National Consultation on
‘Countering Challenges in Adoption: Combating Child Trafficking’
10–11 January 2009, Jamia Hamdard, New Delhi
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ADOPTION AND CHILD TRAFFICKING – IS THERE A CONNECTION?

Every child has a right to family, care and protection. While India has failed to enumerate data on the number of children without a family, the fact is that the number of orphaned, surrendered and destitute children is only increasing at a fast pace in today’s India. In a rapidly changing socio-cultural and economic milieu that pushes people to the margins and forces elimination and exclusion of the most vulnerable, many children fall out of the safety and security net. These are children in difficult circumstances. Often their rights are the first to get compromised in difficult situations.

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides specifically for the care and protection of abandoned, surrendered and destitute children. The spirit and guiding principles of this law clearly suggest that institutional care should be the last resort, and adoption, foster care and sponsorship need to be promoted as alternative care measures. Surely ‘Adoption’ has been the most recognised form of alternative care in India that has gained acceptance over the years. Adoption of children must be promoted to ensure that abandoned and orphaned children find a home that loves and nurtures them.

However, over the years, there have been increasing numbers of reports of children being bought and sold into adoption or cases that do not follow the legal process of law.

Documents such as the Hague Convention (Hague Conference 1993), the earlier UN Declaration on Adoption and Foster Care (1986), and the Child’s Right to Grow Up in a Family: Guidelines for Practice in National and Inter-country Adoption and Foster Care (Adoption Centre 1997), as well as the Supreme Court of India’s judgement in Lakshmi Kant Pandey v. Union of India (1985), establish terms for giving a child in adoption vis-a-vis the state, the rights of the child as a state resource and the state’s obligation to protect this resource. In particular, these documents focus on “identity rights” to a name, a nationality, and to be cared for by one’s parents - that are essential in defining the resource status of the child: his or her ownership or belonging in or to a specific family or nation (Stephens 1995).

Adoption is not about finding children for families, it’s about finding families for children”

Dr. Joyce Maguire Pavao, CEO, Centre For Family Connections, Inc.

While some argue that this is because the legal process is very cumbersome, both for the child and the adoptive parents, others feel that unless streamlined with checks and balances, there is greater likelihood of children being exploited in the name of adoption.

Since there is a demand for adoption and the supply is through both formal and informal sources, the primary question before us has been how to curb child trafficking in the name of adoption, while promoting legal and ethical adoption as a form of alternative care.

Clearly, just as adoption of children needs to be promoted, reports on illegal adoptions and/or child trafficking for and through adoption, requires revisiting the adoption system in the country - the challenges encompassing it, the current checks and balances in the system to curb baby sale and such other untoward incidents, and look for ways to address these.
PURPOSE OF
THE CONSULTATION

For the first time in India, a National Level Consultation was held to discuss the issue of adoption and child trafficking in the backdrop of every child’s right to survival, development, protection and participation. While one concern was that it might bring negative publicity to adoption, the other concern was regarding unchecked violation of children’s rights that happens through trafficking in the name of adoption.

Every time an adoption racket is busted in some part of India, the issue comes to light for a brief period and soon gets buried till another such news bursts out. Fact-finding by civil society organisations and media have time and again questioned the unethical practices being adopted by various reputed agencies in the adoption process, particularly on sourcing of children for adoption and promotion of international adoption for the huge amounts of money involved in it. Despite all this, there was no doubt in the mind of the organisers that there is a need to promote ethical and child-centric adoption, though debates surrounding international and domestic adoption needed to be opened up for more discussion.

A resource kit comprising of various related materials and papers written by experts was circulated to all participants. The kit is available with HAQ: Centre for Child Rights for reference and use by those interested. Some papers shared by the participants were also distributed during the consultation. (For details see annexure 1).

The Consultation was co-organised by HAQ: Centre for Child Rights and CACT-Delhi, which is the state level Campaign against Child Trafficking hosted by Pratidhi (Association for Development). The organisers are grateful for the support received from the European Commission and Christian Aid. The consultation was part of the project titled, ‘Developing a Human Rights Approach to Anti-Human Trafficking (DDH/2004/089-105)’, commissioned by the European Commission to HAQ: Centre for Child Rights through the tdh international federation, and grant received by Pratidhi from Christian Aid for the ‘Campaign against Child Trafficking’.

