is the most directly applicable treaty specific to intercountry adoption. India has adhered to the Hague Convention effective October 1,

¹³ See generally Joanne Selinske et al., *Ensuring the Best Interest of the Child in Intercountry Adoption Practice: Case Studies from the United Kingdom and the United States*, 80 CHILD WELFARE 656 (2001).

¹⁴ Convention on Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), 28 I.L.M. 1448 [hereinafter CRC]. This Article will not discuss the Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography (OP-CRC). For an extensive discussion of the application of this treaty to intercountry adoption, see David M. Smolin, *Intercountry Adoption as Child Trafficking*, 39 VAL. U. L. REV. (forthcoming March 2005).

¹⁵ Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134 [hereinafter Hague Convention].

¹⁶ See Johan D. van der Vyver, *American Exceptionalism: Human Rights, International Criminal Justice, and National Self-Righteousness*, 50 EMORY L.J. 775, 778 (2001) (noting that United States and Somalia are the only nations that have not ratified the CRC).

2003,¹⁷ and the United States is preparing for implementation, possibly to begin in 2006.¹⁸

Much of international law, and especially human rights law, is arguably hortatory in nature, with little or no effective enforcement mechanism. The primary effect of broadly adopted human rights treaties is often to identify and express international ideals and standards, rather than to provide an effective means of enforcement. Thus, the CRC and the Hague Convention can be viewed as expressions of international ideals and standards. Given the lack of effective enforcement mechanisms, the line of applicability between ratifying and non-ratifying nations can become blurred, as the broad ideals of the Conventions can be used as standards to evaluate the conduct of even non-ratifying nations. In this sense, it is useful to discuss the CRC and the Hague Convention in relation to the Andhra Pradesh adoption scandals, even though most of the relevant events occurred before Indian ratification of the Hague Convention,¹⁹ and the United States has not yet ratified either the CRC²⁰ or the Hague Convention.²¹ The CRC and the Hague Convention remain the most relevant sources of international law pertaining to the Andhra Pradesh adoption scandals, even where those Conventions were not, in the strict legal sense, applicable.

1. The CRC and Intercountry Adoption

The CRC appears to take a very limited view of when intercountry adoption is appropriate. The critical text requires that state parties “[r]ecognize that inter-country adoption may be

¹⁷ HAGUE CONFERENCE ON PRIVATE INT’L LAW, STATUS TABLE 33: CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION, *at* http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69 (latest update Oct. 18, 2004) [hereinafter HAGUE CONVENTION STATUS TABLE].

¹⁸ BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE, HAGUE CONVENTION ON INTERCOUNTRY ADOPTION, *at* http://travel.state.gov/family/adoption/convention/convention_459.html (Feb. 5, 2005).

¹⁹ The Hague Convention was effective in India as of October 1, 2003. HAGUE CONVENTION STATUS TABLE, *supra* note 17. India has designated the Central Adoption Resource Agency, New Delhi, as Central Authority. HAGUE CONFERENCE ON PRIVATE INT’L LAW, AUTHORITIES, *at* http://hcch.e-vision.nl/index_en.php?act=authorities.details&aid=186 (last visited Feb. 5, 2005).

²⁰ *See* Vyver, *supra* note 16, at 778.

²¹ The United States signed the Hague Convention on March 31, 1994, but has not yet ratified. *See* HAGUE CONVENTION STATUS TABLE, *supra* note 17.

considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin."²² The CRC's preference for in-country over intercountry adoption is compatible with the Hague Convention. However, the CRC also specifically prefers in-country foster care over intercountry adoption, and initially appears to favor in-country institutional care over intercountry adoption. These latter positions are more controversial, and appear to conflict with the Hague Convention.²³

It is notable, in this regard, that the United Nations Children's Fund ("UNICEF") recently issued a public position on intercountry adoption which appears to favor intercountry adoption over in-country institutional care.²⁴ The statement cites both the CRC and the Hague Convention with approval. In regard to institutional care, however, UNICEF states:

For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care, which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution. In each case, the best interests of the individual child must be the guiding principle in making a decision regarding adoption.²⁵

One could argue that, under the language of the CRC, institutional

²² CRC, *supra* note 14, art. 21(b), 28 I.L.M. at 1464.

²⁴ See William L. Pierce, *Accreditation of Those Who Arrange Adoptions Under the Hague Convention on Intercountry Adoption as a Means of Protecting, Through Private International Law, the Rights of Children*, 12 J. CONTEMP. HEALTH L. & POL'Y 535, 538-40 (1996) (discussing conflict between CRC and Hague Convention). Pierce suggests that the CRC and an earlier United Nations Declaration "grew out of a knowledge of intercountry adoptions that were characterized by largely unregulated adoptions, a significant portion of which involved highly publicized abuses." *Id.* at 539-40. Pierce tried to reconcile the apparent conflict between the CRC and Hague Convention by suggesting that adoptions that comply with Hague norms and procedures would constitute a different kind of adoption than the "internationally unregulated adoption" referenced in the CRC. *Id.* at 540.

²¹ UNICEF, UNICEF'S POSITION ON INTER-COUNTRY ADOPTION, at http://unicef.org/media/media_15011.html (last visited Feb. 5, 2005) [hereinafter UNICEF'S POSITION].

²⁵ *Id.*

care is not a "suitable manner" for the permanent care of a child.²⁶ Therefore, a plausible interpretation of the CRC is that it prefers intercountry adoption to in-country institutional care. By such interpretations, the international community is apparently working toward a harmonization of apparent conflicts between the CRC and the Hague Convention.²⁷

Other provisions of the CRC pertaining to both national and intercountry adoption²⁸ provide basic standards, as follows:

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;²⁹

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it[.]³⁰

The CRC thus seeks to ensure: (a) the use of the "best interests of the child" standard;³¹ (b) safeguarding of the process in which adults (such as parents) relinquish children for adoption, through a requirement of government approval, use of an "informed consent" standard for relinquishments, and the provision of counseling "as may be necessary";³² and (c) government safeguards against improper financial gain in intercountry adoption.³³

Other provisions of the CRC do not directly address adoption, but nonetheless have important implications for a system of

²⁶ CRC, *supra* note 14, art. 21(b), 28 I.L.M. at 1464.

²⁷ For additional discussion of the conflict between the CRC and the Hague Convention, see *infra* notes 58–66 and accompanying text.

²⁸ CRC, *supra* note 14, art. 21(c), 28 I.L.M. at 1464 (requiring safeguards for intercountry adoption equivalent to those existing in the state of national origin).

²⁹ *Id.* art. 21(a).

³⁰ *Id.* art. 21(d).

³¹ *Id.* art. 3, para. 1, 28 I.L.M. at 1459.

³² *Id.* art. 21(a), 28 I.L.M. at 1464.

³³ *Id.* art. 21(d).

intercountry adoption. Article 7 states, "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."³⁴ This provision is significant to intercountry adoption in several ways. First, like many human rights norms, the requirement of immediate birth registration is consistently violated, as over 30% of births worldwide are not registered, including nearly two-thirds of the births in South Asia.³⁵ The failure to register births in sending countries makes it more difficult to document the age and family of origin of children, which unfortunately facilitates abusive adoption practices.

Second, the child's "right to know and be cared for by his or her parents" implicates adoption in several ways. Most directly, adopted children generally are not cared for by their parents, in apparent violation of the CRC. UNICEF plausibly explains this conflict by noting that children should be cared for by their parents "whenever possible."³⁶ UNICEF thus implies that removal of a child from the birth family to an adoptive family would violate the child's rights unless, after the offer or provision of relevant assistance, "a child's family is unavailable, unable or unwilling to care for him or her."³⁷

In addition, adoption—or at least closed adoption—has typically involved the destruction of any legal relationship or contact between the child and his or her biological parents. The secrecy associated with closed adoption has made it difficult or impossible for a child to "know" her biological parents even if she, as an adult adoptee, wishes to conduct a search. The CRC thus implicitly raises a question of whether systems of adoption that deny children information about their biological parents, particularly when a child seeks such information, violate the CRC.³⁸ Presumably, defenders of closed adoption would argue that the best interests of children justify

³⁴ CRC, *supra* note 14, art. 7, para. 1, 28 I.L.M. at 1460.

³⁵ UNICEF reported that in 2000, 70% of births in sub-Saharan Africa, 63% in South Asia, 22% in East Asia and the Pacific, and nearly one-third in the Middle East and North Africa went unregistered. UNICEF, BIRTH REGISTRATION, at http://www.unicef.org/protection/index_birthregistration.html (last visited Feb. 5, 2005).

³⁶ UNICEF'S POSITION, *supra* note 24.

³⁷ *Id.*

³⁸ See CRC, *supra* note 14, art. 8, 28 I.L.M. at 1460. See generally D. Marianne Brower Blair, *The Impact of Family Paradigms, Domestic Constitutions, and International Conventions on Disclosure of an Adopted Person's Identities and Heritage: A Comparative Examination*, 22 MICH. J. INT'L L. 587 (2001) (analyzing adoption information issues from both comparative law and international sources, including CRC).

secrecy in adoption, while opponents would claim that openness is in a child's best interests. Although issues regarding the best interests of children are difficult to resolve, it appears that the CRC was not intended to prohibit closed-record domestic adoption systems.³⁹

Third, the right of a child to a "name" is a poignant reminder that adoption can involve the loss of the original name given to the child by the birth parents.⁴⁰ According to the CRC, the vulnerability of children to having their names changed, concealed, or lost, legitimately or illegitimately, in the adoption process, implicates the rights of children.

The CRC further states, "State Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference."⁴¹

This section also has a paradoxical relationship to intercountry adoption. Intercountry adoption involves the loss of a child's original identity, nationality, name, and family relationships.⁴² Thus, this provision once again underscores that intercountry adoption is, in certain respects, inherently destructive of the rights of the child. Of course, the phrase "family relations *as recognized by law*" reminds us that, in order to make a child eligible for adoption, the child's biological family relationships are generally stripped of legal recognition. Adoption requires that a child be made, in some legal sense, an orphan—a child without legally recognized, living parents. The phrasing of the CRC makes it difficult to tell if the governmental act of legally dissolving the parent-child relationship violates the child's rights, or instead falls into a loophole under the "as recognized by law" language of Article 8. Of course, an adoption that involves the unfortunate loss of some aspect of the child's rights would still presumably be legal within the framework of the CRC, if overall the adoption was in the best interests of the child.

The CRC further states, "Where a child is illegally deprived of some or all of the elements of his or her identity, State Parties shall provide appropriate assistance and protection, with a view to re-

³⁹ See Blair, *supra* note 38, at 642–56. It should be noted that the dispute over closed adoption systems concerns not only the best interests of the adoptee, but also issues related to the interests and wishes of birth parents.

⁴⁰ CRC, *supra* note 14, art. 7, para. 1, 28 I.L.M. at 1460.

⁴¹ *Id.* art. 8, para. 1.

⁴² See generally Stacie I. Strong, *Children's Rights in Intercountry Adoption: Towards a New Goal*, 13 B.U. INT'L L.J. 163 (1995).

establishing speedily his or her identity.”¹³ The question of reestablishing the identity of a child would specifically apply to illegality in adoption. Intercountry adoption has been plagued by claims of illegality, including stealing or buying children from birth parents, and the forging of various documents related to the relinquishment, abandonment, or original identity of the child.¹⁴ While this Article focuses on scandals that have occurred in Andhra Pradesh, India, over 40% of the forty most significant sending nations over the last fifteen years are effectively closed to intercountry adoption, generally due to “concerns about corruption, child trafficking or abduction.”¹⁵ The question of what should be done with children caught up in such illegalities has thus become a concrete problem, plaguing governments, adoption agencies, and adoptive parents. Although the CRC seems to take a clear stand in favor of reestablishing the child’s original identity,¹⁶ many find the issue much cloudier in the context of adoption. This provision of the CRC, of course, has wider application than adoption. Moreover, Article 3 of the CRC creates an overarching principle that, “[i]n all actions concerning children . . . the best interests of the child shall be a primary consideration.”¹⁷ Thus, the CRC is subject to the interpretation that, for example, a “stolen child” should not be returned to his or her original family if doing so is contrary to the child’s best interests. The subjective nature of the “best interests of the child” standard renders disputable the proper outcome in virtually any difficult case, including instances of children illegally

¹³ CRC, *supra* note 14, art. 8, para. 2, 28 I.L.M. at 1460.

¹⁴ *See, e.g.*, Kapstein, *supra* note 5, at 115; Thomas Fields-Meyer et. al., *Whose Kids are They?*, PEOPLE, Jan. 19, 2004, at 74, available at LEXIS, News Library.

¹⁵ ETHICA, COMMENTS ON PROPOSED ICARE LEGISLATION (S 1934) 2, at <http://www.ethicanet.org/ICAREintro.pdf> (July 13, 2004). The report notes that there have been forty different countries of origin in the top twenty countries sending children to the United States over the past fifteen years. Of these, thirteen are “currently closed or effectively closed” (sending less than twenty-six children annually), while four are reportedly closed “temporarily” to “investigate concerns or establish new procedures.” *Id.* at 5. The report further notes that, “[v]irtually all of these countries closed due to concerns about corruption, child trafficking or abduction.” *Id.* at 2. India presumably would not be among the countries this report counts as closed, since only one state, and not the whole country was closed by the scandals described in this Article. As a matter of full disclosure, this author has served or currently serves on advisory boards for Ethica, which is an organization devoted to ethics in adoption. However, I had no part in the writing of the report in question.

¹⁶ CRC, *supra* note 14, art. 8, para. 2, 28 I.L.M. at 1460.

¹⁷ *Id.* art. 3, para. 1, 28 I.L.M. at 1459.

adopted.

Article 11 of the CRC, however, specifically states that “State Parties shall take measures to combat the illicit transfer and non-return of children abroad.”⁴⁸ This provision could be directly applicable to situations in which children are illegally placed abroad for adoption. Once again, however, this provision could presumably be limited by the treaty’s command that “the best interests of the child” be “a primary consideration” in “all actions concerning children.”⁴⁹

In several provisions, the CRC addresses the situation of a child separated from his or her parents.⁵⁰ These provisions do not directly address adoption, and their general principles favoring the reunification or maintenance of family relationships are once again subject to the best interests of the child standard. In relation to adoption, these provisions are another reminder of the unusual nature of adoption in the context of child welfare, due to the severance of biological family relationships. Although the overall scheme of children’s rights strives to protect, maintain, and, where broken, reestablish relationships within the biological family, adoption seeks to legally sever those relationships, and replace them with a new set of family relationships.

The CRC is notable for its definition of participation rights. The treaty goes beyond traditional definitions of rights that would protect or provide for the child, to establish the rights of children to participate in decisions affecting them.⁵¹ Thus, Article 12 of the CRC states:

1. State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.⁵²
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent

⁴⁸ *Id.* art. 11, para. 1, 28 I.L.M. at 1461.

⁴⁹ *Id.* art. 3, para. 1, 28 I.L.M. at 1459.

⁵⁰ *Id.* arts. 9 & 10, 28 I.L.M. at 1460–61.

⁵¹ See generally David M. Smolin, *A Tale of Two Treaties: Furthering Social Justice Through the Redemptive Myths of Childhood*, 17 EMORY INT’L L. REV. 967, 973 n.13 (2003) (explaining division of CRC into protection, provision, and participation rights).

⁵² CRC, *supra* note 14, art. 12, para. 1, 28 I.L.M. at 1461.

with the procedural rules of national law.⁵³

The obvious application of this section to adoption would suggest that older-child adoption would sometimes require consideration of the views of the child. The conceptual structure of the CRC suggests that as the child's capacities develop, he or she would be given a greater degree of participation and even autonomy.⁵⁴ Although the CRC does not require the consent of the child for all older-child adoptions, it is a fair reading of the CRC to require the child's consent at some level of age or maturity. Thus, the CRC indicates that all children capable of being consulted should participate by having their views considered, while some, older or more mature children, should participate through a requirement that the child must consent to any adoption.

Participation rights could be applied to other adoption issues as well. First, there is the question of which remedy to apply when a child has been illegally adopted. Second, there is the question of whether children should have access to information about their birth families, or even personal access to them. The CRC implicitly raises the question of whether, and to what degree, the child's views should be heard, or even be dispositive of these issues.

2. The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

As a treaty, the Hague Convention on Intercountry Adoption is only binding on the nations that ratify it. India recently ratified the Hague Convention, effective October 1, 2003.⁵⁵ The United States is working toward ratification, with draft implementing regulations released for comment on September 15, 2003.⁵⁶ Therefore, the Hague Convention did not directly apply to the periodic Andhra Pradesh adoption scandals. The Convention will become fully applicable to intercountry adoption between India and the United States only after both nations have ratified, and begun implementation of, the Convention, which apparently will not occur

⁵³ *Id.* art. 12, para. 2.

⁵⁴ *See id.* art. 5, 28 I.L.M. at 1459-60.

⁵⁵ HAGUE CONVENTION STATUS TABLE, *supra* note 17.

⁵⁶ Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons; Preservation of Convention Records, 68 Fed. Reg. 54,064 (proposed Sept. 15, 2003) (to be codified at 22 C.F.R. pt. 96).

before 2006 at the earliest.⁵⁷

The Hague Convention on Intercountry Adoption has two major features. On the one hand, the treaty establishes broad standards and ideals for intercountry adoption in a manner analogous to other specialized human rights treaties. This aspect of the Hague Convention is most applicable to all nations, regardless of ratification, and will be explored in this part of the Article. The Hague Convention, however, also requires adhering nations to adopt specific procedural mechanisms and institutions designed to provide a specific means for achieving a system of adoption in accordance with the Convention's broader ideals. These procedural aspects of the Convention are beyond the scope of this Article.

a. Intercountry Adoption Versus In-Country Institutional and Foster Care: Harmonizing the Hague Convention with the CRC

The Hague Convention appears to implement a view that intercountry adoption can be superior to in-country institutional care.⁵⁸ The preamble states that the child "should grow up in a family environment," that nations should take, "as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin," and that "intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin."⁵⁹

Professor Sara Dillon has complained that the Hague Convention's preference for intercountry adoption over in-country institutional care is not mandatory because nothing in the treaty requires sending nations to follow this preference. Professor Dillon is concerned that neither the CRC nor the Hague Convention clearly establishes a child's right not to be subject to the severe harms of long-term institutionalization. She therefore asks whether children have a right to a family, and have a right to intercountry adoption in preference to institutionalization.⁶⁰ The recent UNICEF statement that "institutional care . . . should be used only as a last resort and as a

⁵⁷ See BUREAU OF CONSULAR AFFAIRS, *supra* note 18.

⁵⁸ See Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, 21 B.U. INT'L L.J. 179, 209-10 (2003).

⁵⁹ Hague Convention, *supra* note 15, pmbl, 32 I.L.M. at 1139.

⁶⁰ See Dillon, *supra* note 58, at 199-215.

temporary measure"⁶¹ is an encouraging sign that the international community is recognizing that institutionalization can cause harms that violate the rights of the child. Given the comprehensive nature of the CRC, it would not take much creativity to find violations of the CRC in the long-term institutionalization of children in substandard conditions.⁶² It seems unlikely, however, that any international agreement would ever require nations to place children internationally. Whatever difficulties and rights violations children may experience in their countries of origin, it is doubtful that nation-states can be expected to bind themselves to solve those problems by sending their children away. Thus, it is unlikely that international law would recognize a right of a child to be adopted internationally, even if the law recognized that some children face severe deprivations of rights within their home countries.

Beyond the emerging international consensus condemning long-term institutionalization of children, and the preference for "family" care, are a range of difficult ambiguities. Initially, this issue may be analyzed in terms of a possible conflict between the CRC, which specifically prefers in-country foster care to intercountry adoption, and the Hague Convention, which can be read to prefer intercountry adoption over in-country foster care.⁶³ The recent UNICEF statement preferring intercountry adoption over institutionalization is ambiguous on this question of foster care. The UNICEF statement does not mention foster care specifically, but seeks placement of children in a "family environment" and a "permanent family setting." The UNICEF statement contains language that is very similar to that of the Hague Convention, which also speaks generally of a "suitable family" and "permanent family," without specifically referring to foster care.⁶⁴ Thus, upon closer analysis, the Hague Convention position on intercountry adoption versus foster care is also ambiguous, depending on whether a foster care arrangement can be considered a permanent family. Moreover, as previously stated, even if the Hague Convention prefers

⁶¹ UNICEF'S POSITION, *supra* note 24.

⁶² Substandard institutionalization of the child would likely violate the child's rights under various provisions of the CRC. *See* CRC, *supra* note 14, arts. 6, 20, 23, 24, 25, 27, & 28, 28 I.L.M. at 1460, 1464, 1465-67.

⁶³ Compare CRC, *supra* note 14, art. 21(b), 28 I.L.M. at 1464, with Hague Convention, *supra* note 15, pmbl, 32 I.L.M. at 1139.

⁶⁴ Compare UNICEF'S POSITION, *supra* note 24, with Hague Convention, *supra* note 15, pmbl, 32 I.L.M. at 1139.

intercountry adoption over foster care, it does not impose that preference on sending nations.⁶⁵

A preference for permanent family care over institutionalization therefore does not settle the issue concerning "foster care," due to the variety of caretaking alternatives available to children. The issue then becomes, which forms of child care, short of adoption or birth families, should be considered "permanent family" care? Within the United States foster care has often been associated with the negative features of the foster care system, including multiple moves from one foster family to another. Such weaknesses in the United States foster care system are not necessarily universal. To make matters even more confusing, there are some forms of apparently "institutional care," such as SOS Children's Villages, which seek to offer children a permanent "family" with a "mother" and "siblings."⁶⁶ Does such care, if of sufficiently high quality, come within international condemnations of permanent institutional care for children, or is it considered a "permanent family?"

Questions concerning the status of child care arrangements short of full adoption are likely unanswerable, due to the underlying debate over whether the loss of identity involved in traditional closed adoption is truly superior to some kind of open adoption, permanent guardianship, long-term foster care, kinship foster care, or other arrangement whereby children preserve their original identity and relationship to their families of origin while still being raised primarily by another "family." Thus, the consensus that children need a family environment, and the condemnation of starkly institutional forms of permanent care, cannot settle the status of various traditional and innovative forms of alternative child care for children who cannot be raised within their birth families.

b. Setting Standards for Intercountry Adoption:
Trafficking, Money, Consent, and Open Adoption

The Hague Convention shares with the CRC a concern for child trafficking and attempts to specifically ensure that adoption is not

⁶⁵ See *supra* text accompanying note 60.

⁶⁶ See generally SOS KINDERDORF INT'L, THE CONCEPT, at http://www.sos-childrensvillages.org/cgi-bin/sos/jsp/retrieve.do?lang=en&site=ZZ&nav=2.1&BV_SessionID=@@@@0706947969.1105047125@@@@&BV_EngineID=cccdaddhmkifcfcgcfkmdkfdfnj.0 (last visited Feb. 5, 2005) (describing the SOS Village Organization); Prince Frederick, *Children Orphaned by AIDS, a New Challenge*, THE HINDU, Jan. 7, 2004, available at LEXIS, News Library.

used as a means of child trafficking. Thus, one of the specific objects of the treaty is to “prevent the abduction, the sale of, or traffic in children.”⁶⁷ Toward that end, the Hague Convention requires that the “Central Authorities” who act on behalf of contracting states “take . . . all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.”⁶⁸ Similarly, the Hague Convention forbids anyone from deriving “improper financial gain or other gain” from intercountry adoption,⁶⁹ limits payments to costs, expenses, and “reasonable professional fees,”⁷⁰ while forbidding “directors, administrators and employees of bodies involved in adoption” from receiving “remuneration which is unreasonably high in relation to services rendered.”⁷¹

The Hague Convention further mandates that required consents to adoption “have not been induced by payment or compensation of any kind and have not been withdrawn,”⁷² and that the “consent of the mother, where required, has been given only after the birth of the child.”⁷³ Thus, the Convention specifically seeks to ensure that children are not bought, and that pregnant women are permitted to change their minds about adoption after childbirth. The Convention further requires that those who consent to adoption (such as birth parents) be “duly informed”⁷⁴ as to whether the adoption would “result in the termination of the legal relationship between the child and his or her family of origin.”⁷⁵ Thus, the Convention seeks to ensure that birth parents are not tricked into signing papers they do not understand.

The Convention does not take a position on closed versus open adoption, or the impact of adoption on the legal relationships between the child and his or her family of origin. Adoption within the United States has typically involved the destruction of any legal relationship between the family of origin and the child,⁷⁶ with the

⁶⁷ Hague Convention, *supra* note 15, pmbl, 32 I.L.M. at 1139.

⁶⁸ *Id.* art. 8, 32 I.L.M. at 1140.

⁶⁹ *Id.* art. 32, para. 1, 32 I.L.M. at 1143.

⁷⁰ *Id.* para. 2.

⁷¹ *Id.* para. 3.

⁷² *Id.* art. 4(c)(3), 32 I.L.M. at 1140.

⁷³ *Id.* art. 4(d)(4).

⁷⁴ *Id.* art. 4(d)(1).

⁷⁵ *Id.* art. 4(c)(1).

⁷⁶ *See generally* Annette Ruth Appell, *Blending Families Through Adoption:*

exception of stepparent adoption. The Convention appears open to the possibility of an adoption that does not destroy the child's legal relationship with his or her family of origin. This matter seems to be left to the domestic laws of each country involved.⁷⁷ As a practical matter, when children are taken out of their nation of origin, their opportunities for contact with the birth family can be sharply limited. However, in a surprising number of instances, contact is established between intercountry adoptees and their birth families. The possibility of continued contact, and of sending aid and assistance back to the family of origin, then become practical concerns. Thus, the Hague Convention's attitude towards open adoption is not as irrelevant as may first appear.

B. United States Immigration Law

A complete review of United States immigration law as it pertains to intercountry adoption is beyond the scope of this Article. For present purposes, the federal focus on "orphan" status is most relevant. The federal basis for admitting children into the United States for purposes of adoption is their status as a child who is an orphan. This requirement goes to the heart of legal and ethical principles related to adoption, for if a child is not an "orphan," then presumably he or she is not in need of a new family.

It is helpful, before analyzing the complex federal definition of "orphan," to recognize the different situations in which children might come to be considered orphans. The most obvious situation, of course, is when both parents are dead. Even this situation, however, is potentially equivocal. For instance, would it be proper for intercountry adoption purposes to consider a child whose parents have died to be an orphan, even though the child is being raised by relatives, such as grandparents, adult siblings, or aunts and uncles? Although such a child might fit a dictionary definition of "orphan," a legal definition designed to measure eligibility for intercountry adoption might exclude such a child.

Second, there is a class of children whose parents cannot be located, apparently due to natural disasters or armed conflict. Even though it may not be possible to confirm that the parents are dead in such instances, the child may be considered an orphan, since the

Implications for Collaborative Adoption Law and Practice, 75 B.U. L. REV. 997, 998 (1995).

⁷⁷ See Hague Convention, *supra* note 15, art. 26(c), 32 I.L.M. at 1142; Blair, *supra* note 38, at 657.

parents are clearly unavailable. Once again, however, there remains an ambiguity as to whether a definition of "orphan" should exclude situations where other relatives are able and willing to raise the child.

Third, in some cases infants and young children are anonymously abandoned, and it seems impossible to trace or find either of the birth parents. In these instances, a system of intercountry adoption might want to label children as orphans, even though it is almost certain that the parents are alive. In this instance, there is generally no issue concerning extended family, because the child generally lacks any family identity, and hence any identifiable set of relatives.

Fourth, there are instances in which one or two parents make a conscious decision to relinquish their child to a public or private institution concerned with child welfare. This situation also brings with it certain ambiguities. Was the act truly voluntary? Should the act of relinquishing a child be considered "voluntary" if based on poverty, or is there an obligation to provide sufficient assistance to allow the child to remain with his or her family? Did the parent (or parents) intend to fully relinquish all rights with respect to the child, or rather intend that an institution provide practical help to the child (food, clothing, shelter, education), while the child remained legally and psychologically a part of the parent(s)' family?

Fifth, there are situations where one or both parents seek to place a child with a specific family for purposes of adoption. This could be done either on a direct family-to-family basis, or else through a public or private intermediary. It is a common procedure in domestic adoptions that a birth parent choose the adoptive family for her child, often from a portfolio of prospective adoptive families provided by an attorney or adoption agency. One advantage of such a procedure is that it ensures a direct transfer of the child from one family to another, avoiding institutionalization or foster care. However, it would seem peculiar to define a child who was transferred directly from a birth family to an adoptive family as ever having been an orphan. In addition, in the context of intercountry adoption, it could seem inherently exploitative, or an occasion for illicit child buying, to allow direct transfers of children from poor families in developing countries to comparatively wealthy adoptive parents from rich nations.

These possible circumstances under which a child may be classified as an orphan form a helpful context for analyzing the federal statute, which states:

The term "child" means an unmarried person . . . who is—a child, under the age of sixteen⁷⁸ at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption⁷⁹

The complex terms of this federal definition must be broken down into their elements to be understood. The circumstances under which a child is considered an orphan include: (1) the death of both parents; (2) the disappearance of both parents; (3) abandonment by both parents; (4) desertion by both parents; (5) separation from both parents; (6) the loss of both parents; (7) a sole or surviving parent incapable of providing support releases child in writing for emigration and adoption. These seven circumstances correlate to a large degree with the situations analyzed above, and thus it is interesting to see how the federal statute resolves the issues incident to each.

1. Death of Both Parents

A child is considered an orphan when both parents are dead, and orphan status apparently applies even if the child is being raised by other relatives, at least so long as such other relatives do not legally become the child's parent(s). Therefore, where a child has lost both parents through death, but obtained a new parent, the child is no longer an orphan.

2. Disappearance of Both Parents

The federal regulations state that:

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their

⁷⁸ The child can be sixteen or seventeen if he or she is a part of an adoptive sibling group which includes a child under sixteen. *See* 8 U.S.C. § 1101(b)(1)(F)(ii) (2000).

⁷⁹ 8 U.S.C. § 1101(b)(1)(F)(i) (2000). Alternatively, if the child resides in the legal custody of the adoptive parents for two years, the child could qualify for admission into the United States without first meeting the highly technical definition of orphan. However, few individuals are in a position to live overseas for two or more years in order to bring an adoptive child back to America. *See* 8 U.S.C. § 1101(b)(1)(E)(i)-(ii) (2000).

whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.⁸⁰

The federal regulations attempt to guard against fraud under this circumstance largely through the requirement of reasonable efforts to locate the parent(s) by a competent authority of the foreign-sending nation.

3. Abandonment by Both Parents

The federal regulations specifically require that abandonment involve a willful act by both parents to forsake “all parental rights . . . without intending to transfer . . . these rights to any specific person(s).”⁸¹ Accordingly, direct transfers by both birth parents to adoptive parents is expressly excluded from this definition. Indeed, the regulations go so far as to state that a relinquishment “for a specific adoption does not constitute abandonment.”⁸²

Relinquishment of a child by both parents to a third party “in anticipation of, or preparation for, adoption” is within the definition only where such third party “is authorized under the child welfare laws of the foreign-sending country to act in such a capacity.”⁸³ The regulations also specify that placing a child in an orphanage, without more, does not constitute abandonment, so long as the parents “exhibit ongoing parental interest in the child.”⁸⁴

4. Desertion by Both Parents

The federal regulations provide that desertion occurs when the “parents have willfully forsaken their child and have refused to carry out their parental rights and obligations,” resulting in the child becoming a “ward of a competent authority in accordance with the laws of the foreign-sending country.”⁸⁵ Apparently, desertion occurs when the State intervenes to terminate parental rights due to severe parental neglect.

⁸⁰ 8 C.F.R. § 204.3(b) (2004).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

5. Separation from Both Parents

The federal regulations define separation from both parents as the involuntary severance of the parent-child relationship “by action of a competent authority for good cause” shown.⁸⁶ The regulations require this to be a parental termination action that is “permanent and unconditional,” and also require that the parents be given notice and an opportunity to contest.⁸⁷ In practice, the term seems quite similar to that of “desertion” by both parents. Perhaps the difference is that “separation” involves all forms of abuse or neglect requiring government intervention in the form of termination of parental rights, while desertion is a specific form of neglect.

6. Loss of Both Parents

The regulations define “loss from both parents” to mean the “involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority”⁸⁸ Thus, this category subsumes the situation where both parents are dead, presumed dead, or missing due to some major event.

7. Sole or Surviving Parent Incapable of Providing Support Releases Child in Writing for Emigration and Adoption

The purpose of this section is apparently to allow one remaining parent, incapable of providing support to a child, to release a child for intercountry adoption, while at the same time forbidding this form of release in instances where a child has two parents. This distinction requires the regulations to define when a parent is a “sole or surviving parent.” The regulations define a “sole parent” as the mother of an illegitimate child, but only under limited circumstances, such as where the father has severed parental ties or released the child for intercountry adoption.⁸⁹ The regulations provide, however, that the “sole parent” category does not apply in countries that make no distinction between legitimate and illegitimate children. A “surviving parent” involves instances where one parent has died, and

⁸⁶ 8 C.F.R. § 204.3(b)

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

the child has not gained a new parent.⁹⁰ In either instance, the sole or surviving parent must be “unable to provide for the child’s basic needs, consistent with the local standards of the *foreign sending country*.”⁹¹

The complex federal definition of a child eligible for intercountry adoption therefore permits a single parent to release a child specifically for emigration and adoption, including release to a particular adoptive parent, while denying that same right to two-parent families. In addition, the regulations seek to prevent even a single parent from releasing his or her child specifically for an intercountry adoption, unless that parent is unable to meet the basic needs of the child according to that nation’s standards. Thus, it would theoretically be impermissible for even a single parent to release a child for intercountry adoption merely to give that child the opportunity to live in the United States.

The regulations seem concerned with preventing intercountry adoption from becoming a means for economic immigration into the United States. The implicit policy is that a child should be an orphan within his or her national system, independent of any incentive to send the child to the United States. Presumably, the fear is that some parents in developing worlds would be willing to place their children for “adoption” merely to give them the opportunity for a better life.

In an effort to guard against adoption as economic migration, the regulations strip foreign birth parents of some of the options typically exercised by birth parents in the United States. Birth parents in the United States are generally able to place their children with the adoptive families of their choice, acting either independently or through various intermediaries, regardless of whether there are two parents, and regardless of whether they could fulfill the child’s basic needs themselves.

The current statute and regulations were drafted without regard to the impact of the Hague Convention.⁹² An alternative statute, effective upon “entry into force” of the Convention, would provide alternative grounds for entry of a child into the United States from

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² 8 C.F.R. § 204.3(a)(1) (“It should be noted that this section was *not* drafted in connection with possible United States ratification and implementation of the Hague Convention . . .”).

another Hague Convention nation.⁹³ This statute does not require that such a child fall within the existing definition of “orphan.” Instead, federal law would permit a child to come into the United States when both parents, or a sole or surviving parent, have “freely given their written irrevocable consent to the termination of the legal relationship with the child, and to the child’s emigration and adoption.”⁹⁴ In addition, where there are two living natural parents, they must be “incapable of providing proper care for the child.”⁹⁵ This new standard would substantially weaken the protections against adoption as a form of economic immigration. First, it would now be possible for both parents to specifically choose an intercountry adoption (either generally or with a specific adoptive family), at least so long as they could not provide for the child’s basic needs. In addition, if there was only one living parent, that parent could choose intercountry adoption even without a demonstration that the parent was unable to provide for the child’s basic needs.

Interestingly, this new, alternative definition of a child eligible for intercountry adoption does not literally require the child to be defined as an orphan. It is possible to read too much into this. Presumably, the law would still require that children be in need of a family before being eligible for adoption. It is ironic, however, that the United States, upon implementation of the Hague Convention, would actually be relaxing its standards for regulating intercountry adoption in the critical area of defining which children are eligible for adoption.

The obvious explanation for this weakening of standards is reliance on other Hague nations to ensure the propriety of relinquishments. If one assumes that foreign-sending nations that adhere to the Hague Convention can be relied upon to ensure proper relinquishments, then arguably it makes sense to offer birth parents in such nations more control and choice over the adoption process. Since domestic birth parents have the option of choosing adoptive families for their children, and may relinquish a child for adoption even if they are financially capable of supporting their child, there is an argument that foreign birth parents should also

⁹³ See Intercountry Adoption Act of 2000, Pub. L. No. 106-279, § 302(a), 114 Stat. 825, 838–39 (to be codified at 8 U.S.C. § 1101(b)(1)(G) effective upon United States entry into force of convention).

⁹⁴ *Id.*

⁹⁵ *Id.*

have such options, even in relation to intercountry adoption.

Unfortunately, the premise that foreign-sending nations who join the Hague Convention will have reliable procedures regarding relinquishments seems overly optimistic. As the following examination of the law of India will demonstrate, the existence of high legal ideals and elaborate legal procedures for intercountry adoption in foreign-sending nations does not guarantee the legitimacy and reliability of those processes.

C. *Intercountry Adoption Under the Law of India*

The laws, ideals, and procedures governing intercountry adoption in India, in terms of that nation's role as a country of origin or sending nation, are impressive.⁹⁶ These laws, principles, and procedures are generally consistent with the Hague Convention, even though India only recently ratified the Convention, which entered into force on October 1, 2003.⁹⁷ If the practices were consistent with these laws and ideals, then recurrent scandals such as have occurred in Andhra Pradesh would be impossible.

1. Role of the Indian Supreme Court

The key documents summarizing the ideals and laws of India regarding intercountry adoption are found in the Supreme Court of India's 1984 *Laxmi Kant Pandey v. Union of India*⁹⁸ opinion and subsequent Supreme Court opinions elaborating and applying the principles of the original *Pandey* decision.⁹⁹ The case arose through a generalized claim of abusive intercountry adoption practices and was treated as public interest litigation. The Supreme Court of India was thus invited, at the outset, to prohibit or sharply restrict intercountry adoption. The statutory position of adoption was rather tenuous at that time. The Hindu Adoptions and Maintenance Act of 1956 provided limited authority for Hindu persons to adopt Hindu children, but adoption of a child was prohibited if the adoptive

⁹⁶ For useful overviews of Indian adoption law, and related issues, see ASHA BAJPAL, *ADOPTION LAW AND JUSTICE TO THE CHILD* (1996) [hereinafter BAJPAL, *ADOPTION LAW*]; ASHA BAJPAL, *CHILD RIGHTS IN INDIA: LAW, POLICY, AND PRACTICE* (2003) [hereinafter BAJPAL, *CHILD RIGHTS*].

⁹⁷ See *supra* note 17 and accompanying text.

⁹⁸ *Laxmi Kant Pandey v. Union of India*, (1984) 2 S.C.C. 244 (India).

⁹⁹ There are four pertinent subsequent decisions of the Supreme Court of India: *Laxmi Kant Pandey v. Union of India*, (1985) Supp. S.C.C. 701; (1987) 1 S.C.C. 66; (1990) 4 S.C.C. 531; Unreported Judgments 1991 549.

parent already had a child, birth or adoptive, of the same gender.¹⁰⁰ A proposed uniform law of adoption, applicable to all religious communities, had been introduced in 1972, but dropped due to opposition from the Muslim communities.¹⁰¹ A similar law exempting Muslims from application had been introduced in 1980 but also failed to gain enactment.¹⁰² Therefore, persons or situations not falling within the limited statutory definitions of the Hindu Adoption and Maintenance Act, including non-Hindus seeking to adopt within India, and most foreigners seeking to adopt, were left to the provisions of the Guardians and Wards Act of 1890.¹⁰³ This Act did not provide for adoption, but rather for guardianship lasting until the age of majority.¹⁰⁴

The Supreme Court of India could have relied on the absence of explicit statutory provisions for non-Hindu adoptions as the basis for a broad prohibition of most intercountry adoptions. Instead, the Court embraced intercountry adoption in terms quite consistent with those later expressed in the Hague Convention. The Court's primary rationale and focus appeared to be child welfare. Thus, the Court stated that, "[e]very child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family."¹⁰⁵

The Court created a series of preferred outcomes for children, roughly as follows:¹⁰⁶

- (1) Child with biological family;¹⁰⁷

¹⁰⁰ Hindu Adoptions and Maintenance Act, No. 78, §§ 7, 8 & 11 (1956), available at <http://indiacode.nic.in/fullact1.asp?tfnm=195678> (last visited Feb. 5, 2005). The definition of a Hindu under the Act includes not only a person of the Hindu religion "in any of its forms or developments," but also a "Buddhist, Jaina, or Sikh by religion." A person who is a "Muslim, Christian, Parsi, or Jew" is explicitly excluded from the coverage of the Act. *See id.* § 2.

¹⁰¹ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 246.

¹⁰² *Id.*

¹⁰³ *See id.* at 263.

¹⁰⁴ Guardians and Wards Act, No. 8, § 41 (1890), available at <http://indiacode.nic.in/fullact1.asp?tfnm=189008> (last visited Feb. 5, 2005).

¹⁰⁵ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 251.

¹⁰⁶ The Central Resource Adoption Agency also has incorporated this priority list in their guidelines on intercountry adoption. *See* CENT. ADOPTION RES. AGENCY, MINISTRY OF SOC. JUSTICE & EMPOWERMENT, INTER COUNTRY GUIDELINES § 4.5, at <http://www.cara.nic.in/carahome.html> (last visited Feb. 5, 2005) [hereinafter CARA GUIDELINES].

¹⁰⁷ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 251.

- (2) Child adopted within India;¹⁰⁸
- (3) Child adopted out of country by Indians residing abroad;¹⁰⁹
- (4) Child adopted out of country by “adoptive couples where at least one parent is of Indian origin”;¹¹⁰ and
- (5) Child adopted out of country by person(s) who are not of Indian origin.¹¹¹

Although this priority list may appear nationalist in orientation, the Court grounded these priorities in concerns with the greater difficulties that adoptive children face in assimilating to their adoptive families in situations involving “cultural, racial or linguistic differences.”¹¹² Interestingly, the CRC, although created some years later, specifically states that in adoption, “due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural, and linguistic background.”¹¹³ Therefore, the Court’s preference that Indian children be adopted by Indian parents, whether residing in India or elsewhere, later found support in the world’s most significant treaty on children’s rights. At the same time, the Court was willing to countenance foreign adoption, even by non-Indians, in order to save children from certain fates.

The Court stated that:

If it is not possible to find suitable adoptive parents for the child within the country, it may become necessary to give the child in adoption to foreign parents rather than allow the child to grow up in an orphanage or an institution where it will have no family life and no love and affection of parents and quite often, in the socioeconomic conditions prevailing in the country, it might have to lead the life of a destitute, half clad, half-hungry and suffering from malnutrition and illness.¹¹⁴

The Court pointed out that such conditions would “prevent the realisation of [a child’s] full human potential making [the child] more likely to grow up uneducated, unskilled and unproductive,” with a life “blighted by malnutrition, lack of health care and disease and illness caused by starvation, impure water and poor sanitation.”¹¹⁵

¹⁰⁸ *Id.* at 252.

¹⁰⁹ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 712–14.

¹¹⁰ *Id.* at 714.

¹¹¹ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 252.

¹¹² *Id.*

¹¹³ CRC, *supra* note 14, art. 20, para. 3, 28 I.L.M. at 1464.

¹¹⁴ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 252.

¹¹⁵ *Id.*

The Court stated that allowing foreign adoption was consistent with India's National Policy on Children because it would permit otherwise "destitute, neglected or abandoned" children to realize their full potential, and to live a "healthy, decent life, without privation and suffering arising from poverty, ignorance, malnutrition and lack of sanitation"¹¹⁶ The Court was unflinching in its assessment of the conditions under which many in India lived and was willing to countenance the loss of some of India's children, if necessary to save them from such a fate.

The far-ranging opinion of the Court showed broad familiarity with a variety of adoption issues. For example, regarding older-child adoption, the Court noted that it is easier for younger children to become "assimilated and integrated" into their new environment and that "a problem may also arise whether foreign adoptive parents would be able to win the love and affection of" older children.¹¹⁷ Similarly, the Court's procedures specifically provided for the event of disruption; that is, the failure of an adoption after placement into the adoptive family but prior to finalization of the adoption.¹¹⁸

2. Intercountry Adoption Institutions and Procedures Delineated by the Indian Supreme Court

Much of the Court's opinion involved the creation or recognition of an elaborate set of procedures and institutions for intercountry adoption, which the Court constructed despite the lack of a statutory framework beyond the Guardians and Wards Act of 1890. The Court's procedures and institutions deliberately built upon those which had been implemented in certain local areas within India, particularly Bombay, Delhi, and Gujarat.¹¹⁹ The procedures and institutions for foreign adoption envisioned by the Supreme Court can be summarized as follows:

a. Relinquishment of the Child by Birth Parents

Where the birth parents are known, they are to be counseled and told that if the child is adopted, they will have no further contact with the child.¹²⁰ There is to be no duress to coerce relinquishment

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 276.