The National Consultation aimed to bring various experiences, research and findings to the floor and act as a platform to discuss the developments in the field of adoption as well as thoughts on how to foster the best interest of the child in such circumstances, while promoting adoption as a measure of alternative care for children in need of care and protection.
OBJECTIVES OF THE CONSULTATION

- To revisit and understand the adoption system in the country and challenges encompassing it
- To develop strategies that would help ensure ‘Legalized Adoption’ as an alternative to institutional care for children in need of care and protection
- To understand the connection between adoption and child trafficking and evolve measures to address trafficking of children in the name of adoption
Adoption is an old phenomenon in India. Traditionally it was almost always within the family wherein a childless couple would adopt a relative’s child, most often a boy to carry on the lineage. Unfortunately, orphans, illegitimate children, handicapped or girl children were never adopted. Where the child belonged to an unknown parentage, he/she was taken on by a local elite as an indentured servant, like poskem in Goa, or simply cast away. 1

In recognition of its practice in India, adoption received its first formal nod on 21 January 1890 with the Guardians and Wards Act (GAWA). However, as its very name suggests, this law was aimed more at providing foster care within the ambit of personal laws rather than legalising adoption. As a result, children continued to be transferred informally and confidentially to adoptive parents within the family or the community. It was easy as there were no formal birth registration procedures. Adoption got its first legal sanction with the enactment of the Hindu Adoption and Maintenance Act (HAMA). Unfortunately, the only codified law of adoption in India is restricted to Hindus, which includes Sikhs, Jains and Buddhists, thus leaving GAWA as the only option for non-Hindus to adopt.

In the late '80s and all through the '90s, reports of illegal baby sale and commercialization of inter-country adoptions led to several debates pointing to the need for stricter regulations.

Over the years there has been an increase in adoption of children from Third World countries. This has become a fashionable form of ‘aid’ to the “poor children”. It is also increasing in the wake of scarcity of children caused by infertility, family planning measures, the actual and inherent costs of giving birth locally etc. As a result, the development of the international market for adoption of children from Third World/Developing Nations has led to the phenomenon of buying a child and also buying adoption services that lead to a child.

Establishment of Central Adoption Resource Agency (CARA) in 1990 and its designation as the Central Authority in 2003 for implementation of the Hague Convention on Protection of Children and Cooperation in respect of Inter-

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country Adoption, 1993, led to the creation of a set of guidelines for both inter-country and intra-country adoptions. Of late, CARA has been working on developing a new set of Guidelines on inter-country and in-country adoptions. It is therefore also a time to look at these new guidelines in the light of challenges faced in ensuring legal adoptions.

Even CARA has admitted that there are reports of delays, excessive adoption charges and huge donations given to Indian agencies and of course illegal practices including buying and selling of infants for adoption. Clearly, stricter regulations too do not seem to have addressed the problem.

What is more, many argue against children being given into foreign adoptions. They believe that India must encourage and ensure adoptions into Indian families. It is well known that there are several hundred Indian parents waiting to adopt. Besides, should it not be the responsibility of the State to look after its own citizens instead of sending them off to another country, they argue.

Those who favour inter-country adoptions ask whether it is fair to keep a child away from family environment simply because inter-country adoption is to be sought as the last resort. Many of them suggest that it is not easy to find Indian parents willing to take all kinds of children, while foreigners often do not have inhibitions with regards to the looks of the child or the colour or even a physical disability that can be addressed.

Clearly, the Supreme Court of India too has been in favour of in-country adoptions, as was suggested by Justice P.N. Bhagwati in his judgement in Lakshmi Kant Pandey vs. Union of India. This judgement for the first time recognised that children were being ‘abandoned and surrendered’ and thus looked at regulated adoption as a measure to find them a family. It also looked at the issue of child trafficking and ways to regulate adoptions in a manner that would check such illegalities and exploitation of children.