¹¹⁸ *Id.* at 266–67.

¹¹⁹ *Id.* at 260–63.

¹²⁰ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 268.

of a child, and birth parents are given three months after relinquishment to change their minds and reclaim the child. In addition, birth parents are not permitted to make a decision regarding adoption "before the birth of the child or within a period of three months from the date of birth."¹²¹ In regard to the documentation of relinquishments, the Court stated:

But in order to eliminate any possibility of mischief and to make sure that the child has in fact been surrendered by its biological parents, it is necessary that the institution or centre or home for child care or social or child welfare agency to which the child is surrendered by the biological parents, should take from the biological parents a document of surrender duly signed by the biological parents and attested by at least two responsible persons and such document of surrender should not only contain the names of the biological parents and their address but also information in regard to the birth of the child and its background, health and development.¹²²

If the birth parents are not known, an effort must be made by the institution having care of the child to "try to trace the biological parents of the child."¹²³ If the birth family is not found, then the child is regarded as "an orphan, destitute or abandoned child" and considered free for adoption without any need for consent by the birth parents.¹²⁴ The Court's second *Laxmi Kant Pandey* opinion stated, however, that "no children who are found abandoned should be deemed to be legally free for adoption until the Juvenile Court or the Social Welfare Department declares them as destitutes or abandoned."¹²⁵

b. Child Is Offered for Adoption to Prospective Indian Adoptive Parents: Proposal for Voluntary Coordinating Agencies

The Indian agency is required to make "every effort . . . to find placement for the child by adoption in an Indian family."¹²⁶ The child cannot be made available for foreign adoption until a two month period of making the child available for adoption within India

¹²¹ *Id.* at 268–69.

¹²² *Id.* at 268.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 705.

¹²⁶ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 271.

has passed, unless the "child is handicapped or is in [a] bad state of health needing urgent medical attention, which is not possible for the social or child welfare agency looking after the child to provide" ¹²⁷

The Supreme Court, in its second *Pandey* decision, proposed the use of a "voluntary Co-ordinating agency" within each state or large city to coordinate and facilitate efforts to locate adoptive parents for children within India. ¹²⁸ This concept was modeled after an experimental program in Bombay. ¹²⁹ Perhaps as an inducement, the Court suggested that the period of time for seeking an adoptive family within India be reduced to three to four weeks, if such a system was functioning. ¹³⁰

c. The Central Adoption Resource Agency (CARA)

The Supreme Court proposed the creation of a Central Adoption Resource Agency:

[I]t would be desirable if a Central Adoption Resource Agency is set up by the Government of India with regional branches at a few centres which are active in inter-country adoptions. Such Central Adoption Resource Agency can act as a clearing house of information in regard to children available for inter-country adoption and all applications by foreigners for taking Indian children in adoption can then be forwarded by the social or child welfare agency in the foreign country to such Central Adoption Resource Agency and the latter can in its turn forward them to one or the other of the recognised social or child welfare agencies in the country. Every social or child welfare agency taking children under its care can then be required to send to such Central Adoption Resource Agency the names and particulars of children under its care who are available for adoption and the names and particulars of such children can be entered in a register to be maintained by such Central Adoption Resource Agency. ¹³¹

¹²⁷ *Id.* at 272.

¹²⁸ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 713.

¹²⁹ *See id.*

¹³⁰ *Id.* at 714.

¹³¹ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 271.

d. Agencies

i. Indian Agencies

The Supreme Court was quite clear that:

[I]t should not be open to any and every agency or individual to process an application from a foreigner for taking a child in adoption and such application should be processed only through a social or child welfare agency licensed or recognised by the Government of India or the Government of the State in which it is operating¹³²

Indeed, the Court specifically directed that the Government of India create a list, within three months, of recognized agencies, beyond the two regarded as already recognized (Indian Council of Social Welfare and Indian Council for Child Welfare).¹³³ The Court found it “desirable” to only recognize agencies “engaged in the work of child care and welfare . . . since inter-country adoption must be looked upon not as an independent activity by itself, but as part of child welfare programme”¹³⁴ The Court was concerned that recognizing agencies set up only for adoption would “degenerate into trading.”¹³⁵ The Court also suggested that agencies be examined to determine if they had “proper staff with professional social work experience, because otherwise it may not be possible for the social or child welfare agency to carry out satisfactorily the highly responsible task of ensuring proper placement of a child with a foreign adoptive family.”¹³⁶ The Indian government was to send the list of recognized agencies to foreign governments and state courts.¹³⁷

The Court did discuss the issue of networking between recognized and unrecognized agencies, as follows:

Situations may frequently arise where a child may be in the care of a child welfare institution or centre or social or child welfare agency which has not been recognised by the Government. Since an application for appointment as guardian can, according to the principles and norms laid down by us, be processed only by a recognised social or child welfare agency and

¹³² *Id.* at 269.

¹³³ *Id.*

¹³⁴ *Id.* at 270.

¹³⁵ *Id.*

¹³⁶ *Id.* at 269–70.

¹³⁷ *Id.* at 271.

none else, any unrecognised institution, centre or agency which has a child under its care would have to approach a recognised social or child welfare agency if it desires such child to be given in inter-country adoption, and in that event it must send without any undue delay the name and particulars of such child to the recognised social or child welfare agency through which such child is proposed to be given in inter-country adoption.¹³⁸

It was later alleged that this networking privilege was abused, as “unrecognised agencies are using recognised placement agencies as post offices for processing cases in respect of children which are in the custody of the unrecognised agencies with which the recognised agencies have nothing to do.”¹³⁹ The Court rejected this practice, ruling that recognized agencies could not process a guardianship application for a foreigner unless the child had been in their custody for at least one month prior to the “making of the application.”¹⁴⁰ The Court emphasized, in this regard, that the recognized agency was responsible for preparation of the child study report, including a medical report.¹⁴¹ Thus, the Court rejected the use of recognized agencies as “a post office or conduit pipe for the benefit of an unrecognised agency.”¹⁴²

The Indian agencies were given a variety of critical tasks, beyond the care of the children, including: (a) creating a detailed child study form, including identifying information, information about original parents, a health report prepared by a physician, and information as to the physical, intellectual, and emotional development of the child;¹⁴³ (b) determining if the child is legally free for adoption, including any necessary investigation—if the parents surrender the child, the agency must oversee the taking of valid relinquishment documents;¹⁴⁴ and (c) prosecuting the guardianship petition in the local court.¹⁴⁵

ii. Foreign Agencies

The Supreme Court of India prohibited independent adoptions,

¹³⁸ *Id.* at 270.

¹³⁹ *Laxmi Kant Pandey*, (1987) 1 S.C.C. at 69.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 270–71.

¹⁴⁴ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 703–04.

¹⁴⁵ *Id.* at 704.

in which foreigners apply directly to the Indian agency without the use of an agency from their home country. One exception to this prohibition concerns direct transfers of children from birth to adoptive families, which the Indian Supreme Court, somewhat surprisingly, has permitted.¹⁴⁶ The Court further required the Government of India to “prepare a list of social or child welfare agencies licensed or recognised for inter-country adoption by the government of each foreign country where children from India are taken in adoption”¹⁴⁷

The Court gave several important tasks to foreign agencies. First, the Court made foreign agencies responsible for the preparation of a home study report on the adoptive family. This process ensures that the adoptive parents will be suitable parents for the child and will be “able to handle trans-racial, trans-cultural and trans-national problems likely to arise from such adoption.”¹⁴⁸ Second, foreign agencies would act as a buffer between the adoptive family and Indian agencies and individuals, in order to avoid illicit monetary demands. In this way, the Court hoped to “reduce, if not eliminate altogether the possibility of profiteering and trafficking in children.”¹⁴⁹ Finally, foreign agencies undertook the task of providing supervision and security for the child between the time of arrival in the foreign country and finalization of the adoption.¹⁵⁰

The Court was quite aware that the absence of a broader Indian adoption statute meant that many adoptive parents would only receive guardianship within India. The Court only wanted foreign adoption to occur when the child would be fully adopted under the laws of the recipient nation, with rights equivalent to those of a biological child.¹⁵¹ The foreign agency was to ensure that such an adoption was legally possible, and to monitor the well-being of the child prior to finalization of the adoption. The foreign agency was responsible for ensuring finalization within two years of arrival, sending regular progress reports on the child prior to adoption, and sending the adoption order to the Indian agency.¹⁵² In the event of disruption of the adoption prior to finalization, the foreign agency

¹⁴⁶ See *infra* Part I.C.4.

¹⁴⁷ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 267.

¹⁴⁸ *Id.* at 265.

¹⁴⁹ *Id.* at 264.

¹⁵⁰ See *id.* at 267.

¹⁵¹ *Id.* at 263.

¹⁵² *Id.* at 265–66.

was responsible to “take care of the child and find a suitable alternative placement” with the approval of the Indian agency.¹⁵³

Thus, the Court did not want to send Indian children overseas, under a mere Indian guardianship order, without having a legally recognized agency within the receiving country responsible for overseeing the process to its culmination in a successful legal adoption.

e. Scrutiny

Scrutiny agencies were to assist the local court in evaluating whether “it would be in the interest of the child to be given in adoption to the foreign parents.”¹⁵⁴ A “scrutinizing agency must be an expert body having experience in the area of child welfare and it should have nothing to do with placement of children in adoption for otherwise objective and impartial evaluation may not be possible.”¹⁵⁵

f. Local Courts

Once an adoption had been found acceptable by the Indian agency, the Voluntary Coordinating Agency (“VCA”), and CARA, and with the advice of the scrutinizing agency, the local court would evaluate the guardianship petition under the 1890 Act. The adoption would only go forward if the local court found the foreign adoption to be in the interests of the child.¹⁵⁶ The court, however, could only grant guardianship for the purposes of the child being brought to the foreign country, where the foreign guardians were expected to complete an adoption under their own law.¹⁵⁷

3. The Indian Supreme Court Addresses Money and Corruption

The Indian Supreme Court repeatedly expressed concerns about the possibility that foreign adoption could become a form of “profiteering and trafficking in children.”¹⁵⁸ The Court constructed a

¹⁵³ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 267.

¹⁵⁴ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 702.

¹⁵⁵ *Id.* at 702–03

¹⁵⁶ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 269–77; *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 702–04, 713–14.

¹⁵⁷ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 263, 266, 277.

¹⁵⁸ *Id.* at 264, 270, 273.

number of safeguards against these evils. First, as noted above, the Court forbade independent adoptions as a way of reducing occasions where a foreigner, "in his anxiety to secure a child for adoption," could "be induced or persuaded to pay any unconscionable or unreasonable amount which might be demanded by the agency . . ."¹⁵⁹ This safeguard relies heavily on the integrity of foreign agencies as buffers against corruption. Second, the Court forbade representatives of foreign adoption agencies working in India from "scouting for children" or receiving children directly from birth parents, "in order to prevent taking of children from needy parents by offering them monetary inducement . . ."¹⁶⁰ Third, the Court required that recognized Indian agencies "maintain proper accounts which shall be audited by a chartered accountant at the end of every year."¹⁶¹

Fourth, the Court placed limits on the amount of money that Indian agencies could recover:

[T]he social or child welfare agency which is looking after the child selected by a prospective adoptive parent, may legitimately receive from such prospective adoptive parent maintenance expenses at a rate of not exceeding 60 Rs per day [approximately \$1.25] (this outer limit being subject to revision by the Ministry of Social Welfare, Government of India from time to time) from the date of selection of the child by him until the date the child leaves for going to its new home as also medical expenses including hospitalisation charges, if any, actually incurred by such social or child welfare agency for the child.¹⁶²

The Court required such bills to be submitted to and paid by the foreign agency, presumably in the hope that such an intermediary role would guard against "profiteering."¹⁶³

The Court also permitted the Indian agency to recover a maximum of 4000 rupees (approximately \$90), to cover "legal expenses, administrative expenses, preparation of child study report, preparation of medical and I.Q. reports, passport and visa expenses and conveyance expenses . . ."¹⁶⁴ The Court's 1987 supplemental judgment raised this limit to 6000 rupees, based largely on increases

¹⁵⁹ *Id.* at 265; *see supra* text accompanying note 149.

¹⁶⁰ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 707.

¹⁶¹ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 270.

¹⁶² *Id.* at 273.

¹⁶³ *Id.*

¹⁶⁴ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 711.

in visa fees by the United States and other countries, and the “high fees charged by lawyers.”¹⁶⁵ The Court also stated that “surgical or medical expenses” are “recoverable . . . against production of bills or vouchers.”¹⁶⁶

The Court regarded the various limits on adoption costs to be revisable by the Indian government.¹⁶⁷ CARA regulations as of October 2003 limit per day maintenance expenses to 100 rupees, about \$2.25 per day, and the expense limitation is 10,000 rupees, about \$225.¹⁶⁸ The Court emphasized that the court granting the guardianship order should review and sanction the amounts to be paid to the Indian agency as a “greater safeguard” and because the various limits created by the Court were outer limits not automatically awarded.¹⁶⁹

Fifth, the Court also discussed the important issue of voluntary donations by foreigners to Indian agencies. The Court permitted such voluntary donations, above and beyond the limits set for maintenance, medical, and other expenses, but stated that such donations shall be received after “the child has reached the country of its adoptive parents.”¹⁷⁰ This requirement presumably was intended to preserve the “voluntary” nature of the “donation.”¹⁷¹

The Court therefore attempted to balance the need to safeguard against profiteering and child trafficking against the need to allow agencies providing for children to meet their expenses and accept donations.

4. The Indian Supreme Court on Family-to-Family Adoption

The elaborate institutional apparatus for intercountry adoption created by the Supreme Court of India seems largely based on a distrust of Indian child welfare agencies. This is illustrated by the Court’s treatment of direct agreements between Indian birth parents and foreign adoptive parents. The Supreme Court stated in the first *Laxmi Kant Pandey* decision:

¹⁶⁵ *Laxmi Kant Pandey*, (1987) 1 S.C.C. at 75.

¹⁶⁶ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 711.

¹⁶⁷ See *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 273.

¹⁶⁸ CARA GUIDELINES, *supra* note 106, § 4.38(ii).

¹⁶⁹ *Laxmi Kant Pandey*, (1985) Supp. S.C.C. at 710–11.

¹⁷⁰ *Laxmi Kant Pandey*, (1984) 2 S.C.C. at 273.

¹⁷¹ *Id.*

We may make it clear at the outset that we are not concerned here with cases of adoption of children living with their biological parents, for in such class of cases, the biological parents would be the best persons to decide whether to give their child in adoption to foreign parents. It is only in those cases where the children sought to be taken in adoption are destitute or abandoned and are living in social or child welfare centres that it is necessary to consider what normative and procedural safeguards should be forged for protecting their interest and promoting their welfare.¹⁷²

Thus, virtually the entire edifice of procedural safeguards erected by the Indian Supreme Court for intercountry adoption is apparently inapplicable in instances where an Indian family hands a child directly over to a foreign family for purposes of adoption.

A recent case from the Supreme Court of India, *Smt. Anokha v. The State of Rajasthan*,¹⁷³ applies these comments from the *Pandey* decision to a specific dispute. *Anokha* concerned a family-to-family transfer of a child for purposes of adoption. The couple hoping to adopt was from Italy and had been coming to India for twenty years, hiring Sumer Singh Yadav as a taxi driver to “tour the country.”¹⁷⁴ In 2000, Sumer Singh Yadav died in an accident after dropping the Italian couple off at their destination. The widow, Anokha, was left with their six children, including five daughters. The Italian couple, then childless, offered to adopt one of the girls, named Babu Alka, and the mother agreed. A guardianship petition, relying upon the Guardians and Wards Act of 1890, was filed in the local court and various relevant documents pertaining to the suitability of the Italian couple as adoptive parents were submitted.¹⁷⁵ The local court, however, rejected the guardianship petition because of the failure to adhere to the normal procedures for intercountry adoption, including sponsorship by an Italian child welfare agency recognized by the Indian government and the issuance of a no objection certificate (“NOC”) by the central Indian government. The State High Court agreed with the local court.¹⁷⁶ The Supreme Court of India, however, citing language from the first *Pandey* decision and

¹⁷² *Id.* at 264.

¹⁷³ *Smt. Anokha v. State of Rajasthan*, 2003 SOL Case No. 809 (India), available at <http://www.supremecourtonline.com/cases/9192.html> (Feb. 5, 2005).

¹⁷⁴ *Id.* para. 2.

¹⁷⁵ *Id.* paras. 2–3.

¹⁷⁶ *Id.* paras. 5–6.

other precedents, held that the guardianship petition should be granted.¹⁷⁷

The Supreme Court of India noted that the *Pandey* case had been initiated by a letter “complaining of mal-practices indulged in by social organizations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents.”¹⁷⁸ The implication was that the *Pandey* decision was inapplicable where Indian agencies were not involved in the transfer of the child from birth to adoptive family. The Court specifically quoted the language from *Pandey* stating that, where children were still living with their biological parents, the parents “would be the best persons to decide whether to give their children in adoption to foreign parents.”¹⁷⁹ The Court then explained: “The reason is obvious. Normally, no parent with whom the child is living would agree to give a child in adoption unless he or she was satisfied that it would be in the best interest of the child. That is the greatest safeguard.”¹⁸⁰

The Indian Supreme Court did demand a few safeguards for the child in the *Anokha* decision. In particular, the Supreme Court required that the foreign couple (1) file an affidavit with the local court undertaking to adopt the child within two years and to produce the child, if required, until proof of adoption was filed with the local court; (2) deposit with the local court a sum sufficient to pay the child’s return airfare to India with the amount to be returned once the child was adopted; and (3) submit to the local court annual reports, with photographs, concerning the child’s welfare and education and inform the local court of any changes of address.¹⁸¹ These reporting obligations terminated upon finalization of the adoption in Italy.¹⁸² These requirements adapt to a direct family-to-family adoption the usual protections applicable to foreign adoptions during the period between the granting of a guardianship petition in India and the issuance of a full adoption decree in the foreign country. Nonetheless, the pre-guardianship protections provided in *Pandey*, which go to the question of whether the child will be given to the foreign family for purposes of adoption, remain inapplicable to

¹⁷⁷ *Id.* para. 17.

¹⁷⁸ *Id.* para. 8.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* para. 17.

¹⁸² *Id.*

direct family-to-family adoption agreements.

It seems odd that the Indian Supreme Court did not focus more attention on the obvious possibility of abuse implicit in direct transfers of children from Indian birth families to unrelated foreigners. The economic imbalance between the hundreds of millions of poor Indians and well-off citizens of wealthy nations such as Italy arguably casts a long shadow of exploitation over any such transfers of a child. The Italian couple in question in the *Anokha* case very likely had an annual income greater than fifty times that of the birth family, even before the death of the father; once the father died, this gap could have grown to one hundred times. Along with this gap, the struggle to survive of an Indian widow with six children, five of whom would require dowries to marry, is obvious. “Helping” a family by taking a child away from her mother is arguably an extraordinarily cruel form of assistance. If the Italian family was simply concerned for the well-being of the family of their former taxi cab driver, it would have been well within their means to financially assist the family *without taking their child away from them*. The very cost of the plane ticket for the child—an estimated 50,000 rupees according to the Court, about \$1100—would likely have made a significant difference in the life of this family, and certainly would have provided for any needs of the child for a number of years, if she had remained in India with her family.

In addition, the risks of child-selling in direct transfers of children from poor Indian birth families to comparatively wealthy foreigners seem significant. It would seem very difficult to prevent “under the table” direct payments made, in essence, as payment for a child. Intentional child-buying under the guise of adoption therefore seems a danger inherent in this form of adoption. Unintentional child buying is another danger, as money “given” to birth families as gifts or voluntary donations, which may appear gratuitous and kind to foreigners, could be interpreted as inducements to consent to adoption. Once again, the extreme economic imbalance between many Indian birth families and wealthy foreign families creates a severe danger of exploitation, in this instance in the form of intentional or unintentional child buying.

The apparent answer of the Supreme Court of India to these inherent dangers of family-to-family handovers of children for intercountry adoption is twofold. First, the Court refers to the “rights

and choice of an individual to give his or her child in adoption to named persons, who may be of foreign origin.”¹⁸³ Although the Court does not elaborate on this point, the concept of a right to transfer parental rights to others is both suggestive and disturbing. Viewed positively, this right of transfer may embody the desire, in a society with often desperate poverty, that birth families be given a full range of choices in fulfilling their parental obligations, including that of providing for their children through choosing appropriate adoptive parents. Second, the Indian Supreme Court explicitly relies on the role of local courts, under the 1890 Guardians and Wards Act, in ensuring: (1) the voluntariness of the relinquishment; (2) the lack of “any extraneous reasons such as receipt of money” for the relinquishment; (3) proper notice to the birth family of the significance of such relinquishment; (4) the suitability of the adoptive parents; and (5) that “the arrangement would be in the best interests of the child.”¹⁸¹ The point of the Court seems to be that, whatever the dangers involved in direct transfers of children from Indian families to foreign adoptive families, the involvement of the local courts in evaluating guardianship petitions remains a sufficient safeguard.

The ultimate lesson of the Supreme Court’s treatment of direct family-to-family transfers is, therefore, that the Court distrusts Indian voluntary agencies to such a degree that it perceives even more dangers of abuse when they are involved than when they are absent. In the Court’s view, the presence of such Indian agencies, acting as intermediaries or making decisions on behalf of a child, precipitates the necessity of elaborate protective measures beyond the usually sufficient procedures of the local court.

Whatever the Supreme Court of India may have held regarding such direct transfers of children for intercountry adoption under Indian law, however, is not dispositive of the question under either United States law or international law. For instance, if in the *Anokha* case, the adoptive family had been United States citizens seeking entry for the child into the United States, it would have been debatable whether the child qualified as an “orphan” under present United States immigration law. If a direct transfer between birth and adoptive family had been attempted while the father was alive, clearly it would have been impermissible because United States law would

¹⁸³ *Id.* para. 15.

¹⁸¹ *Id.*

not consider such a child an orphan for immigration purposes.¹⁸⁵

Nevertheless, United States law does apparently allow a “sole or surviving parent . . . incapable of providing the proper care” to “in writing irrevocably release[] the child for emigration and adoption,”¹⁸⁶ even where the child is directly transferred from birth to adoptive family. The issue in the *Anokha* case, however, would have been whether the mother was “incapable of providing the proper care,” meaning “that a sole or surviving parent is unable to provide for the child’s basic needs, consistent with the local standards of the *foreign sending country*.”¹⁸⁷ This question may have been fairly debatable both ways in *Anokha*. On the one hand, a poor widow in India left with five girls and one boy could appear to be in a very precarious position. On the other hand, the Indian Supreme Court opinion does not describe the financial situation of the family in any detail. It is possible that there was some provision for basic needs, or that some of the children were old enough to work and contribute to the family. Indeed, if the widow had been completely destitute, presumably she would have been forced into abandoning all of her children, not merely transferring one out of six to a foreign family.

As explained above, United States immigration law would grow more lenient on precisely this point once the Hague Convention entered into force. Federal law at that point would clearly permit a direct transfer from a widow to an adoptive family, as in the *Anokha* case, without proof of an inability to meet the child’s basic needs.¹⁸⁸ Thus, the United States government would entrust to the foreign-sending government the entire task of prohibiting exploitative transfers of children from widows to United States adoptive parents.

It is unclear, however, whether the Indian government’s treatment of the *Anokha* case was consistent with its obligations under the Hague Convention. The Indian government’s decision to virtually eliminate the role of the central government, and especially that of CARA, in family-to-family transfers does not seem to fit with the Hague Convention, which has no such exception. Indeed, the Hague Convention could be read to forbid, or at least strictly regulate, direct family-to-family transfers of children for purposes of

¹⁸⁵ See *supra* Part I.B.

¹⁸⁶ 8 U.S.C. § 1101(b)(1)(F)(i) (2000).

¹⁸⁷ 8 C.F.R. § 204.3(b) (2004).

¹⁸⁸ See *supra* Part I.B.

intercountry adoption.¹⁸⁹ Although the Indian government may view local courts as a sufficient safeguard for intercountry adoption, in family-to-family direct transfer cases, it seems likely that the Hague Convention would require a greater role for the central government.

5. Institutional Development of the Indian System for Foreign Adoption

The foreign adoption system outlined by the Indian Supreme Court had been largely based on those developed locally within certain parts of India. Nonetheless, the Supreme Court's activism led to the development and coordination of a national system for foreign adoption. The Central Adoption Resource Agency ("CARA"), proposed by the Court, was created on June 28, 1990, "under the aegis of the Ministry of Welfare in pursuance of Cabinet decision dated 9-5-1990."¹⁹⁰ CARA was designed to "deal with all matters concerning adoption," as "[i]n the Government of India all matters related to adoption shall be dealt within the Ministry of Welfare."¹⁹¹ The directions of the Indian Supreme Court were codified into CARA guidelines. CARA perceives itself as having a "principle aim . . . to encourage in country adoption," while also being "engaged in clearing inter country adoption of Indian children."¹⁹²

Under CARA regulations, Indian agencies must receive recognition by CARA in order to either "give a child to foreign parents for the purpose of adoption" or to "submit an application to an Indian court under the Guardians and Wards Act, 1890, for declaring a foreigner as a guardian of an Indian child."¹⁹³ Indian agencies involved in foreign adoption also should be licensed by the State "under the provisions either of the Women and Children

¹⁸⁹ The Hague Convention states:

There shall be no contact between the prospective adoptive parents and the child's parents . . . until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Hague Convention, *supra* note 15, art. 29, 32 I.L.M. at 1143.

¹⁹⁰ CARA GUIDELINES, *supra* note 106, § 2.1.

¹⁹¹ *Id.*

¹⁹² CENT. ADOPTION RES. AGENCY, MINISTRY OF SOC. JUSTICE & EMPOWERMENT, ABOUT CENTRAL ADOPTION RESOURCE AGENCY, at <http://www.cara.nic.in/carahome.html> (last visited Feb. 5, 2005).

¹⁹³ CARA GUIDELINES, *supra* note 106, § 5.2.

Institutions (Licensing) Act, 1956 or the Orphanages or Charitable Institutions (Supervision and Control) Act, 1960.”¹⁹⁴ In addition, Indian agencies applying for recognition from CARA should have the recommendation of their state government for such work, although CARA may override a State’s refusal to recommend.¹⁹⁵ CARA also grants “enlistment of foreign agencies,”¹⁹⁶ and effectively determines which foreign agencies may sponsor “applications of foreign adoptive parents for adopting an Indian child.”¹⁹⁷ Both foreign agencies and Indian agencies should be run “on a non-commercial, non-profitable basis.”¹⁹⁸

CARA approves all foreign adoptions, as its regulations require the recognized Indian agency to “apply to CARA for getting a clearance for the child.”¹⁹⁹ Approvals by CARA of specific placements are called “No Objection Certificates” (“NOC”).²⁰⁰ Indian courts cannot grant guardianship to foreign parents unless CARA has first granted the NOC, with the possible exception of circumstances where CARA has failed to respond to the application “within the time limit specified” in the guidelines.²⁰¹

In addition, CARA guidelines implement the Supreme Court’s directions for Voluntary Coordinating Agencies (“VCA”).²⁰² Local VCAs are responsible for promoting adoption within India, and for issuing an NOC when efforts to place the child within India have been unsuccessful.²⁰³ The various local VCAs are themselves required “to seek recognition from CARA by means of an application which shall be routed through the State Government”²⁰⁴ The VCA review and issuance of an NOC precedes CARA review, and provides CARA with evidence that sufficient efforts to place a child within India were made.

CARA guidelines similarly reflect the Supreme Court’s

¹⁹⁴ *Id.* § 5.4(b).

¹⁹⁵ *Id.* § 5.4(i).

¹⁹⁶ *Id.* § 6.2.

¹⁹⁷ *Id.* § 6.3(i).

¹⁹⁸ *Id.* §§ 5.4(f) & 6.2(iii).

¹⁹⁹ *Id.* § 2.14.

²⁰⁰ *Id.*

²⁰¹ *Id.* § 2.18.

²⁰² *See id.* § 7.1.

²⁰³ *See id.* § 7.1(f).

²⁰⁴ *Id.* § 7.4.

instructions regarding “scrutinising agencies.”²⁰⁵ The scrutinising agency is appointed by the local court reviewing the guardianship petition. The Indian Council for Social Welfare and the Indian Council of Child Welfare may serve as scrutinising agencies; local courts may also appoint other entities as scrutinising agencies from those recognized by CARA for this purpose.²⁰⁶ Scrutinising agencies “should not be involved in the placement of children in adoption.”²⁰⁷ Scrutinising agencies review all facets of the case, including issues pertaining to the voluntariness of the surrender of the child and the accuracy of the child study form. Additionally, they ensure that adoptive parents are “really interested” in accepting special needs and older children and guard against illicit profiteering. Also, they ensure proper clearances by VCA and CARA and determine whether the adoption is “in the best interests of the child.”²⁰⁸ Scrutinising agencies may charge for their review, with the ordinary rate amounting to approximately \$10 to \$11 per case for foreign cases, and a little more than \$3 for Indian cases.²⁰⁹

Although CARA plays a comprehensive regulatory role in relation to the other actors in Indian adoption, CARA has not fulfilled the Supreme Court’s expressed wish that it match prospective adoptive parents with Indian agencies and available children. The Supreme Court of India had envisioned a system in which foreign agencies initiated their contacts with CARA, who in turn matched them with Indian agencies.²¹⁰ Instead, foreign agencies and prospective adoptive parents generally make direct contact with Indian orphanages, which subsequently seek CARA approval for specific placements. This direct contact between foreign and Indian agencies in arranging specific adoptions has been a mixed blessing, simultaneously creating opportunities for initiative, efficiency, and corruption. A system in which all placements were based on matches or referrals made by CARA could have created a logjam at the center of the system and would only have avoided corruption if CARA itself had proven incorruptible.

²⁰⁵ *See id.* § 8.1.

²⁰⁶ *Id.*

²⁰⁷ *Id.* § 8.3(iii).

²⁰⁸ *Id.* § 8.5(7).

²⁰⁹ *Id.* § 8.8 (between 450 and 500 rupees for foreign agencies and 150 rupees for domestic adoption).

²¹⁰ *See Laxmi Kant Pandey v. Union of India*, (1984) 2 S.C.C.244, 271.

6. Analysis of the Indian Adoption System

The most obvious feature of the Indian system for foreign adoptions is its bureaucratic layering of multiple institutions that must approve each adoption. Within this system, CARA not only approves each foreign adoption, but also approves the Indian agency, foreign agency, VCA, and scrutinising agency involved in each adoption. A foreign adoption usually only proceeds when all of these entities—Indian agency, foreign agency, CARA, VCA, scrutinising agency, and local court—in some manner approve the adoption. In addition, it would also be necessary to procure traveling permissions from immigration authorities. The Indian government has thus added multiple layers of regulation to the basic procedures, under the Guardians and Wards Act of 1890, under which a local court reviews a guardianship petition. These multiple layers of review often appear duplicative; for example, VCAs exist to ensure efforts to place a child within India, but the issuance of an approval (NOC) by the VCA is then subsequently reviewed by CARA, the scrutinising agency, and the local court. Does it really take three entities to determine whether a prior entity approved an adoption?

The tendency towards bureaucracy and multiple layers of approval may be typical of the way that the Indian government has traditionally functioned, particularly prior to recent liberalization of the economy. While such a scheme may appear to provide multiple layers of safeguards against abuses in adoption, in the context of Indian society it may instead simply provide multiple layers of corruption. Asha Bajpai, an Indian family law teacher writing about adoption in India, commented:

The procedures involved in inter-country adoption are too complicated. Though the intention is to screen the genuine cases the procedures give rise to a lot of bureaucracy. . . . Bureaucratic controls, are too complex and hence there is a tendency towards violations. Since checks and balances are done by Government officials there is a likelihood of a lot of corruption.²¹¹

By creating a system where multiple institutions must approve each adoption, within the context of a system often suffering from corruption through bribery and personal connections, safeguards can instead become opportunities for abuse. The system of adoption can become one where, in order to get an adoption through the system,

²¹¹ BAJPAI, ADOPTION LAW, *supra* note 96, at 170.

an individual has to either have certain personal connections, or else be willing to "grease palms." Once it becomes apparent that approvals are based on such personal connections or monetary inducements, incentives to follow the rules may disappear.

These possible difficulties with corruption are exacerbated by the introduction of foreign money into the system. The per capita income within the United States is \$35,060, while that of India is \$480.²¹² A computer programmer working in the burgeoning computer industries of Hyderabad, India, could expect to earn around \$8000 annually, while a project manager might raise that figure to \$11,000.²¹³ Thus, amounts of money that might seem insignificant to American adoptive parents could be enormously corrupting in India.

Some might argue that the use of bribes or personal connections to secure necessary approvals for adoptions within a society where such behavior is common does not necessarily distort the adoption system. After all, within India it may sometimes be the case that a government official or agency personnel will demand extra payment for providing an entirely proper approval or service. Such requests may be common within a system where persons with authority seek extra payments for performing their normal tasks as a means of supplementing their salary. "Greasing" a system may simply cause it to perform its assigned task somewhat more quickly than would otherwise be the case. Given the importance of time in the life of a child, and the negative effects upon the child's welfare of delays in the adoption process, some might argue that "greasing" the system by whatever means are available is ethically defensible. An adoption under such conditions, it could be argued, still accomplishes the fundamental good of placing an orphan within a suitable family. Others would argue that an otherwise proper adoption involving illicit payments to government actors or agencies could be characterized as a kind of trafficking in children, and thus fundamentally unethical.

The corrupting power of money, however, goes far beyond the question of whether bribery *ipso facto* converts adoption into "baby-selling" or trafficking. Money not only speeds up the system, but also

²¹² Daniel H. Pink, *The New Face of the Silicon Age: How India Became the Capital of the Computing Revolution*, WIRED, Feb. 2004, at 7, available at <http://www.wired.com/wired/archive/12.02/india.html> (last visited Feb. 5, 2005).

²¹³ *Id.* at 1, 7.

alters its fundamental workings. The availability of large amounts of foreign money for foreign adoption can systematically tilt the system, at every stage, toward intercountry adoption. The presence of money can subvert the fundamental principles of intercountry adoption, which favor the maintenance of the child within the birth family, where feasible, and favor in-country adoptive placement over intercountry adoption. Because foreign money is available, Indian agencies may be transformed from social welfare organizations assisting families and orphans to foreign adoption profiteers scouting the countryside for children. Instead of offering counseling, services, or help designed to allow a child to remain within her birth family, agencies will systematically offer money to birth parents to induce relinquishment. Agencies will thus go into the business of deliberately producing “paper” orphans, who when placed in foreign adoption become an immensely profitable product. Similarly, obstacles to in-country adoption will be systematically constructed when proportionately huge amounts of money can be made for foreign placements. Agencies will prefer to place a child out-of-country and receive literally thousands of dollars—a year’s salary for a middle class Indian—rather than place the child in-country and receive less than \$100.²¹¹ Thus, money subverts the basic principles of the CRC, Hague Convention, and Indian law.

The combination of a system where permissions/approvals are commonly based on money or personal connections, with a large monetary incentive toward foreign adoptions, can lead to a systematically corrupt adoption system. Money is used to procure approvals and false paperwork in questionable cases, not merely to speed proper approvals. And within such a system, it can become virtually impossible to tell which adoptions were legitimate, and which were not, as the system may operate in largely the same way for both. Both involve the use of personal connections or bribery for approvals, and both involve disproportionately large monetary incentives toward intercountry adoption. The question of whether children really were orphans needing a home, or could have been placed in-country, can be obscured in a system already corrupted by the power of money and personal connections.

Given the differential economic scales between the United States

²¹¹ See FRANCIS ABBOTT, MY GIFTS FROM INDIA 49 (2003) (noting that Indian agencies receive \$12 to \$25 per domestic adoption, as compared to \$2500 to \$5000 per intercountry adoption, creating incentive for illegal conduct).

(and other receiving countries) and India, even the modest sums which the Indian government permits Indian agencies to recover for foreign adoptions could be corrupting. The limits of \$2.25 per day and \$225 reimbursement for expenses²¹⁵ are still substantially greater than what is available for in-country placements, and could in themselves tilt the system away from its principles disfavoring foreign placements. On the other hand, it could be argued that there are unique costs applicable to foreign adoption that justify these higher reimbursements. At present, however, the higher reimbursement schedules for foreign adoption is insignificant compared to the other sources of foreign money that are coming into the system. One obvious source is the permission under Indian law for "voluntary donations." The Supreme Court of India had specified that such sums were not to be paid until the child had traveled to the foreign country.²¹⁶ In practice, it appears that such fees have provided a loophole by which to completely bypass the attempts under Indian law to limit the impact of foreign money on the adoption process.

It has become commonplace for United States placement agencies, who deal directly with American parents, to charge foreign fees that are far higher than the maximum reimbursements. Thus, while according to CARA regulations one would expect foreign fees of substantially less than \$1000, it is far more common for such fees to fall within a range of \$6500 to \$12,500.²¹⁷ One justification for such "foreign fees" lies in part in the concept of "voluntary donations." The difficulty, of course, is that a listed or required "donation" is not truly "voluntary." Other difficulties flow from the failure of United States placement agencies to break down their foreign fees. The agencies may view some of those foreign or Indian fees as covering matters beyond the regulations of the Indian government, such as the costs United States agencies incur in operating a program in another country. It is not clear how much of this money is paid to the Indian agencies in question, although estimates from the Andhra Pradesh scandal indicate that Indian agencies there were receiving between \$2000 and \$7000 per intercountry adoption.²¹⁸ In addition, it is often unclear whether

²¹⁵ See *supra* note 168.

²¹⁶ See *supra* notes 170-71 and accompanying text.

²¹⁷ The author has collected the advertised fees of a number of United States placement agencies for adoptions in India; a summary and substantiating documentation is on file with the author.

²¹⁸ See ABBOTT, *supra* note 214, at 49 (\$2500 to \$5000); Ravi Sharma, *A Business in*

“donation” money actually goes to improve the orphanages in question, or simply enriches particular individuals. These uncertainties make it very difficult to determine up front whether United States agencies are operating in literal conformity to Indian law, but also make it obvious that the behavior of United States agencies can create the incentive and opportunity to violate the letter and spirit of the law.²¹⁹

Of course, beyond the issue of listed fees lies the possibility that foreign personnel are making covert payments to Indian agencies. Even modest payments by United States agencies to foreign agencies or others could be highly influential in securing the desired result: quick access to “legally” adoptable children. This danger is exacerbated by the custom some United States agencies may have of paying country coordinators a “per case” fee, turning such coordinators into economic free agencies. Thus, if a United States country coordinator were to “kick back” a modest portion of his or her own fee to an individual in India, it could be highly persuasive in securing favorable access to adoptable children.

One might compare intercountry adoption between the United States and a developing nation like India to the problem the United States faces sharing a border with a developing nation like Mexico. The economic lure of the United States makes even substantial enforcement efforts entirely inadequate to the task of policing the border between the United States and Mexico. In the context of adoption, however, while enforcement efforts have been historically quite lax the economic lure of violating the law is equally attractive.

II. THE STORY OF THE ANDHRA PRADESH ADOPTION SCANDALS

A. *Questions and Perspectives*

The story of the Andhra Pradesh adoption scandals is difficult to tell in large part because so many of the facts remain subject to significant dispute. In addition, the various actors in the story—United States adoption agencies, adoptive parents, older adoptees,

Babies, FRONTLINE (Apr. 28–May 11, 2001) (reporting that Indian agencies admit to receiving at least \$3000 per baby, plus “liberal donations” and claiming that Indian agencies actual obtaining \$7000 per baby and receive money abroad), at <http://www.frontlineonnet.com/fl1809/18090460.htm> (last visited Feb. 5, 2005); Shireen, *Hyderabad Cops Unearth Another Child Trafficking Racket* (Mar. 31, 1999), at <http://www.rediff.com/news/1994/mar/31ap.htm> (\$2000 to \$3000).

²¹⁹ See *supra* note 217.

Indian agencies and persons subject to investigation and legal action, Indian social justice activists, and various United States and Indian government officials—would likely tell the story in vastly different ways.

At the heart of the scandals are claims of a systematic criminal conspiracy to obtain illicit profits from intercountry adoption.²²⁰ This conspiracy would subvert the governing legal standards for intercountry adoption at every turn. Instead of making reasonable efforts to keep children with their birth families, scouts would approach families and employ various means, including (but not limited to) the buying of children, to induce families to relinquish their children.²²¹ Documents necessary to the processing of intercountry adoption, including relinquishments, identity papers and child study forms, refusals to adopt by prospective Indian adoptive parents, and death certificates of parents would be fabricated, falsified, or obtained under false pretenses.²²² Prospective Indian adoptive parents would be pushed aside in favor of foreign adoptive parents.²²³ Indian legal principles requiring fees to be limited and “donations” to be voluntarily given after the child leaves India would be subverted by the requiring of fees and payments to Indian agencies and individuals far in excess of legal standards, and vastly disproportionate to normal pay scales for such work in India. The conspiracy, in short, would amount to buying Indian children for a pittance from impoverished and vulnerable Indian birth families, and selling them for a fortune (in Indian terms) to foreign adoptive families.²²⁴

There has never been a comprehensive investigation by Indian or United States authorities as to the accuracy of such charges. As we shall see, however, at various points in time government actors have given the charges substantial credence and acted, at least temporarily, as though the charges were true. The failure of a systematic

²²⁰ See Ramaswamy, *supra* note 12.

²²¹ See generally WOMEN DEV. & CHILD WELFARE DEP'T, GOV'T OF ANDHRA PRADESH, ACTION TAKEN REPORT ON ADOPTION, at <http://www.reachouthyderabad.com/newsmaker/bs21.htm> (May 2001) [hereinafter ANDHRA PRADESH, ACTION TAKEN REPORT].

²²² Ramaswamy, *supra* note 12.

²²³ See Sharma, *supra* note 218.

²²⁴ See Gita Ramaswamy & Bhangya Bhukya, *The Lambadas: A Community Besieged: A Study on the Relinquishment of Lambada Girl Babies in South Telangana*, 4–5 (2001) (on file with author).

accounting of the accuracy or extent of the scandal has enabled differently situated actors to tell the story in vastly different ways.

Apologists for intercountry adoption, including some United States agencies, Indian agencies, and foreign adoptive parents, might respond to the claims of a systematic criminal conspiracy as follows: It is true that one or two of the Indian orphanages were sloppy in their paperwork and may even have illegally acquired children for adoption. It is true that some of these individuals were “in it for the money.” It is probably also true that some poor birth parents were paid some money. However, India has literally millions of children in need of adoption due to abandonment, poverty, the shame associated culturally with illegitimate birth, and cultural discrimination against female children. Indeed, female infanticide is prevalent in India.²²⁵ In some instances, the female children who were “bought” for modest sums would otherwise have been victims of female infanticide.²²⁶ In other cases, the modest funds provided to birth families could be seen as an act of charity. In any event, the need for intercountry adoption is clearly great. In addition, adoption has not yet attained broad cultural acceptance in India, and the cultural burdens of raising a girl in India make it particularly unlikely that one could place female children within the country. There simply are not adequate in-country adoptive families to meet the needs of India’s children. It is true, of course, that there is a great deal of corruption in India,²²⁷ and therefore it is inevitable that some bribery and corruption is involved in processing adoption cases. However, the cultural predominance of corruption in India is no reason to leave Indian children to suffer from infanticide, abandonment, starvation, living in the streets, being raised under horrific conditions in institutions, or other such fates.²²⁸

²²⁵ See *Glaring Gender Bias in Sale of Infants*, THE HINDU, Apr. 3, 1999, available at LEXIS, News Library [hereinafter *Gender Bias*]. For statistics on the millions of missing females in India, generally viewed as an effect, in part, of female infanticide, see *infra* text accompanying note 354.

²²⁶ See *Gender Bias*, *supra* note 225; *Selling Infants*, THE HINDU, Apr. 11, 1999 (offering the statement of the accused, Peter Subbaiah, “We are giving them a new lease of life. They would have otherwise become victims of female infanticide. We provide them with all the comforts and ensure a better life.”), available at LEXIS, News Library.