Over the years, the Ministry of Women and Child Development too came into action upon realising that the girl child was particularly unwanted and that there were several adverse circumstances where women would rather surrender or abandon their new born if possible in the case of children born to ‘unwed’ mothers or ‘out of wedlock’. The Ministry addressed this problem by initiating the Cradle Baby scheme, where a recognised adoption agency can act as a reception centre for such women to surrender their babies. These reception centres too have been in the limelight for misusing the privilege bestowed on them as a recognised adoption agency cum reception centre to exploit women and children and make profits out of it.

A fact-finding mission initiated by the Campaign Against Child Trafficking (CACT) in the year 2005 in Tamil Nadu clearly brought out the competition among adoption agencies for getting babies from the Government’s Cradle Baby Scheme and the mal-treatment of children in the cradle baby reception centres. Several agencies have been in the news for misuse of the adoption guidelines, charging huge amounts of money as adoption fees and donations from

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2 Indian adoptions run into problems (http://www.familyhelper.net/newscky/html#india)
adoptive parents, and using the law allowing adoption of surrendered children for procuring children through fraudulent surrendered deeds. In 2001, it was the Tender Love and Care Home and the Bethany Home in Andhra Pradesh that made news on adoption scandals. In 2005, it was the Malaysian Social Service Society in Tamil Nadu and then Preet Mandir in Maharashtra that made the headlines in leading press 3.

The other situations that become prime opportunities for trafficking of children for adoption are situations of natural and man-made disasters. Our Natural Disaster Management Policy has failed to draw attention to problems of children in a situation of disaster or emergency despite reports of children being trafficked in such situations for various purposes, the recent one being the Bihar floods. Recently, the newspapers reported about the case of a riot affected Muslim family from Gujarat, who had lost their child only to be found after eight years of search in a Hindu family that claimed to have adopted him. The question here was not just of whether the adoption was legal or illegal. It was also about the fact that there are no systems in place in a situation of disaster to minimise pain and sufferings of children and their families and adopt measures to check unscrupulous incidents. At the end of the day, the situation was neither happy for the child, who had forgotten his childhood completely and treated his adoptive parents as his real parents, nor for the adoptive family that had to finally part with the child as per the court’s order. It was also not the best thing the biological parents of the child looked forward to as they could see the discomfort and pain caused to their own child for parting with someone he had become so attached to and had bonded with so closely.

In the meantime, another debate surrounding the adoption issue is that of ‘surrendered’ children. The amendment to the Juvenile Justice Act in 2000 and subsequently in 2006 too has ensured that orphaned, abandoned and surrendered children can be given up for adoption

In its 2008 report on India's children, “Still Out of Focus: Status of India’s Children”, HAQ: Centre for Child Rights highlights the issue of illegal adoptions in its chapter on Trafficking and at the same time makes an attempt to look at connected issues that pose a threat to ‘adoptions’ in India. One such issue is that of commercial surrogacy, which has been able to provide a cheaper alternative to NRIs unable to have children of their own. The report asks – “If commercial surrogacy becomes the order of the day, will the already bleak chances of such children finding a family by way of legal adoption or foster care become grimmer”?

In these circumstances, violation or denial of children’s human rights needs to be addressed with utmost attention and seriousness.

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During the recent Bihar floods, 34 lakh families were rendered homeless of which 9 lakh were children. Where are these children? There is evidence that many of these children have been trafficked post floods.
WHAT ARE THE NUMBERS?

In the scenario described above it is not just difficult, it is impossible to estimate the exact number of children who await adoption. The data on the CARA website does not include inter-country adoption figures of other licensed adoption agencies recognised by State Governments. Hence, information relating to regional variations in adoptions is not available.