²²⁷ See generally Raymond Bonner, *In India, a Battle over Adoptions*, INT’L HERALD TRIB., June 24, 2003, at 1, available at LEXIS, News Library.

²²⁸ See Shabnam Minwalla, *Insensitive System Consigns Children to Life in Bleak Institutions*, THE TIMES OF INDIA, Feb. 4, 2001, available at LEXIS, News Library.

Apologists for adoption from India may also assert that the scandal was politicized and exaggerated by Indian activists opposed to international adoption. Many such apologists believe that some of the Indian orphanages implicated at later stages of the scandal were wrongly accused, or guilty only of the kinds of corruption necessary to accomplish the job of saving children within a society where corruption and bribery are ubiquitous.

The specific factual disputes implicated by the conflicting views of the scandals are as follows: (1) Did the wrongdoing encompass most or all of the Indian orphanages and agencies placing children for intercountry adoption, or did it only involve one or two? (2) What percentage of the children being placed in intercountry adoption needed a family, and what percentage were "made orphans" for the purposes of profiting from adoption, but otherwise would have remained within their birth families? (3) What percentage of the children placed in intercountry adoption could have been placed for adoption within India, if the proper efforts toward in-country adoption had been made? (4) How many children's lives were lost due to the placement of children in institutions, and how many lives were saved from infanticide?

Alongside of these factual questions rests a difficult ethical dilemma, which can be described as the problem of the "second choice." Most would agree that the "first choice" for a system of intercountry adoption would embrace the ideals, principles, and laws that can be harmonized from international, Indian, and American law. Such rules would guarantee that: (1) relinquishments were voluntary, and not induced or coerced; (2) reasonable efforts were made to keep children with their birth families; (3) in-country adoption was favored over intercountry adoption; (4) profiteering from adoption was eliminated; (5) decisions were made without regard to bribery or corruption. It appears to many, however, that these broadly embraced principles are simply not attainable in many of the sending countries, such as India, Cambodia, and Guatemala. The issue then becomes one's fall-back position, or second-choice. Many adoptive parents and agency personnel insist that the intercountry adoption system must be kept open and functioning despite even pervasive corruption violative of the fundamental principles of intercountry adoption. They argue that the good of saving or helping individual children is the preeminent good, to be prioritized above all other norms implicated by adoption. On this basis, shutdowns of individual countries are always opposed, and

indeed any reforms that would slow down the processing of intercountry adoptions are found wanting. The “second” choice of much of the intercountry adoption world, in short, is a corrupt system that continues to process adoptions, rather than a shutdown or slowdown of the current system. By contrast, some would argue that if the fundamental principles that ethically validate intercountry adoption cannot be implemented, then the second-choice is to shut down or significantly slow down the current system. They argue that the harms that a corrupt adoption system causes to children, birth families, and adoptive families outweigh the good of ensuring the placement of individual children overseas.²²⁹

The factual and values questions understandably become intertwined whenever there is an adoption scandal. Those whose second choice is a corrupt adoption system will, of course, factually tend to minimize the scope and seriousness of the corruption involved. In the end, however, it would seem that many would prefer a functioning and highly corrupt intercountry adoption system to a shutdown. By contrast, those who perceive possible harms in even a cleanly run intercountry adoption are likely to seize upon any evidence of illegality as confirmation that the intercountry adoption system is pervasively corrupt and needs to be shut down.

Beneath the conflict over the best second-choice lie ideological differences. Ideologically, there are divisions over the desirability of intercountry adoption that parallel, to some degree, the debate within the United States over the placement of African-American children in white families. For example, some—including adult adoptees—are beginning to voice concerns about placing Asian children in white families. Concerns are raised that Asian children lose, or seek to suppress, their own Asian identities in the process of adapting to their adoptive, white families.²³⁰ Others express concern that intercountry adoption is another form of exploitation of poor or vulnerable nations by rich nations, comparable to colonialism, or exploitative forms of child trafficking. From these ideological perspectives, intercountry adoption is suspect at best. By contrast,

²²⁹ Bonner, *supra* note 10, at A3.

²³⁰ Adult Korean adoptees have been active in sharing their concerns and experience. See *AFTER THE MORNING CALM: REFLECTIONS OF KOREAN ADOPTEES* (Dr. Sook Wilkinson & Nancy Fox eds., 2002); KATY ROBINSON, *A SINGLE SQUARE PICTURE: A KOREAN ADOPTEE'S SEARCH FOR HER ROOTS* (2002); *SEEDS FROM A SILENT TREE: AN ANTHOLOGY BY KOREAN ADOPTEES* (Tonya Bishoff & Jo Rankin eds., 1997); JANE JEONG TRENKA, *THE LANGUAGE OF BLOOD* (2003).

others perceive adoption generally as a kind of “pro-life” good, and interracial or intercountry adoption as a way of practicing a positive form of diversity. Thus, both “conservative” and “liberal” political values can lead to a generally positive ideological evaluation of intercountry adoption.

Another set of ideological issues, with parallel versions under various political and religious perspectives, will also impact the choice of the second-best. For many individuals of various political and religious perspectives, removing a child from a society can be justified based on the propensity of that society to harm the child, due to the child’s gender, caste, socioeconomic status, religion, or race. For example, both conservatives and liberals are shocked by the manner in which females in many societies suffer intense forms of discrimination, limitation, and perceived denigration literally from the womb to the grave. Gender-selective abortion, female infanticide, and the gender-based denial of an education merely lead the list of well-publicized harms against girls in various non-Western societies. Generally “liberal and tolerant” individuals in rich, Western societies may be loathe to leave, or return, a female child to her fate within those societies, and thus see intercountry adoption as a compelling good, for it places the female child within a society where she can realize her potential. Similarly, for some evangelical or fundamentalist Christians, removing a child from an overwhelmingly non-Christian culture into a Christian home may be a compelling spiritual good, for it can lead to the child’s eternal salvation. These views, whether secular or religious, liberal or conservative, are problematic because they can virtually justify taking any child from his or her family, culture, nation, and people in order to achieve some greater secular or religious salvation. Such views tend to be whispered, rather than shouted, because while they include some high ideals, they explicitly or implicitly involve sweeping denunciations of entire cultures, nations, peoples, and religions.

The ways in which individuals characteristically think or solve problems also may impact the analysis of the second-best. The difference parallels that between a public health or economics approach, which concentrates on global, demographic, and statistical effects, and that of a physician or social worker, who may concentrate on helping one individual or family at a time. Those who characteristically analyze systemic effects will tend to perceive a corrupt adoption system as a self-perpetuating process, and will want to determine whether the system as a whole, if allowed to continue,

will do more harm than good.²³¹ Those who concentrate on the individual will see the good of intervening to “save” an individual child, or each individual child, as paramount, without even calculating the total impact of the system as a whole over time.²³² The possibility of leaving a child to his or her fate, in order to stop a corrupt system from operating, will seem highly immoral to some even if the system is in fact harming many children.²³³

B. Chronological Narrative of the Andhra Pradesh Adoption Scandals

The Andhra Pradesh adoption scandals can be presented as a chronology of increasingly serious, cyclical adoption scandals. Although it is possible to begin the story earlier, it is convenient to begin with the events of 1995–1996. During that period a particular individual working in the United States embassy in Madras (now called Chennai), began to hold up intercountry adoptions based on suspicions of irregularities. The suspicions centered around an orphanage called Action for Social Development (“ASD”), run by Sanjeeva Rao. Prospective adoptive parents generally responded by continuing to seek the adoption and emigration of “their children.” It appears that eventually the children whose adoptions had been held up by the American embassy were granted visas and allowed to travel to the United States. Some children were transferred away from ASD to other orphanages due to the allegations.²³⁴

The next phase of the scandal broke in March and April of 1999, and once again involved Sanjeeva Rao and his orphanage, ASD.²³⁵ This time, another individual, Peter Subbaiah, who ran the Good Samaritan Evangelical and Social Welfare Association, was also implicated.²³⁶ The primary accusation concerned buying babies from a tribal group called the Lambada. The Lambada were a traditionally nomadic people, now settled into hamlets (called tandas) and surviving primarily through subsistence farming and farm labor,

²³¹ See Gregory Katz, *No Place to Call Home: Baby Trafficking, Backlash Devail Dreams of Better Life for Orphans*, DALLAS MORNING NEWS, Mar. 21, 2004, at 1A, available at LEXIS, News Library.

²³² See *id.*

²³³ See *id.*

²³⁴ My account of the 1995–96 scandal is based on discussions with prospective adoptive parents and agency personnel. This scandal does not appear to have been extensively covered in either the Indian or the foreign press.

²³⁵ Shireen, *supra* note 218.

²³⁶ *Selling Infants*, *supra* note 226.

often under conditions of severe poverty. The Lambada had previously practiced the custom of a bride price, but had adopted the culturally predominant Indian dowry system, which requires the family of the bride to pay a substantial sum to the groom's family in order to arrange her marriage.²³⁷ In addition, the Lambada were said to believe that the third, sixth, and ninth child was, if a girl, "inauspicious."²³⁸ They were allegedly prone both to female infanticide, and also to selling, for very modest sums, some of their female infants.²³⁹ Press accounts in India referred to their "fair complexion" as making them more attractive to foreign parents,²⁴⁰ although it is not clear whether this reflected Indian, rather than American, prejudices.²⁴¹

The 1999 scandals began with the arrest of two women who were alleged to be acting as scouts or intermediaries in the purchase of children.²⁴² Although some reports styled these women as "social workers,"²⁴³ they were charged with buying Lambada infants for relatively small sums (\$15 to \$45), and then receiving significantly

²³⁷ See *Gender Bias*, *supra* note 225; Ramaswamy & Bhukya, *supra* note 224, at 23–26.

²³⁸ Azizur Rahman, *Girls Pay Price of Being Born Poor*, SYDNEY MORNING HERALD, May 7, 2001, available at 2001 WL 18183443.

²³⁹ See, e.g., *Gender Bias*, *supra* note 225.

²⁴⁰ *Selling Infants*, *supra* note 226.

²⁴¹ Indian sources clearly consider dark-complexioned children more difficult to place. For example, the Andhra Pradesh High Court noted, without embarrassment, that Indian parents rejected children for adoption who were reportedly "black in complexion." *John Clements v. All Concerned*, (2003) 4 ANDHRA LAW TIMES 644, para. 35. (Andhra Pradesh H.C.) (on file with author). The court was concerned with fraud—that prospective Indian parents were shown a sick and dark-skinned child whom they would reject, and then that paperwork was attached to a different, more desirable child. *Id.* The court did not seem to criticize the desire of Indian parents for light-skinned children. Similarly, the CARA Web site currently describes the special needs of one child as "[d]ark complexion squint eyes." CENT. ADOPTION RES. AGENCY, MINISTRY OF SOC. JUSTICE & EMPOWERMENT, LIST OF SPECIAL NEEDS CHILDREN LEGALLY FREE FOR ADOPTION, at <http://www.cara.nic.in/carahome.html> (last visited Feb. 5, 2005). Although many Americans interested in adopting children from India may not be concerned with complexion, this may not be universal. I recall one United States adoption agency which, in trying to persuade me to accept a certain referral from India, pointed out the light complexion of the child as a desirable characteristic. For various reasons (including my unease with the agency), we declined that referral.

²⁴² See T. Sunil Reddy, *Rescued Children Fight Diseases, Face a Future of Uncertainty*, INDIA EXPRESS, Apr. 5, 1999, available at <http://www.indianexpress.com/ie/daily/19990405/ige03066.html> (last visited Feb. 5, 2005).

²⁴³ See, e.g., *id.*; *Selling Infants*, *supra* note 226.

larger sums (\$220 to \$440) from the orphanages for the children.²⁴⁴ Press reports indicated that the orphanages received \$2000 to \$3000 for each child placed in intercountry adoption.²⁴⁵

As a result of the 1999 scandals, Sanjeeva Rao and Peter Subbaiah were arrested and placed in prison. The government conducted dramatic raids to “rescue” the children from the orphanages, taking 172 children from Rao’s orphanage and 56 from Subbaiah’s orphanage, the vast majority from each being female.²⁴⁶ The “rescue” of these children turned into a fiasco. It is reported that ten children died shortly after being moved into government care.²⁴⁷ While some claimed the children died from preexisting conditions, others indicated that the fault was the government’s. Some suggested that the parade of government officials “visiting” the children had been a source of disease and infection.²⁴⁸ Efforts to reunite the children with their birth parents were generally unsuccessful, and it appeared that the Lambada parents generally did not want their children back.²⁴⁹ The government investigation allegedly revealed that most of the relinquishment documents were forged, with the signatures provided by thumb impressions of office attendants. The documents were alleged to be generally fraudulent in regard to the identities and original locations of the children.²⁵⁰

The scandal caused a severe temporary slowdown of adoptions from Andhra Pradesh, but eventually the flow of adoptions from the state resumed. Sanjeeva Rao and Peter Subbaiah were released from prison, apparently without ever being formally tried. Rao eventually was able to reopen his orphanage.²⁵¹ Scouts resumed buying children

²⁴⁴ See Reddy, *supra* note 242 (author’s conversion of rupees to dollars).

²⁴⁵ Shireen, *supra* note 218.

²⁴⁶ Reddy, *supra* note 242.

²⁴⁷ *Another Child Dies in Hospital*, THE STATESMAN (India), Apr. 6, 1999, available at LEXIS, News Library; *Three Infants Die, Three More Critical*, THE HINDU, Apr. 3, 1999, available at LEXIS, News Library; *Three Rescued Babies Die in Hyderabad*, THE STATESMAN (India), Apr. 2, 1999, available at LEXIS, News Library; see also *Infants Rescued from Illegal Creches Face Uncertain Future*, THE HINDU, Apr. 17, 1999 (reporting the death of nine rescued children), available at LEXIS, News Library.

²⁴⁸ See *Infants Rescued from Illegal Creches Face Uncertain Future*, *supra* note 247; Reddy, *supra* note 242; *Selling Infants*, *supra* note 226; *Three Infants Die, Three More Critical*, *supra* note 247.

²⁴⁹ See Sharma, *supra* note 218.

²⁵⁰ *Id.*; Charge Sheet in CR. No. 89/1999, at 3 (IX Metropolitan Magis. Ct., Hyderabad 1999) (on file with the author).

²⁵¹ *Orphanage Director Held, CID Begins Probe*, THE TRIBUNE (India), Apr. 24, 2001, available at <http://tribuneindia.com/2001/20010424/main5.htm> (last visited Jan. 9,

among the Lambada, although perhaps working with somewhat more discretion. By the spring of 2000, a year after the scandal, there was a press report that the Lambadas were still selling their infants to "the same people who purchased children last year."²⁵² Government help to ease the desperate plight of the Lambada apparently never appeared.

A number of orphanages operating in 1999 had been left untouched by the scandal. These included a Roman Catholic orphanage, Tender Loving Care ("TLC"), run by an Indian nun, Sister Maria Theresa; an evangelical Christian orphanage, John Abraham Bethany Memorial, operated by a Christian couple, Mahender and Savitri Kumar; another Christian orphanage, Precious Moments, operated by Anita Sen, wife of a Director General of Police; and a Hindu orphanage, Guild of Service. Many foreign agencies chose to continue working in Andhra Pradesh, or even to open new programs there, apparently based on the relatively quick and successful processing of cases there. For example, in December 2000 a large Canadian adoption agency, Children of the World, announced that it had reached an understanding with two orphanages in Andhra Pradesh, apparently including the Bethany orphanage. A four member Canadian delegation visited India, the delegation including one Indo-Canadian. A Canadian government official commented that the two orphanages had been investigated to ensure "there is no trafficking of children and it is not a profit-making organization as our ethics are very strict." The Canadian official noted their demand for a "strict code of ethics," and their satisfaction that, "[t]he way they adopt children in India is pretty strict for us."²⁵³

About three months later, in late March and early April 2001, a new adoption scandal flared up in Andhra Pradesh. The scandal began with the March 22, 2001, arrest of Christopher Vinod, who was traveling by car with three infants.²⁵¹ The case also involved the

2005); see generally W. Chandrakanth, *Adoption Starts from the Womb*, THE HINDU, Apr. 28, 2001, available at LEXIS, News Library.

²⁵² S. Gopinath Reddy, *Year After Scandal, Andhra Villagers Begin Selling Children Again*, INDIAN EXPRESS, May 1, 2000, available at <http://www.indianexpress.com/ie/daily/20000501/ina01059.html> (last visited Feb. 5, 2005).

²⁵³ Ajit Jain, *Canadian Agency to Adopt Indian Orphans*, at <http://newsarchives.indiainfo.com/2000/12/20/20orphange.html> (Dec. 20, 2000). For the aftermath, discussed *infra*, see *Quebec Halts Adoptions from India* (CBC news broadcast, May 5, 2001).

²⁵¹ Sharma, *supra* note 218.

adjoining State of Karnataka, located to the west of Andhra Pradesh. A large number of Lambada had settled in a poverty-stricken area that lay along the Andhra Pradesh–Karnataka border, and Vinod identified two of the children with him as having come from the Karnataka side of the border. Vinod implicated Sister Maria Teresa’s TLC orphanage, as well as the Bethany orphanage, in a scheme of purchasing infants from the Lambada for placement in intercountry adoption.²⁵⁵ It appeared that a split had arisen among various groups involved in these practices, in part arising from the divorce of the Kumars, who had operated the Bethany orphanage. Savitri Kumar retained the orphanage, while her ex-husband, Mahender, allegedly was working with Peter Subbiah and/or Sanjeeva Rao. Some claimed that a rivalry between the two groups caused the arrests. The immediate results, however, were apparently dramatic for both groups.²⁵⁶

On April 6, government authorities came to arrest Savitri. She reportedly told them that she was going to offer prayers, and then slipped out a back door.²⁵⁷ Charges were filed against her, and the government issued increasingly large rewards for information leading to her capture. Police raided her orphanage, and “rescued” sixty children, moving them to government orphanages and hospitals.²⁵⁸ Sensational charges developed from a report that one of the children was missing corneas from both eyes, leading to speculation they had been harvested from the child for sale.²⁵⁹ Lurid reports of graveyards of dead babies also emerged,²⁶⁰ along with related claims that Savitri had altered identities of infants, taking the identities of the dead for the living.²⁶¹

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Orphanage Director Held*, *supra* note 251.

²⁵⁹ Rahman, *supra* note 238.

²⁶⁰ See, e.g., *Stolen Infants Adopted Here*, SUNDAY AGE (Melbourne), May 6, 2001, at 5, available at LEXIS, News Library; Syed Amin Jafri, *59 Infants Rescued From Another AP Adoption Centre* (Apr. 22, 2001), at <http://www.rediff.com/news/2001/apr/22ap1.htm>.

²⁶¹ See Charge Sheet in CR. No. 13/2001, at 13 (IX Metropolitan Magis. Ct., Hyderabad 2001) (on file with author) (charging that in the Bethany orphanage “dead children were shown alive and whenever substitute children of similar age are received in the Home they were kept in the place of dead children to avoid break in the process of adoption so as to expedite the process of selling the children for monetary consideration”); *NCW Report on Adoption Scam Castigates State*, CARA, at <http://news.indiainfo.com/2001/05/08/08sellgirls.html> (May 8, 2001) (on file with

Press reports indicate that there was at least one child reunited with her birth family. Sahvi Begum, a three-year-old child who had been in Savitri's Bethany home, was discovered among the "rescued" children in the government home by her parents.²⁶² Six months earlier, Sahvi's family had reported her missing and filed a police complaint. Her reunion with her family produced some poignant drama, as the government home initially refused to release her to her parents, even when they came a second time accompanied by a member of the legislature and the press. The child rushed to embrace her mother upon spotting her, but the government workers separated them. The government home had the legislator placed in prison, although she was later released. The press reported that the child was finally reunited with her mother after "completion of requisite formalities."²⁶³ Given the degree of corruption in India, one wonders if those "formalities" could have included some kind of bribe. The press did not resolve the mystery of how Sahvi Begum ended up in the Bethany orphanage, but the reports were indicative of fraud: the orphanage had renamed her "Reena," and in "adoption papers . . . declared her as an orphan."²⁶⁴ Begum's Bethany-prepared paperwork stated that she had been a resident of the Bethany orphanage since 1999, despite the fact that she had lived with her family until late 2000.²⁶⁵ Thus, it appeared that the Bethany orphanage had created a false name and history in order to prepare her for adoption.

Children of the World, the large Canadian adoption agency that had started an India program in December 2000, reportedly had fifteen couples in the process of adopting a child from the Bethany orphanage when the scandal closed the orphanage. The agency publicly defended Savitri and her orphanage, claiming Savitri would not have bought children because an average of ten children were "left on her balcony every day."²⁶⁶ Nonetheless, the province of

author) (noting that adoption clearance certificates were issued in names of deceased infants at Bethany orphanage).

²⁶² Syed Amin Jafri, *Missing Girl Among Children Rescued in Tandur* (May 1, 2001), at <http://www.rediff.com/news/2001/may/01ap1.htm>.

²⁶³ *Id.*

²⁶⁴ Syed Amin Jafri, *Adoption Home Tampered with Children's Records* (May 2, 2001), at <http://www.rediff.com/news/2001/may/02jafri.htm>.

²⁶⁵ *Id.*

²⁶⁶ *Quebec Halts Adoptions from India*, *supra* note 253.

Quebec suspended adoptions from India due to the scandal.²⁶⁷

Authorities subsequently arrested Sanjeeva Rao again, and raided his reopened Action for Social Development orphanage. Thirty-four children were taken from ASD; twenty-two were transferred to Sishu Vihar (the government orphanage), and twelve were hospitalized.²⁶⁸

The scandal spread further when authorities arrested Anita Sen, who operated the orphanage Precious Moments, on the grounds of an evangelical Christian Bible school.²⁶⁹ The press made much of the fact that Sen's husband was prominent within the police department.²⁷⁰ Initially, one of the primary charges against Sen was that she lacked the CARA registration necessary to place children in intercountry adoption.²⁷¹ Her defense was apparently that she had the proper registration within Andhra Pradesh to run an orphanage, and was lawfully routing her adoptions through the Indian Council of Social Welfare, a CARA-approved organization.²⁷² Sen's lack of CARA registration thus presented the issue of the networking of non-CARA child welfare organizations with CARA-approved organizations. Under the rules of the Indian Supreme Court, it would seem that such networking was only legal if the child was physically moved to the CARA-approved organization.²⁷³ While this issue could be seen as more a matter of technical compliance than fundamental ethics, other more serious charges against Sen emerged. It has been claimed that Sen had taken a variety of older children under false pretenses, including offers to educate the child, or provide the mother with a job, and instead had fraudulently changed the child's name, identity, or status, and offered the child for intercountry adoption.²⁷⁴ Thus, while Sen was seen by some as helping others out of Christian conviction, anti-international-adoption activists claimed that she was stealing children from their families in order to profit

²⁶⁷ *Id.*

²⁶⁸ ANDHRA PRADESH, ACTION TAKEN REPORT, *supra* note 221.

²⁶⁹ *See High Drama at Adoption Centre*, THE TIMES OF INDIA, Apr. 28, 2001, available at LEXIS, News Library.

²⁷⁰ *See, e.g., 54 Children Rescued in Andhra Adoption Racket Bust*, THE TIMES OF INDIA, Apr. 27, 2001, available at LEXIS, News Library; *Orphanage of IPS Officer's Wife Raided, 61 Rescued*, HINDUSTAN TIMES, Apr. 26, 2001, available at LEXIS, News Library.

²⁷¹ *See supra* note 270.

²⁷² *See High Drama at Adoption Center*, *supra* note 269.

²⁷³ *See supra* notes 138–42 and accompanying text.

²⁷⁴ Ramaswamy & Bhukya, *supra* note 224, at 3–4.

from hefty foreign adoption fees.

Indian press reports of the 2001 scandal were generally critical of the state government of Andhra Pradesh. It was obvious to most that the government had failed to respond adequately to the 1999 scandals, particularly since the 2001 scandals involved precisely the same charges, and some of the same individuals and orphanages.²⁷⁵ The propensity of the government to take short-term measures against such scandals, while ultimately allowing the same abusive practices to resume within a few months, was repeatedly noted by the press.²⁷⁶ Thus, the government came under some pressure to prove that it would finally do something about the adoption scandals that would stop their reoccurrence.²⁷⁷

The Chief Minister of Andhra Pradesh at that time, Chandrababu Naidu, is particularly well-known in the West, where he has an enviable reputation as the CEO of Indian politicians.²⁷⁸ Naidu has carefully groomed an international image as a businessman-statesman, who governs Andhra Pradesh via his laptop, while making Andhra Pradesh's capital city, Hyderabad, into "Cyberabad," an international center for information technology ("IT").²⁷⁹ Naidu's reputation stemmed from his advocacy of a certain kind of globalization for Andhra Pradesh, whereby the workings of government would be modernized through the use of IT, and the government would nurture the growth of a globally-connected, private IT industry. Naidu has associated himself with major Western figures like Bill Gates and Bill Clinton, while forming strong alliances with international organizations such as the World Bank.²⁸⁰

Naidu's critics complain that his pro-globalization policies have not benefited the majority of the people of Andhra Pradesh, who remain poor farmers or laborers. From this perspective, Naidu has sold out his people to wealthy foreign interests.²⁸¹ Given the populist

²⁷⁵ See *Children as Chattel*, *supra* note 9.

²⁷⁶ See *id.*

²⁷⁷ See Ramaswamy & Bhukya, *supra* note 224, at 12.

²⁷⁸ See H.S. Bahram, *In Two Smart Moves, CM Wins over Rivals & Hushes Critics*, THE TIMES OF INDIA, Sept. 3, 2001, available at LEXIS, News Library.

²⁷⁹ See Amrit Dhillon, *No One Saves for a Rainy Day Now*, TIMES (London), Feb. 4, 2004, available at LEXIS, News Library.

²⁸⁰ Haroon Siddiqui, *He Turned Around a Failed State*, TORONTO STAR, Jan. 30, 2003, at A25, available at LEXIS, News Library.

²⁸¹ See generally, *YSR Vows to Restore Pre-1999 Power Tariff*, THE HINDU, Sept. 11, 2003, available at LEXIS, News Library.

tenor of Indian politics, where politicians often try to win office by promising the masses government largess, Naidu's international connections and pro-business economic policies left him politically vulnerable. (Indeed, Naidu later would be swept from power in the May 2004 elections.)²⁸² Naidu was presumably quite unhappy about the recurrent intercountry adoption scandals, which could serve to remind voters of a particular ugly aspect of globalization: the sale of poor Indian children to rich foreign families.

In April 2001, Naidu's government announced a series of actions apparently intended to evidence a comprehensive approach to addressing abusive adoption practices. The government decree banned the relinquishment of children on the "grounds of poverty, number of children and unwanted girl[s]."²⁸³ Procedures for handling "abandonments" of children were also altered.²⁸⁴ Thus, Naidu hoped to prevent abuses of two major legal means by which children become eligible for adoption—relinquishment and abandonment. In typical fashion, Naidu proposed "computerization" of all adoption records, and the development of software "to monitor all cases and bring transparency."²⁸⁵ The reward on Savitri's head rose from around \$2200 to over \$11,000. More than \$110,000 was authorized for the care of the almost 200 children who had been taken from the orphanages. Selected Lambada boys and girls were to be trained to carry to the Lambada hamlets a government script on adoption, to be performed in the Lambada language and employing song and dance. A meeting of police superintendents and collectors in the affected districts was proposed to discuss the problems and circumstances causing the sale of girl children, and means for "effective control." The Government would restore the rescued children "to their biological parents if they can be traced."²⁸⁶

²⁸² See Syed Amin Jafri, *I Was Misled About Public Mood: Chandrababu Naidu* (May 27, 2004), at <http://im.rediff.com/news/2004/may/27tdp.htm> (noting that Naidu's Telugu Desam Party party held only forty-seven assembly and five Lok Sabha seats, the lowest in the party's twenty-one-year history). Interestingly, even economic and business analysis after the election highlighted the failure of Naidu's technology-focused policies to produce broad-based economic growth. Despite Naidu's international reputation, Andhra Pradesh was apparently falling behind the rest of India in its economic growth. See G. Ramachandran, *Lessons from Andhra Pradesh*, THE HINDU BUSINESS LINE, May 12, 2004, available at 2004 WL 75191946.

²⁸³ ANDHRA PRADESH, ACTION TAKEN REPORT, *supra* note 221.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

The government's actions must be seen in the context of the activists, who emerged through the various Andhra Pradesh adoption scandals as opponents of intercountry adoption. These anti-intercountry-adoption activists were an apparently loosely organized collection of social activists, with a background of working on behalf of women, the poor, tribals, dalits, or labor unions. For the activists, intercountry adoption had become another form of the familiar problem of the exploitation of the vulnerable by the powerful. They further viewed intercountry adoption as another form of "trafficking." The activists were effective in putting pressure on the government to act against intercountry adoption, and in working to influence public opinion.²⁸⁷

A primary point of conflict developed over the fate of the children seized from the orphanages. The Andhra Pradesh activists worked energetically to prevent any of these children from being placed out of the country, claiming that they should either be returned to their birth families or else adopted within India. By contrast, many Western prospective adoptive parents who had been matched with particular children, and had passed to varying degrees through the many stages of Indian adoption, sought to "bring their children home," as they sometimes (and controversially) put it. Although the government claimed to allocate substantial sums to the care of the "rescued" children, many Westerners regarded Sishu Vihar, the government orphanage, as a hell-hole.²⁸⁸ Each side demonized the other. The Western "parents" considered the activists cruel ideologues willing to sacrifice the children for the sake of their cause. The activists considered the Western "parents" selfish, rich, and privileged foreigners who thought their money and skin color could buy them Indian children.²⁸⁹

The children caught in the middle included some who had been seized from the orphanages in the spring of 1999, along with those seized from the orphanages in 2001. The most publicized case, at least in the West, was that of "Haseena."²⁹⁰ Haseena was born in July 1999 and allegedly relinquished by her mother to Sister Teresa Marie's TLC orphanage in January 2000. Haseena's adoption by

²⁸⁷ ABBOTT, *supra* note 214, at 54–55 (quoting *Deccan Herald* and describing activists).

²⁸⁸ *Id.* at 84–85 ("Sishu Vihar is a living hell . . .").

²⁸⁹ See Bonner, *supra* note 10, at A3; Katz, *supra* note 231, at 1A.

²⁹⁰ See Bonner, *supra* note 10, at A3.

Sharon Van Epps and her husband, John Clements, an American couple in their mid-thirties, was approved by CARA on March 23, 2001, just as the 2001 adoption scandal was breaking. Sharon Van Epps came to India and met Haseena about a year later, in the spring of 2002, when Haseena was a little more than two and a half years old. Describing the moment when she first met Haseena, Sharon Van Epps noted, "I felt like something I'd been missing my whole life that I didn't even know I'd been missing had been found."²⁹¹ Sharon Van Epps then began the long vigil of remaining in India, visiting Haseena regularly, and working actively to get Haseena's adoption approved. On May 28, 2003, the State moved Haseena from the TLC orphanage to the government orphanage, Sithu Vihar, and subsequently began denying Sharon Van Epps visitation.²⁹²

The family court in Hyderabad denied the guardianship petition of the Van Epps, and the case was eventually appealed to the High Court of Andhra Pradesh.²⁹³ The court issued an extensive opinion, which had the effect of affirming the family court's denial of guardianship.²⁹⁴ The court's far-ranging opinion indicated that the state's highest court generally credited the accusations against adoption agencies operating in Andhra Pradesh.²⁹⁵ In regard to Haseena, the court noted that the attorney for the Van Epps conceded violations of the Indian adoption guidelines.²⁹⁶ In addition, the High Court appeared to believe that Haseena had been misrepresented as having a deformed foot in order to procure the necessary "refusals to adopt" by prospective Indian adopters.²⁹⁷ The court refused to accept the argument that the principles of equity supported the granting of the guardianship. Noting the claims that the Van Epps had themselves done nothing wrong, and had bonded to the child after receiving CARA approval,²⁹⁸ the court stated that accepting that argument would be "giving seal of approval to the fraud played by the placement agencies and the casual approach of

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ John Clements v. All Concerned, (2003) 4 ANDHRA LAW TIMES 644, para. 4 (Andhra Pradesh H.C.) (on file with author).

²⁹⁴ *See id.* para. 75.

²⁹⁵ *See id.* paras. 29–32, 34–35, 43–44.

²⁹⁶ *Id.* para. 36.

²⁹⁷ *Id.* paras. 27–28 (noting findings and observations of the family court).

²⁹⁸ *Id.* para. 36.

approval . . . by the officials of VACA and CARA.”²⁹⁹ The court noted that, “on previous occasions also, large scale violations committed by the placement agencies in case of inter-country adoptions came to light. But the Government instead of taking remedial measures allowed the malpractices to go on unabated.”³⁰⁰ The court then noted that “[t]he society welcomes such agencies which come forward to render help to the society, though not at their cost, but they can never be allowed to become business centers for extracting as much money as possible, which amounts to granting license to those agencies for trafficking in Indian children.”³⁰¹

The court’s refusal to allow an equitable exception for the Van Epps did not merely rest on a need to respond vigorously to the wrongdoing of the agencies. In addition, the court specifically rejected the argument that the “prospective foreign parents” were completely innocent. The court criticized the parents for employing “backdoor methods in securing the child,” and implied that upon learning of the “fraud” they should have “walked out of the muddle and . . . allowed the law of the land to be implemented.”³⁰² Thus, instead of crediting the parent’s long vigil and elaborate efforts to obtain custody of Haseena, the court suggested it would have been more ethical to leave the mess behind, leaving the Indian laws and legal system to deal with the situation.

The Andhra Pradesh High Court questioned the assumption that Haseena would be better off in the United States:

In India the marriage is considered sacrosanct, while it is a contract in western countries. Stable and secure family life is a remote possibility in those countries. It is on record that these foreign parents are willing to adopt female children only, but not male children. If the marriage between the adoptive parents breaks down, it is not known what will happen to the child. In fact, we repeatedly asked the counsel appearing for CARA and VACA whether any study was made with regard to the welfare of the children adopted by foreign parents, but we could not get any reply.³⁰³

²⁹⁹ *Id.* para. 44.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.* para. 45.

³⁰³ *Id.* para. 47. Interestingly, there is at least one published study of outcomes for children from India adopted and raised in the United States. All of the children had been adopted between 1973 and 1987 from Mother Theresa’s Missionaries of

The court was similarly unimpressed with the argument that the TLC was a religious organization serving the poor:

It is submitted . . . that the . . . agency is being run by Nuns without expecting any monetary benefit and they are doing their best to serve the destitute, abandoned and relinquished children. . . . [W]e are constrained to observe that the Nuns who relinquished the world and who dedicated themselves for the service of society are also getting influenced by the unethical methods adopted by certain agencies who made their institutions as business centers and we do not wish to further comment except saying that [the] agency did not conform to the guidelines for the reasons best known to them.³⁰¹

The court's willingness to rule against the Van Epps may have been influenced by the presence, before the court, of prospective Indian adoptive parents. Thus, the case was presented not as a question of whether Haseena would remain an orphan, but rather as a kind of custody battle between prospective American and Indian adoptive parents. Haseena was presented, both before the court and in the press, as caught between India and America, with the court's decision being in part a question of which nation was a more fit place to be raised. Thus, ironically, an intercountry adoption case, which is usually seen (in the West) as about providing homes for otherwise abandoned or relinquished orphans, was presented as more of a traditional child custody dispute. Haseena's problem—the reason she was remaining in Sishu Vihar—was not that no one wanted her, but rather that too many people wanted her.³⁰⁵ Under these circumstances, it would have been difficult for the court to have ruled in favor of the Van Epps, for the implication would have been that an Indian child wanted by Indian parents was better off leaving India for America.

In addition, the court's opinion evidences a desire to send a clear message against profiteering and corruption in intercountry adoption. The lack of follow-through in the prosecution of the

Charity. The outcomes could be regarded as mixed, with 46% identified as special-needs children by their parents. The authors of the study emphasized "subjective" markers of adoption success. See Joan F. Goodman & Stacy S. Kim, "Outcomes" of Adoptions of Children from India: A Subjective Versus Normative View of "Success", *ADOPTION Q.*, Dec. 2000, at 3-4.

³⁰¹ *Clements*, (2003) 4 *ANDHRA LAW TIMES* 644, para. 33.

³⁰⁵ See *id.* para. 77 (discussing Indian wishing to adopt Haseena who sought to implead in the case, and who appeared before the court); Bonner, *supra* note 10, at A3 (noting controversy regarding Indian couple seeking to adopt Haseena).

offending agencies meant that the appellate courts in India were largely left with cases like Haseena's as their opportunity to act against corruption in intercountry adoption. Perhaps if the High Court had been given other opportunities to act against intercountry adoption, it might have been less inclined to use the Haseena case to send a clear message. At the same time, the court could act against intercountry adoption in the Haseena case, and still believe that Haseena herself would not be harmed, but indeed would ultimately be placed with an appropriate Indian family.

Despite the court's statement that the Van Epps should have walked away from the "muddle,"³⁰⁶ the last part of the court's opinion evidenced some respect for Sharon Van Epps' motherly love of Haseena. The court specifically recited the equitable consideration that Sharon Van Epps had been staying in Hyderabad for eighteen months and had "developed so much love and affection towards the minor girl."³⁰⁷ Noting that the Indian applicant seeking to adopt Haseena had "represented . . . [that] he is not particular to adopt . . . Haseena only,"³⁰⁸ the court left it to the authorities below to possibly consider a new petition from the Van Epps to adopt Haseena, assuming that "there are no other Indian parents who are willing to adopt this child . . . [and] the guidelines are scrupulously followed."³⁰⁹ Thus, while the High Court affirmed the family court's denial of the Van Epps' petition, it kept the door theoretically open to the filing of a new petition.

From the Van Epps point of view, the court's openness to a new petition may have seemed like a cruel gesture. Why deny this petition and then speak of starting over again, while Haseena languished in Sishu Vihar? Moreover, it should have been clear to all involved that the activists would ensure that there would always be Indian families seeking to adopt Haseena, giving her prominence as a test case.³¹⁰ Thus, the conditions for reopening the case seemed exceedingly

³⁰⁶ See *Clements*, (2003) 4 ANDHRA LAW TIMES 644, para. 45.

³⁰⁷ *Id.* para. 76.

³⁰⁸ *Id.* para. 77.

³⁰⁹ *Id.*

³¹⁰ *Cf. Bonner*, *supra* note 10, at A3 (noting the charge that the Indian couple who came forward to adopt Haseena did so due to "external pressures" from foreign adoption opponents, rather than from "love and affection for the child"). The point is not that these charges were necessarily correct, but rather that the Van Epps would have expected the activists to be able to come forward with prospective adoptive parents in test cases.

unlikely to occur. In fact, after the Haseena case, the Indian press increasingly publicized the existence of hundreds of Indians waiting to adopt children in Andhra Pradesh, who were being discouraged from doing so by overly strict guidelines or simple foot-dragging by the authorities. Despite the Western understanding that Indians would not want to adopt—and especially would not want to adopt girls—it appeared from the Indian press that there was a pent-up demand within Andhra Pradesh to adopt children, both male and female.³¹¹ Ironically, it turned out that Indians were being subjected to stricter requirements than foreigners, which had the effect of artificially suppressing adoption of Indian children within India. For example, Indians seeking to adopt faced requirements of infertility or childlessness, or were denied access to the range of children available for adoption. In addition, the income requirements applied to Indian applicants had the affect of rendering the majority of Indian families in Andhra Pradesh ineligible to adopt. Thus, many families who could, in Indian terms, provide reasonably well for a child, were considered ineligible to adopt. Despite these roadblocks, there were apparently hundreds of Indian parents in Andhra Pradesh formally registered and waiting to adopt. Thus, the activists pressed the authorities to speed up their processing of adoptions by Indians, and particularly to place the contested children remaining in Sishu Vihar.

Haseena was eventually placed with an Indian family in 2003, after the Van Epps had exhausted their appeals.³¹² The activists pointed to her placement, and that of many others of the “rescued” children, with Indian parents, as evidence that there were indeed Indian homes available for the children, if only the corrupting power of foreign money could be eliminated. Many Western parents continued to assume, however, that intercountry adoption was necessary to meet the needs of Indian children. Some pointed to the willingness of Americans to adopt special needs and older children, and argued that these children, at least, could not be placed for adoption within India. Some American agencies, however, began to publicize what they characterized as a new openness to domestic adoption within India, even noting that this new development was causing a reduction in the numbers of children available for intercountry adoption.³¹³

³¹¹ See Katz, *supra* note 231, at 1A.

³¹² See *id.*

³¹³ See Laura Lucas, *Four Families Show the Evolution of Adoption in India*, at

The fallout of the Andhra Pradesh scandal continued into 2004, as Indian children continued to be subjects of custody battles between prospective foreign parents and the activists. Like other bitter custody disputes, the parties were often unwilling to compromise and yet each blamed the other for extending the struggle. The extensions of the struggles were particularly unfortunate for the children, as it generally meant that they remained in either Sishu Vihar, or else in a private orphanage. The unwillingness to compromise was likely heightened by each side's lack of authority to enter into a binding settlement determining the fate of the children. Unlike a traditional custody dispute, where a father and mother could agree on custody issues and be confident of court approval, neither the prospective adoptive parents nor the activists had real authority to settle the cases. If the prospective adoptive parents withdrew their petitions or failed to appeal, they would become legal strangers to the child they had sought to adopt, and would have no assurance that the child would be placed in a good home. The prospective adoptive parents could reasonably fear that the children would be subject to political or bureaucratic delays dooming them to grow up in orphanages, or would be placed in inappropriate homes with those who came forward to adopt just to make a political point. Since the activists did not control the governmental processes, they could not guarantee a positive outcome in the cases, however much they believed that such outcomes were possible in India. Similarly, if the activists stopped fighting against the granting of guardianship to the foreign parents, they had no way of knowing what happened to the children. While the activists' fears that the children would fare badly in America or other rich nations seemed ludicrous to the foreign parents, those fears had been echoed by the Andhra Pradesh High Court, and were apparently real. Moreover, the harm of a child being sent to America, while Indian prospective parents waited in vain for children to adopt, could not be remedied if children were placed in foreign homes.

Unfortunately, the fears of the activists for the fate of children sent to America were accentuated by the case of a three-year-old girl named Priyamvada, who was under the care of Sister Teresa's TLC orphanage. An American woman named Gail Hunt had obtained approval from CARA prior to April 2001, but the family court refused

<http://www.holtintl.org/hifamilies/archive/India0307.shtml> (last visited Feb. 5, 2005).

guardianship (as in Haseena's case). As in Haseena's case, an Indian couple selected the child for adoption, but the case was stalled as the foreign adoption petition was appealed. Gail Hunt had originally applied to adopt Priyamvada as a single mother, but in the interim she married an individual named Steven Showcatally. Unfortunately, in March 2004, as the appeal was still pending, Showcatally was charged with homicide in the death of the couple's adopted Guatemalan toddler, Gustavo.³¹⁴

The reported facts evidenced a classic and fatal case of battered child syndrome involving serious head injuries. On Tuesday, March 16, 2004, Showcatally brought Gustavo home from daycare, and became frustrated with the child's diarrhea, which required him to repeatedly bath and change the boy, who was soiling his clothes and towels. Showcatally called Hunt on the telephone, and reported to her that there had been an accident in the tub and that Gustavo's head was swelling. Hunt reportedly told Showcatally to meet him at the hospital. Gustavo was brought to the operating room shortly after arrival, but died that evening. When investigators pointed out that the child's injuries were inconsistent with Showcatally's story that he had dropped the boy once while washing him in the tub, he admitted that he had dropped the child twice more intentionally, after the accidental drop. Showcatally reported that he had called his wife when he noticed that "the baby's eyes were twitching and rolling back in his head."³¹⁵

Oddly, TLC pushed for an emergency hearing regarding Gail Hunt's petition to adopt Priyamvada around April 1, 2004, less than two weeks after the death of Hunt's son Gustavo. The story of Gustavo's death, and the link to Gail Hunt and the Priyamvada case, broke in the Indian press a few days later. Somebody had located the United States news stories about the death of Gustavo, which included Gail Hunt's name, and made the connection. The Indian press appeared indignant that TLC and/or Hunt would seek to push the adoption of Priyamvada forward under such circumstances. The assumption of the Indian press seemed to be that there had been an attempt to sneak the case through without informing the authorities

³¹⁴ Mara H. Gottfried, *Father Charged in Baby's Death*, PIONEER PRESS (St. Paul), Mar. 19, 2004, available at 2004 WL 56312081; Paul Gustafson, *Woman's Adoption Attempt Criticized*, STAR TRIBUNE (Minneapolis), Apr. 9, 2004, at 1B, available at LEXIS, News Library; *US Woman's Husband Charged with Murder*, THE HINDU, Apr. 3, 2004, available at LEXIS, News Library [hereinafter *Husband Charged with Murder*].

³¹⁵ Gottfried, *supra* note 314.

in India of this change in Hunt's home situation.³¹⁶ After the story broke in India, Sister Teresa announced that she was withdrawing the petition for foreign adoption. Sister Teresa's claim was apparently that this was in response to the death of Gustavo, rather than in response to the negative publicity. Sister Teresa then told the press she would be releasing the child for in-country adoption, with the suggestion that the child be placed with relatives of one of the nuns, who wanted to adopt her. The activists, however, had their own candidates, a couple who had earlier come forward to adopt the child.³¹⁷ Thus, the battle over Priyamvada would continue as the agency and activists recommended different Indian adoptive families. Sister Teresa did not explain why it was so easy to find a domestic adoptive placement now, despite the legal determination several years earlier, when Priyamvada was much younger and hence more adoptable, that there were no such placements available.

As the aftermath of the scandal continued into 2004, the family court was consistently denying guardianship petitions for the "rescued" or pipeline children. It became increasingly unlikely that any of these children would be leaving India for adoptive placements, and increasingly clear that litigating the cases would do no more than further delay domestic placements. In the meantime, the system of processing new cases of intercountry adoption out of Andhra Pradesh became effectively shut down. No approvals for adoptions from the state were granted by CARA during the one-year period from August 2003 through July 2004, presumably because the requests were not being made.³¹⁸ Apparently, even the Guild of Service, an orphanage apparently untouched by the scandals, virtually ceased placing children outside of India.

The odd demographic picture of Indian adoption continued after the closing of intercountry adoptions from Andhra Pradesh. Andhra Pradesh adoptions have varied sharply over the last ten years. During the period from 1991 to 1993, Andhra Pradesh had been a fairly insignificant state for intercountry adoption, placing only 119 children (an average of forty per year) over that three-year period.

³¹⁶ See *Husband Charged with Murder*, *supra* note 314.

³¹⁷ See Gustafson, *supra* note 314, at 1B.

³¹⁸ CARA has been placing approvals (NOC) information on their web site on a monthly basis. See CENT. ADOPTION RES. AGENCY, MINISTRY OF SOC. JUSTICE & EMPOWERMENT, ACTUAL CASES OF CHILDREN GIVEN NOC, at <http://www.cara.nic.in/actualcases.asp>. (Dec. 2004) (monthly reports and cumulative totals on file with the author).

Even then, however, the dysfunctional official domestic adoption system had fallen behind the scant intercountry adoption numbers, with only seventy-six domestic adoptions over the same three-year period.³¹⁹ By the year 2000, the year sandwiched between the two major Andhra Pradesh adoption scandals, Andhra Pradesh was placing around 200 children in a single year, placing second among all Indian states.³²⁰ Now, post scandal, Andhra Pradesh is not placing any children internationally. By contrast, Maharashtra, which includes the famous city of Bombay (now called Mumbai) and borders Andhra Pradesh, has been consistently a leader in Indian intercountry adoption statistics.³²¹ Although the state represents approximately 9% of India's population,³²² during the year 2000, and again in the one-year period ending July 31, 2004, Maharashtra was responsible for approximately 40% of all intercountry adoptions.³²³ Even more intriguing, the relatively small city of Pune, located in Maharashtra, which represents between 2.5% and 3.75% of India's population,³²⁴ accounts for approximately one-quarter of all intercountry adoptions.³²⁵ Oddly, despite these comparatively high numbers of foreign placements out of Maharashtra, the Indian press reported a shortage of children available for domestic adoption within the state.³²⁶ In the meantime, the activists apparently hoped

³¹⁹ See BAJPAI, ADOPTION LAW, *supra* note 96, at 178–79.

³²⁰ See BAJPAI, CHILD RIGHTS, *supra* note 96, at 42; Ramaswamy & Bhukya, *supra* note 224, at 12.

³²¹ See BAJPAI, ADOPTION LAW, *supra* note 96, at 177–79 (Maharashtra represented one-third of all official adoptions—domestic and intercountry—during period from 1991 to 1993, including 12% of all intercountry adoptions).

³²² See OFFICE OF THE REGISTRAR GEN., CENSUS OF INDIA 2001: PROVISIONAL POPULATION TOTALS: MAHARASHTRA, at <http://www.censusindia.net/profiles/mah.html> (created Apr. 4, 2001).

³²³ See BAJPAI, CHILD RIGHTS, *supra* note 96, at 42 (517 of 1364, or 37.9%, in 2000); *supra* note 318.

³²⁴ See OFFICE OF THE REGISTRAR GEN., CENSUS OF INDIA 2001: CITIES WITH MORE THAN ONE MILLION POPULATION, at <http://www.censusindia.net/results/millioncities.html> (created Sept. 13, 2001) (2001 population of Pune—2,540,069); OFFICE OF THE REGISTRAR GEN., CENSUS OF INDIA 2001: URBAN AGGLOMERATIONS/CITIES HAVING POPULATION OF MORE THAN ONE MILLION IN 2001, at http://www.censusindia.net/results/million_plus.html (created July 25, 2001) (2001 population of Pune greater metropolitan area—3,755,525); OFFICE OF THE REGISTRAR GEN., CENSUS OF INDIA 2001: PROVISIONAL POPULATION TOTALS: INDIA, at <http://www.censusindia.net/results/resultsmain.html> (created Apr. 5, 2001) (2001 population of India—1,027,015,247).

³²⁵ See *supra* note 318 (23.6% in one year period ending July 31, 2004).

³²⁶ See Roli Srivastava, *Adoption Agencies Faced with Shortage of Children*, THE TIMES OF INDIA, Mar. 13, 2004, available at LEXIS, News Library.

that they could build on their work in Andhra Pradesh, and achieve their goal of a nationwide moratorium on intercountry adoption.³²⁷

III. REFORMING INTERCOUNTRY ADOPTION: BRINGING PRACTICE INTO ROUGH CONFORMITY WITH LEGAL PRINCIPLES AND IDEALS

A. *Intercountry Adoption Is Not a Self-Regulating, Self-Correcting System*³²⁸

The ongoing Indian adoption scandals illustrate the persistent gap between law and practice. The difficulty is not merely that there are abuses, but rather that under the current system the abuses can become systematic. It is not merely that there are systematic abuses, but that most of the affected parties are in some manner “bought off” into accepting the system despite those abuses. Upon examination, it seems clear that most of the parties involved in intercountry adoption possess strong motivations to favor even a systematically abusive adoption system over no system at all. Thus, intercountry adoption is not a self-regulating or self-correcting system. This principle can be demonstrated by analyzing the respective roles of the various parties to intercountry adoption.

1. United States Agencies Possess Financial and Ideological Incentives to Bring Children to the United States, Regardless of Allegations of Abuse

United States agencies involved in intercountry adoption possess strong financial and ideological incentives to keep cases flowing through the pipeline, regardless of credible allegations of abuse. Financially, agencies depend on successfully moving children from other countries to the United States. Ideologically, while agencies typically pay lip service to the legal preferences for maintaining children in their country of origin, many well-meaning agency personnel are strongly committed to the goal of “saving children” through adoption. Thus, from the agency perspective the goal of

³²⁷ See Katz, *supra* note 231, at 1A (stating that the goal of activist Gita Ramaswamy is to shut down all intercountry adoptions in India within two years).

³²⁸ Some of the concepts and text in this section are adapted from the comments I submitted to the State Department on their proposed Hague regulations. See David M. Smolin, *Comments to Regulations Implementing the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Convention) and the Intercountry Adoption Act of 2000 (the IAA)*, Docket No. State/AR-01/96 (Nov. 5, 2003) (on file with author).

correcting abuses, even where honestly accepted as a positive value, almost always gives way to the higher value, financial and ideological, of keeping children moving through the system. United States agency personnel generally do not appear to report their knowledge of irregularities and abuses to the authorities, and may even use various means to try to prevent or discourage adoptive parents from sharing their own knowledge of improprieties. United States agency personnel are financially or ideologically motivated to “believe the best,” doubt negative reports, minimize abuses, and keep the system open and running at all costs even when abuses become apparent.

These propensities are well illustrated in the Andhra Pradesh adoption scandal. Although a detailed examination of agency behavior is beyond the scope of this Article, it seems evident that United States agencies played no role in reporting, reducing, ending, or limiting systematic corruption within the Andhra Pradesh adoption system. Instead, agencies were willing to continue placing children out of Andhra Pradesh so long as the Indian and American government authorities were willing to continue processing cases. While there is no way to account for the numbers of purchased, kidnapped, or improperly relinquished children who were “placed” for adoption by United States agencies, the numbers seem to have been significant. The numbers apparently would have been substantially higher, if not for the sporadic intervention of Indian authorities. United States adoption agencies were either unwitting or witting parties to trafficking in children. Significantly, despite the scandals, United States agencies only stopped accepting new referrals for placements after the system itself closed down, after the 2001 scandals. Moreover, there is no evidence that a single United States agency has ever taken any significant action to report, prevent, or remedy the many instances of corrupt adoption practices to which they have been witting or unwitting parties.

To this day, United States agencies continue to advertise to prospective United States parents foreign fees and orphanage “donation” sums which appear contrary to both the letter and spirit of Indian law.³²⁹ This willingness to violate the letter and spirit of the law is not a mere technicality, as it is precisely the presence of inordinate sums of money that create the incentives and conditions within India to profiteer from adoption.³³⁰ Although it may be Indian

³²⁹ See *supra* note 217.

³³⁰ See, e.g., ABBOTT, *supra* note 214, at 49 (noting that while private orphanages

agencies and individuals who have been most directly involved in improperly obtaining children for adoption, it is Western dollars that have provided the incentives that fuel systematic adoption corruption. Although United States agencies may not intentionally buy or traffic in children, they are responsible for systematically creating monetary incentives that fuel the purchase and sale of children under the guise of adoption.³³¹

The current system of adoption virtually guarantees that United States agencies will continue to fuel abusive adoption practices. Within a largely unregulated system of adoption, the agencies willing to overlook or even participate in abusive adoption corruption practices will remain and "succeed" in securing significant numbers of adoptions. Agencies concerned about corruption will tend to leave or avoid abuse-prone situations, such as those present in India, Guatemala, or Cambodia,³³² leaving the field to those willing to play the game and do whatever it takes to "bring the children home." Within abuse-prone areas, agencies that deal with corrupt orphanages and facilitators who illegally obtain children will often have a competitive advantage because they will have access to larger numbers of paper-adoptable children. To make matters worse, within the world of intercountry adoption it is often the abuse-prone areas that produce, on a statistical basis, some of the highest rates of intercountry adoption. The classic example of this phenomenon is Guatemala which, despite its relatively small population of less than fourteen million, has become one of the most significant sending nations,³³³ while also developing a reputation as a haven for

received between \$12 and \$25 for domestic adoptions, Peter Subbaiah "and the like" were receiving \$2500 to \$5000 per adoption from the United States and other countries, an "obvious motivation in their illegal actions").

³³¹ The activists in India, seeing the central role of money, go beyond my claim that American money inadvertently supports trafficking, to a stronger claim. Activist Ramaswamy contends that, "American adoption agencies that charge \$15,000 or much more for an adoption in India knowingly support baby trafficking [and that] [m]uch of the money goes to Indian adoption agencies to lubricate the system so babies will be available." Katz, *supra* note 231, at 1A (quoting Ramaswamy).

³³² See *id.*

³³³ The population of Guatemala as of 2004 is commonly estimated at 12.7 million, although other sources list figures somewhat higher. See, e.g., BBC NEWS, COUNTRY PROFILE: GUATEMALA, at http://news.bbc.co.uk/1/hi/world/americas/country_profiles/1215758.stm (last updated Nov. 16, 2004). Despite this small population, Guatemala placed 2219 children in the United States in fiscal year 2002, 1609 in 2001, and 1518 in 2000. See BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, IMMIGRANT VISAS ISSUED TO ORPHANS COMING TO THE U.S., at

profiteering attorneys or middlemen who buy or kidnap babies.³³⁴

While the broad middle range of reputable adoption agencies within the United States officially decries corrupt practices, these agencies also consistently choose to involve themselves in adoption systems where such corruption is rampant, without taking significant remedial steps to avoid becoming complicit in child trafficking. The better agencies, those who are in it for the cause rather than for the money, ultimately believe that playing the game is a necessary evil toward the good of saving children. In the end, however, such high-mindedness does little more than pad the pockets of those in sending countries who are more forthrightly using adoption as a “business center,” in the words of the Andhra Pradesh High Court.³³⁵

Within the current adoption world, an agency that has strong scruples about avoiding involvement in adoption profiteering, corruption, or questionable practices in obtaining children would have difficulty functioning within a number of the sending countries. Some of the larger agencies might be able to avoid many of these difficulties by running their own orphanages and social service agencies within the sending countries. In this way, an agency could ensure that true efforts really were made to assist families in keeping their children and in seeking domestic placements. Smaller agencies that have to rely on the work of others within sending countries will generally have difficulty guaranteeing their work.

The history of the Andhra Pradesh scandals indicates that Westerners networking within a sending country such as India may overestimate their capacity to identify honest, non-corrupt partners. A part of this difficulty is cultural, as definitions of what counts as “honest” and “non-corrupt” may differ significantly across cultures. A

http://travel.state.gov/family/adoption/stats/stats_451.html (Feb. 5, 2005). The United States received 6186 children from Guatemala in the five years between 1997 and 2001, out of a total of 8913 placed internationally by Guatemala during those years. PROCURATOR GENERAL'S OFFICE, ADOPTION PROCESS IN GUATEMALA: 1997-2001, at <http://www.casa-alianza.org/EN/human-rights/illegal-adop/statistics/list9701.shtml> (last visited Aug. 13, 2002) (on file with author).

³³⁴ See *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, U.N. Comm'n on Human Rights, 56th Sess., Provisional Agenda Item 13, U.N. Doc. E/CN.4/2000/73/Add.2 (2000) (on file with author); Sara Olkon, *The Business of Selling Babies? Guatemala Leads Latin America in the Number of Illegal Adoptions*, MIAMI HERALD, June 4, 2000, at 1L. For a defense of adoption from Guatemala, see Hannah Wallace, *After Months of Being Closed, Adopted Families May Now Travel to Guatemala for Their Children*, at <http://www.rainbowkids.com/2003/10/news/guatopens.shtml> (Oct. 1, 2003).

³³⁵ See *supra* note 304 and accompanying text.

further difficulty is that the very presence of the Western agency may create opportunities and temptations to profiteer that affirmatively corrupt previously honest entities. Within the context of Andhra Pradesh, it is possible that some of the more established orphanages and social service agencies, which possessed in some instances significant religious motivations, may have continued indefinitely as honest efforts in service to the poor, had they not been presented with the lucrative possibilities of placing children internationally. Finally, the financial opportunities of intercountry adoption may have induced some within India to go into the "adoption business" as a highly profitable racket requiring little more than the capacity to charm Westerners, bribe Indians, and create a network for obtaining children from desperately impoverished and vulnerable families. The costs of orphanage care, within a society where orphanage workers could be paid less than a dollar a day, could be paid out of the profits of such an operation. Given the potentially high profits, a corrupt individual could run a reputable orphanage offering decent care, which would show well to foreigners, and still walk away with, in Indian terms, a small fortune. Thus, a wide range of persons, from the initially honest servant of the poor, to a charming opportunist who knows how to tell Americans what they want to hear, might appear completely honest and well-intentioned to an American. Thus, Americans who believe they can pick out trustworthy persons in the adoption context are likely engaged in wishful thinking.

A further difficulty is that some Indians serving as middlemen in such schemes could possess cultural attitudes that allow them to buy children or engage in other abusive practices without experiencing any sense of guilt or wrongdoing. Some middle class or wealthy Indians may possess a starkly negative (they might say "realistic") view of the poor, "backward" worlds of lower-class India, composed of tribals, scheduled castes, poor farmers, servants, and laborers. From this perspective, moving children from such "backward" circumstances to the immeasurably richer developed world may seem like bestowing a great benefit, no matter what means are employed to wrest children from their families. Any losses to birth families could easily be minimized through a worldview that looks with relative disdain at the lifestyle of those birth families, who are, after all, sometimes guilty of selling (or even killing) their own children. It would be relatively easy for Westerners, who are easily shocked by the life and circumstances of the poor of India, to feel that they are in common cause with their Indian collaborators in moving children

from great deprivation to adoptive homes in America, while overlooking the willingness of those collaborators to buy or even steal children. From the Western perspective, after all, it is “their world,” and their job to get things done in a way that is culturally suitable. Thus, the tacit agreement between United States agencies and their Indian counterparts is that the end justifies the means, and that the ugly means will be left within the discretion of those who know India best, the Indian agencies and facilitators.

The paradox of the adoption world is that one can systematically buy and steal children from their parents, get rich in the bargain, and still feel like a hero, as though one had at great personal risk repeatedly rescued children from burning buildings. Within a world gripped by the myth of saving a child, virtually every other value becomes expendable. Those who believe the myth, or only pretend to believe it, find that, within the adoption world, even the most egregious sins and illegal conduct are excused so long as they successfully move children from third-world deprivation to first-world luxury.

Thus, to expect adoption agencies, or any organization dominated by adoption agencies, to stop abusive adoption practices is akin to expecting an immigration rights group to patrol America’s borders. Even where such a group is aware of technically illegal behavior, it would be more apt to excuse the behavior on behalf of the greater good or right of immigration. Thus, any adoption system that relies on adoption agencies to police themselves, or peer accreditation systems to regulate the agencies, is doomed to be ineffective in stopping abusive adoption practices.

2. United States Adoptive Parents Are Poorly Situated to Discover, Prevent, Investigate, or Report Abusive Adoption Practices

Adoptive parents are very poorly situated to police the system of intercountry adoption. Their primary motivation is to become the parents of a child. They rely for their information primarily on adoption agencies, which tend to minimize irregularities and shield them from the actual workings of the system. Their contacts with the foreign country are often of short duration, and sometimes tightly scripted. Even when they become aware of irregularities, or gain extensive knowledge of the system, they easily become embroiled in efforts to “get their children out” regardless of those irregularities.

The Andhra Pradesh adoption scandals illustrate these

principles. Most of the Western parents who accepted placements from Andhra Pradesh presumably believed that “their child” was a true orphan and “their agency” reliable. Many were presumably never informed about the existence of prior scandals in the state, and if they were informed they were presumably reassured that this would not affect their adoptions. As each of the scandals broke—in 1996, 1999, and 2001—prospective adoptive parents to varying degrees collaborated with one another in mutual efforts to “bring their children home.” Some made heroic efforts, spending extensive amounts of time in India, with mixed results. Although these parents became heroes within the adoption community for their efforts, and were sometimes respected by some within India, there is no evidence that any of them worked, either individually or collaboratively, to reform the adoption system or remedy the wrongs done in the name of adoption.³³⁶ Their heroic efforts were concentrated on completing their adoptions, or helping other Western prospective adoptive parents do the same. There was understandably little time or appetite left to try to change the system, even when they came to understand some of its flaws. Of course, most of the prospective adoptive parents with affected children were unable or unwilling to travel to India for extended periods of time. They became reliant on others for their information, as they sought answers from afar to various questions: Was Peter Subbaiah a good man being maligned for religious and political reasons, or was he really guilty?³³⁷ Where is “my child?” Was my child bought? Whatever information or rumors were circulated among Western prospective adoptive parents, there was no organized effort to have a voice in repairing the Indian adoption system.

Experience outside of Andhra Pradesh has confirmed that only a small minority of Western adoptive parents become seriously interested in efforts to reform adoption, even after being personally impacted by adoption scandals.³³⁸ When they do so, they face various obstacles: threats of libel suits from their agency, ostracism and

³³⁶ See, e.g., ABBOTT, *supra* note 214, at 43–112 (describing efforts of Francis Abbott and other American parents to bring children out of adoption scandals to America); *supra* notes 290–312 and accompanying text (discussing extraordinary efforts of Sharon Van Epps to complete her adoption of Haseena).

³³⁷ See ABBOTT, *supra* note 214, at 44–53 (arriving at starkly negative conclusions about Subbaiah).

³³⁸ This conclusion is my own, after talking with parents and agency personnel impacted by adoption scandals in a number of countries.

criticism from adoption communities that view them as a threat to the continued operation of the system, and contractual gag provisions. Even if they go so far as to sue their agencies, adoptive parents are likely to either settle the suits, and then become subject to gag agreements as part of the settlement, or else lose the suit based on contractual disclaimers of responsibility for what occurs in foreign countries. In any event, it appears that very few lawsuits have ever been brought against agencies for trafficking in children; the typical lawsuit instead complains about undisclosed conditions of the child. Thus, American courts have not yet recognized the harm to adoptive parents resulting from the "adoption" of a trafficked, stolen, or bought child. The alternative of approaching government authorities in the hope of a remedy or some official action is understandably frightening to adoptive parents, who wonder about possible negative effects on their adopted children. Will their child have her United States citizenship revoked or denied, or be taken from the adoptive family and shipped back to her country of origin, if the family comes forward with evidence of trafficking? And in the rare event where adoptive parents have attempted to approach government authorities, they have sometimes experienced a lack of interest in investigating and pursuing their cases. Thus, adoptive parents who do possess significant knowledge of improprieties rarely share it in any way likely to produce change.

3. Some Sending Nations Are Unwilling or Unable to Prevent Significant or Systemic Abusive Adoption Practices

Not all sending nations are equally prone to significant adoption scandals or abusive adoption practices. The list of nations significantly affected by such difficulties in the last few years include Cambodia, Guatemala, India, Romania, and Vietnam. One of the primary difficulties in these scandal-prone nations is their inability, or unwillingness, to enforce legal and ethical norms related to intercountry adoption. The question is why some nations seem to be constantly mired in adoption scandals and improprieties, while adoption systems in other sending countries seem to function more ethically.

Although poverty is a very significant factor in creating the conditions for abusive intercountry adoption systems, it is not a sufficient cause. First, not all poor nations have become havens for abusive adoption practices. Second, significant sectors of Indian

society are quite economically and technologically advanced. India is a nation-state representing one of the world's great civilizations, the largest democracy in the world and the world's second-most populous nation. India is a land filled with poverty and poor people, and its per capita income of \$480³³⁹ is certainly low, but it would be wrong to simply label it a poor and backward nation. The technological, cultural, intellectual, and economic resources of India are extensive and impressive. A nation capable of inspiring the fear that it will capture, through "out-sourcing," America's high technology jobs,³⁴⁰ presumably has the capacity to develop an adoption system with greater integrity.

Why, then, has India had such difficulty in creating a more transparent and ethical intercountry adoption system? To understand the problem, it may be helpful to view the issue of India's role as a sending country for intercountry adoption from an Indian perspective. Although it may not be apparent to outsiders, the adoption issue, within the broader scheme of the fate of India's children, is completely insignificant. India has been sending between four hundred and six hundred children a year to the United States,³⁴¹ and the total number being sent to all countries (including the United States) is approximately one thousand to thirteen hundred children annually.³⁴² In a nation with 157 million children between zero and six years of age, and more than twenty million births per year,³⁴³ thirteen hundred children a year leaving the country for intercountry adoption can have no statistical effect, whether on

³³⁹ Pink, *supra* note 212.

³⁴⁰ See *id.*; Manjeet Kripalani & Peter Engardio, *The Rise of India, and What it Means for America*, BUSINESS WEEK, Dec. 8, 2003, at 66, available at LEXIS, News Library.

³⁴¹ See, e.g., EVAN B. DONALDSON ADOPTION INST., INTERNATIONAL ADOPTION FACTS, at <http://www.adoptioninstitute.org/FactOverview/international.html> (last visited Feb. 5, 2005) (indicating 503 Indian adoptions in America in 2000 and 543 in 2001); William L. Pierce, *Finding American Homes: For U.S. Families, International Adoption Is at an All-Time High*, NATIONAL REVIEW ONLINE (Oct. 24, 2002), at <http://www.nationalreview.com/comment/comment%2Dpierce102402.asp> (indicating 412 Indian adoptions in fiscal year 2002).

³⁴² See, e.g., BAJPAI, ADOPTION LAW, *supra* note 96, at 179 (stating that there were 3331 intercountry adoptions in three year period from 1991 to 1993; Rahman, *supra* note 238 (quoting CARA Head stating that 7315 children were adopted internationally over last six years)); Ramaswamy & Bhukya, *supra* note 224, at 12 (estimating that there are 1000 intercountry adoptions per year); *supra* note 318 (summary of last eight months' CARA figures show 708 approvals over eight month period).

³⁴³ See OFFICE OF THE REGISTRAR GEN., PROVISIONAL POPULATION TOTALS: INDIA, *supra* note 324.

population or on any category of public health or social welfare. The same would be true even if India managed to send ten times as many children as it presently does to other countries for intercountry adoption. Thus, although India's children face, on a broad demographic basis, many significant issues, *from India's perspective* intercountry adoption is not a solution to any of those problems.

To illustrate the insignificance of intercountry adoption for India, consider the legitimate concerns raised by India's sex ratio of 933 females per 1000 males, which drops to 927 females in the zero to six age group.³⁴⁴ India is "missing," within the zero to six age range, nearly six million girls.³⁴⁵ Whether this is caused by sex-selective abortion, female infanticide, or a general failure to allocate food, medical care, or other essentials to girls, it is certainly a legitimate societal concern. In this context, although efforts to save female children are sometimes seen as a positive purpose of intercountry adoption, the significance of moving approximately six hundred to seven hundred girls a year out of the country is hardly a way to remedy the problem of India's female population. Aside from the absurdity of shipping away girls in a society lacking in females (about two-thirds of intercountry adoption placements out of India are girls),³⁴⁶ the fact remains that the numbers involved in intercountry adoption are so small that they have no demographic significance. The same exercise could be done in regard to other problems affecting India: the numbers affected by malnutrition, illegal child labor, trafficking, or other wrongs simply are not going to be significantly affected by intercountry adoption, even if one assumed that every single child involved in intercountry adoption was being saved simultaneously from every single possible wrong befalling India's children.

From this perspective, it would be irrational for India to devote very much in the way of resources or effort in living up to international legal ideals for adoption. In a land facing innumerable social problems, the allocation of scarce government resources and attention to those problems is critical. In a land with hundreds of millions of impoverished people, questions of the best path to economic development should be preeminent. Creating a system to

³⁴⁴ *Id.*

³⁴⁵ See BAJPAI, CHILD RIGHTS, *supra* note 96, at 455-56 (describing status of girl children in India, and noting that the sex ratio worsened from 1991 to 2001).

³⁴⁶ See *supra* note 318.

ship a small number of "orphans" out of the country can hardly be a national priority.

The attitude of Western adoptive parents to India's problems may seem rather peculiar. Americans who are overwhelmed by the poverty and apparent degradation experienced by masses of people in India somehow seem to feel it a noble response to spend between \$10,000 and \$20,000 adopting an individual child, while leaving behind, in the orphanages, on the streets, and in the villages, tens of millions of similarly situated children. The arbitrariness of selecting an individual child for such rescue, while doing little or nothing for those left behind, does not seem to bother most. The odd effect might be compared to responding to a massive famine by selecting one starving individual for a donated diet of caviar and champagne. Obviously, the cost-effective, rational response to a famine is to erect a feeding station for the masses with low-cost, basic nutrition, not helicopter a few individuals out of the country so they can dine in ethnic restaurants in America.

One answer to the question of why India has not developed a more transparent and efficient system of intercountry adoption, then, would be that it would be irrational to make such a system a national priority. A second answer is the nature of the obstacles to the construction of such a system. The primary obstacles are probably not financial, as India could, if it chose, charge foreign agencies and adoptive parents sufficient fees to fund the administrative and oversight costs necessary for a well-functioning system. The primary obstacles to India developing an effective system of intercountry adoption are cultural and legal. Even a cursory examination of those obstacles should illustrate the point.

First, India has yet to develop an efficient, humane, and transparent system of domestic adoption. The current statutory bases for domestic adoption, the Hindu Adoption and Maintenance Act of 1956, and Guardians and Wards Act of 1890, severely limit the capacities of Indians to adopt Indian children, due to limitations based on the existence of other children in the adoptive family, or the religion of the adoptive parents.³¹⁷ Those laws reflect longstanding cultural obstacles to the broad acceptance of formal adoption as a way of building a family. In addition, it is questionable whether the formal system of adoption has any connection or relevance to the majority of Indians, who may have limited access,

³¹⁷ See *supra* notes 100–05 and accompanying text.

financially or culturally, to initiating formal legal processes, and who may handle “adoption” instead through informal, community-based processes.

There are ongoing efforts in India to address the inadequacies of the formal system of domestic adoption, in part through the enactment and implementation of new laws. In addition, adoption does seem to be gaining social acceptance. Nonetheless, the bureaucratic implementation of reform often comes very slowly in India. At best, it will likely be a decade before domestic adoption within India achieves significant reform affecting most of the nation.³⁴⁸

The lack of a functional system of official domestic adoption within India is starkly evident from a statistical comparison with the United States. In the United States, a country with a population of approximately 295 million people,³⁴⁹ there are approximately 50,000 adoptions per year out of the foster system alone, which does not include children placed directly from birth parents to adoptive parents or through private agencies.³⁵⁰ By contrast, India, with over one billion people, officially reports less than 2,000 domestic adoptions per year.³⁵¹ Thus, on a per capita basis, official domestic

³⁴⁸ The Juvenile Justice (Care and Protection of Children) Act, §§ 40–45 (2000) includes provisions on adoption that could be used to authorize a (possibly partial) system of adoption not subject to the limitations of the Hindu Adoption Act. Apparently these provisions have not yet been generally implemented. See BAJPAI, CHILD RIGHTS, *supra* note 96, at 46–47. However, in January 2005, a district court judge in New Delhi ruled that intercountry adoptions should be processed under the Juvenile Justice Act, rather than under the Guardians and Wards Act of 1890. This ruling appears to be effective only locally, and thus will not change adoption procedures in the rest of the country. The ruling will, however, add to the national debate over the role of the Juvenile Justice Act in India’s adoption system. See *Complete Adoption Formalities in India*, TIMES OF INDIA, Jan. 19, 2005, available at LEXIS, News Library; *Foreign Adoptions: Juvenile Justice Act to Apply*, at <http://cities.expressindia.com/fulstory.php?newsid=114298> (Jan. 18, 2005); see generally Parvathi Menon, *A New Act and Some Concerns*, FRONTLINE (May 26–June 8, 2001), at <http://www.frontlineonnet.com/fl1811/18110630.htm> (last visited Feb. 5, 2005).

³⁴⁹ See U.S. CENSUS BUREAU, U.S. AND WORLD POPULATION CLOCKS (estimating a U.S. population of 295,222,486), at <http://www.census.gov/main/www/popclock.html> (last visited Jan. 6, 2005).

³⁵⁰ See CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., THE AFCARS REPORT: PRELIMINARY FY 2001 ESTIMATES AS OF MARCH 2003, at <http://www.acf.hhs.gov/programs/cb/publications/afcars/report8.htm> (last visited Feb. 5, 2005).

³⁵¹ See BAJPAI, ADOPTION LAW, *supra* note 96, at 179 (stating that there were 3611 domestic adoptions in India during three year period from 1991 to 1993); BAJPAI,

adoption appears at least one hundred times more common within the United States than in India. This disparity seems likely to remain significant even if one takes into account the significant gaps in India's adoption statistics, which apparently only include adoptions by CARA-approved agencies.³⁵²

The lack of an effective system of domestic adoption within India means, in itself, that India cannot at present create a truly lawful system of intercountry adoption. The law, after all, both nationally and internationally, requires that intercountry adoption be a last resort *after* domestic adoption. This principle requires that efforts be made to adopt a child domestically prior to attempting intercountry adoption. Those efforts to adopt a child domestically, however, are hampered by a domestic adoption system that artificially suppresses and limits domestic adoption. Thus, even where it is factually accurate, *on an individual basis*, that sincere efforts were made to place a particular child domestically, *on a system-wide basis* adequate efforts to place a child domestically cannot occur until domestic adoption is at least as accessible as intercountry adoption. Indeed, how can India satisfy legal requirements to favor in-country adoption, when under current law there are many situations where a family that would be ineligible to complete an adoption domestically, could legally complete the adoption if they were foreign and adopted through the intercountry adoption system?³⁵³

CHILD RIGHTS, *supra* note 96, at 41 (noting in-country adoptions ranged from 1330 to 1870 in the years 1996 to 2000); Bonner, *supra* note 10, at A3 (reporting that there were 1200 domestic adoptions in 2002). Curiously, one source quotes a higher number of around 4000 per year; even if this is accurate, the per capita domestic Indian adoption rate would be quite low. *Cf.* Rahman, *supra* note 238 (quoting Dev Barman of CARA to the effect that 25,000 domestic adoptions were approved in last six years).

³⁵² Apparently all of the available statistics on domestic adoption in India come from CARA, which only receives reports from CARA-approved agencies. *See, e.g.*, BAJPAL, CHILD RIGHTS, *supra* note 96, at 41 (listing CARA as source for statistics on domestic adoption from "recognized agencies"). Agencies that do not place children internationally generally do not seek recognition from CARA and therefore do not report their adoptions to CARA. Thus India, like the United States, lacks a formalized mechanism for gathering nationwide domestic adoption statistics.

³⁵³ For example, twins or other sibling groups with children of the same gender cannot be adopted domestically within the terms of the Hindu Adoptions and Maintenance Act of 1956. *See* Hindu Adoptions and Maintenance Act, No. 78, § 11 (1956), available at <http://indiacode.nic.in/fullact1.asp?tfnm=195678> (last visited Feb. 5, 2005). In intercountry adoption, by contrast, individuals can avoid these limitations by obtaining guardianship from India, and then relying on their own adoption laws to finalize the adoption, regardless of limitations relating to religion or

Another cultural obstacle to reform of India's intercountry adoption system is the predominance and acceptance of corruption within Indian society. It is not as though corruption and bribery were uniquely associated with adoption. To the contrary, corruption is a pervasive part of Indian life. Corruption is so pervasive as to be normative in many spheres; thus, it takes an extraordinary effort for India to construct systems that are less subject to the taint, distortion, and inefficiencies of corruption. This effort to create situations where corruption is less pervasive can occur within India when there are very strong incentives, as in the development of major industries, such as the IT sector. But is it worth it to India to make these heroic efforts in regard to intercountry adoption, which lacks both humanitarian and economic benefit for the nation as a whole?

An additional cultural obstacle to the development of a lawful system of intercountry adoption in India is the complex relationships among different groups within India. Generally speaking, Western agencies will network with Indians who are literate, speak English, have access to telephones, computers, and the internet, and thus come from India's middle or wealthy classes. Many of the children being placed for adoption, however, come from tribal groups or scheduled castes, or at least from the hundreds of millions of poor farmers and laborers who comprise India's poorer classes. The mothers of these children will generally speak only Indian languages, be illiterate, and have little access to modern means of communication. Even with the best of intentions, it would be very difficult to create non-exploitative relationships across the class, caste, and other social boundaries that divide Indian adoption workers from birth families.

Finally, an additional obstacle to creating a system of lawful intercountry adoption in India lies in the difficulties of protecting the rights of poor, Indian women. The severe gender imbalance within India, under which there are approximately thirty-five million missing females (933 females for every 1000 males),³⁵⁴ is the most obvious sign of the many difficulties suffered by India's women. The combination of being female, and a member of a caste, tribe, or social group traditionally disadvantaged in Indian society, places hundreds of

gender. Thus, the odd situation is created where an adoption which would be denied to an Indian under domestic adoption is allowed to a foreigner through intercountry adoption.

³⁵⁴ See *supra* note 324 (reporting data from 2001 Indian census).

millions of India's girls and women in a starkly vulnerable position. The fundamental requirements of a lawful relinquishment, under which each parent makes an individual and free choice, arguably do not fit the realities of the lives of these women. Is it correct, for example, to view the mother as an autonomous agent in trying to decide whether to place her child, when her family and group view her as bound to follow the dictates of her husband and mother-in-law? What does "choice" mean when an individual faces chronic malnutrition and debt? And how does even an Indian from outside of the social group establish a respectful, non-exploitative relationship with both the individual woman, and her family and group, when that very family and group may be cruelly oppressing the woman?

There are, then, multiple daunting difficulties that must be overcome to establish an intercountry adoption system in India that meets the standards of national and international law. The point is not that establishment of such a system is impossible, but rather that it would require sustained and heroic efforts. It is not at all clear, however, that such heroism would be best spent on adoption. Indeed, it would arguably be irrational for India, or Indians, to make the herculean efforts required to overcome these obstacles for the sake of constructing a better intercountry adoption system. If one had the capacity to overcome legal gaps, cultural prejudices, corruption, misunderstandings across class lines, and the powerlessness of poor Indian women, one could perform far greater miracles in India than sending a thousand children a year out of the country.

B. The United States Government Is the Primary Actor Capable of Reforming Intercountry Adoption

1. The Andhra Pradesh Activists Have Succeeded in Shutting Down, Rather than Reforming, Intercountry Adoption

If it is true that the intercountry adoption system is not self-regulating, and that the primary actors involved lack the power or incentive to prevent abuses, then from where can reform come? Initially, one can see in the Andhra Pradesh story the possibility that reform could come from activists in sending countries who put pressure on their governments to act. The difficulty with this thesis is that the Andhra Pradesh activists have succeeded more in shutting

down the intercountry adoption system than in reforming it. It is sometimes unclear, in any event, whether the activists are simply ideologically opposed to sending Indian children out of the country, even if such adoptions were done in accordance with the principles of national and international law. Even if the activists were committed to reforming, rather than shutting down, the system, there is little indication that they would be capable of overcoming the obstacles to such reform noted above.³⁵⁵ Activists cannot single-handedly overcome legal barriers, cultural prejudice, pervasive corruption, and the powerlessness of poor Indian women. Nor can activists ensure that the many players in the intercountry adoption system perform honestly and efficiently. As a protest movement, it is much easier to shut the system down than to reform it. For activists, shutting down a system primarily requires that one persuade one of the many authorities who must approve each adoption to consistently deny such approvals. At the present time, for example, the courts of Andhra Pradesh, including both the family court and the High Court, appear sufficiently hostile to intercountry adoption to make it difficult for new cases to proceed.³⁵⁶ Even the Indian courts, however, seem largely powerless to reform, rather than shut down, India's intercountry adoption system.

2. The United States Government Should Reform Intercountry Adoption by Creating an Accountability Structure Which Holds United States Adoption Agencies Legally Responsible for the Actions of Agencies and Individuals with Whom They Work in Sending Nations

Among the actors involved in intercountry adoption, the United States government is the entity best situated to bring about significant reform. There are several reasons why the United States is well situated for this role. First, the United States is the largest recipient nation,³⁵⁷ giving it a unique stake in the global adoption system. Second, the United States government is already involved, as an immigration matter, in intercountry adoptions, and under the Hague Convention, federal responsibility for intercountry adoption will become an international treaty obligation. Third, the United States

³⁵⁵ See *supra* Part III.A.

³⁵⁶ See *supra* notes 293–318 and accompanying text.

³⁵⁷ See, e.g., Pierce, *supra* note 23, at 537; Kapstein, *supra* note 5, at 115.

government generally has a presence in the various sending countries, and thus has agents able to investigate matters occurring in other countries. Finally, unlike many sending nations, the United States government does not have to overcome any essential legal or cultural obstacles within American society in order to enforce the fundamental standards of intercountry adoption.

The primary difficulty faced by the United States government has been a lack of political will to enforce the relevant legal norms. This lack of political will stems from at least two sources: first, the understandably low priority of intercountry adoption for the federal authorities, and second, the political pressures created by the adamant demands of American adoptive parents and agencies, who generally urge that adoptions be completed and entry into the United States approved even in situations involving serious violations of the norms governing adoption.

The transitions involved in United States ratification of the Hague Convention provide the opportunity for the United States government to take up the task of reforming intercountry adoption, by taking the political high ground against those within the American adoption community who lobby for the status quo. The political battle within the United States will concern the question of the "second-choice," as some argue that the global adoption pipeline must be kept open at all costs, despite credible charges of illegality and abuse, and others argue that abusive adoption practices must be stopped even if this means sometimes slowing or stopping adoptions. The hope that can be offered at this point is that the United States government is capable of substantially improving the global adoption system, if it can summon the political will to do so.

Assuming the political will to act affirmatively to reform intercountry adoption, the next question is one of method. The United States government should use the Hague implementation process to create an accountability system. The United States government would anchor this accountability system by holding United States adoption agencies to account through the Hague process of government accreditation of agencies. Critical to this accountability structure would be multiple legal devices by which United States adoption agencies would themselves be held accountable for the actions of agencies and individuals with whom they worked in the sending countries.

Within the current adoption system, United States agencies generally escape all accountability for scandals and abuses by

disclaiming any responsibility or control over the acts of their partner agencies and facilitators in other countries. For example, the United States agencies who were involved in placing children through Sanjeeva Rao's ASD orphanage, or Peter Subbaiah's Good Samaritan orphanage, or the Kumar's John Abraham Bethany orphanage, apparently considered themselves free of any responsibility or liability *even if those Indian individuals and agencies were guilty of child trafficking or other violations of adoption norms.*

By contrast, the United States government should work to create an adoption system in which United States agencies are liable for these kinds of fundamental violations of the legal and ethical norms governing adoption. Of course, United States agencies will respond that they cannot control or be responsible for what occurs in countries like India. This kind of claim has become so familiar within the adoption world that its irresponsible and unethical nature is not clearly recognized. It is an argument, it should be noted, which is not accepted in other situations involving cross-border provisioning of services or goods. No American company providing customer service to Americans through a call center in India could disclaim responsibility for privacy violations, sloppy work, or rudeness, because "we can't control what happens in India." No American company employing software programmers or financial analysts in India could avoid fundamental ethical norms because "we can't stop corruption in India." No importer of goods into the United States would be permitted to disclaim product liability responsibility for defective products based on the argument that we "can't control the way things are made in China." In a connected, interdependent world, it is normative that professionals, organizations, and industries involved in cross-border work are responsible for the integrity and quality of the service or good, regardless of how many nations were networked and involved in providing or creating the service or good. Responsibility for adoption is not less significant or important than these other responsibilities, and there is no reason that institutions and individuals working in adoption services should be able to disclaim their normal responsibilities in such brazen fashion. It is absurd to have an industry present itself to adoptive families as highly ethical, and involved in placing orphans into loving homes, and then to allow the industry to disclaim responsibility when it turns out that it has instead been involved in creating orphans and breaking apart families.

Thus, the legally enforced position of the United States

government should be that adoption agencies in the United States are legally accountable for the actions of their partner agencies and facilitators working within sending countries. Some United States agencies may withdraw from some adoption fields because of this exposure to greater liability and responsibility. Some may be unable to obtain liability insurance at reasonable rates, particularly if they place children from certain high-risk nations. In the longer term, however, only agencies that are willing to be held responsible for their entire network of service providers can be trusted to exercise the great responsibility of moving children across borders.

The exact legal and institutional mechanisms by which systems of accountability can be built into the global adoption system are beyond the scope of this Article. The question is complex, and requires additional and intricate analysis.³⁵⁸ The thesis of this Article, however, is that adoption scandals, like those in Andhra Pradesh, illustrate the necessity of building such systems of accountability into the global adoption system. Without such systems of accountability, one can virtually never know, when holding an adopted child, whether the child was an orphan needing a home, or a beloved daughter or son illicitly taken from a home. Without accountability, the pretty face of adoption as a loving act that fills a real need in a child's life will, all too often, turn out to be no more than a mask covering over ugly realities of trafficking, profiteering, and needless tragedy.

³⁵⁸ Some initial suggestions are found in my comments on the proposed Hague regulations. See Smolin, *supra* note 328. I intend to elaborate on this issue of providing accountability in a subsequent work.