<table>
<thead>
<tr>
<th>Year (Jan. to Dec.)</th>
<th>In-country Adoption</th>
<th>Inter-country adoption by NRIs / PIOs / Foreigners NOCs issued by CARA</th>
<th>Total (4+5)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>RIPAs</td>
<td>Shishu Grehs</td>
<td>Total (2+3)</td>
</tr>
<tr>
<td>2001</td>
<td>1960</td>
<td>573</td>
<td>2533</td>
</tr>
<tr>
<td>2002</td>
<td>2014</td>
<td>690</td>
<td>2704</td>
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<tr>
<td>2003</td>
<td>1949</td>
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<td>743</td>
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<td>1536</td>
<td>873</td>
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<td>984</td>
<td>2494</td>
</tr>
<tr>
<td>2008</td>
<td>1419</td>
<td>750</td>
<td>2169</td>
</tr>
<tr>
<td>2009</td>
<td>1369</td>
<td>483</td>
<td>1852</td>
</tr>
</tbody>
</table>

Source: CARA Website
At the national level, though this data does not show any specific trends, the average number of such cases registered during 2000 and 2007 comes to about 32. These figures however, do not tell much as many cases go unregistered. Also there is no law as such to book a case of illegal adoption or trafficking for adoption On the other hand, data on crime against children produced by the National Crime Records Bureau (NCRB) does not provide state-wise information of kidnapping of children for the purpose of adoption.

<table>
<thead>
<tr>
<th>Year</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kidnapping of children for adoption</td>
<td>100</td>
<td>37</td>
<td>45</td>
<td>36</td>
<td>21</td>
<td>15</td>
<td>41</td>
<td>23</td>
<td>36</td>
<td>34</td>
<td>44</td>
</tr>
</tbody>
</table>

Source: NCRB, Crime in India 1999-2007
The two-day consultation began with an introductory session addressed by Mr. Amod Kanth, Chairperson, Delhi Commission for Protection of Child Rights, Ms. Debashree Mukherjee, Secretary Department of Women and Child Development, Government of NCT Delhi and Ms. Suman Nalwa, ACP-SPUWC (Special Police Unit for Women and Children), Delhi. Amongst other guest speakers for the two days were:

- Ms. Nina Nayak (Ex-Chairperson, CWC, Bangalore and Member Karnataka Council for Child Welfare),
- Dr. Bharti Sharma (Chairperson, CWC, Nirmal Chhaya, New Delhi),
- Ms. Leena Mehta (Associate Professor, Social Work Department, MS University, Baroda, Gujarat, and Former Chairperson, CWC),
- Ms. Leila Baig (Honorary Secretary, CVARA, Delhi),
- Mr. Joseph Aguettant (Delegate, terre des homes foundation-Laussane, Kathmandu Office),
- Mr. Arun Dohle (Adopted Child associated with ACT, Germany),
- Ms. Anjali Kate (Sakhee, Pune, Maharashtra),
- Ms. Pauline Hillen (Manager, Wereldkinderen, Den Haag, Netherlands),
- Mr. Ossie Fernandes (Director, Human Rights Advocacy and Research Foundation, Chennai, Tamil Nadu),
- Advocate D. Geetha (Human Rights Lawyer and Activist),
- Mr. Asif and Ms. Ranu (Adoptive Parents)
KEY ISSUES

1. Adoption for Whom and Why?

Sanctioned by customary law and religion, previously adoption was never about protecting the destitute children or giving them a safe, loving home. Fortunately, adoption is no longer about families trying to find a legal heir for continuation of family lineage. In today’s context, it has moved beyond that to become a measure of alternative care for children in need of care and protection who are orphans, abandoned or surrendered.

The official position is that it is not just adoption, but a question of custody of the child and how a decision in this regard affects his/her well-being, that is a matter of concern for the government. Unfortunately however, a child rights’ perspective is still lacking in the implementation of alternative care models that India seeks to promote. ‘Permanency Planning’ for the child is lacking. Placement of children in adoption is being carried out to meet the needs of adoptive parents and to suit the commercial interests of adoption agencies rather than those of a child.

We have seen a great attitudinal change in the Indian families wanting to adopt and in the adoption situation in Delhi and perhaps in other states too…across board, across the social strata families have opened their hearts and their homes without any prejudice, without any question of wanting to do a secret adoption or a hidden adoption or ulterior motives such as need for someone who would look after them in old age or carry on family business or light the funeral pyre. Today we are living in an evolved society where the parents feel there is vacuum in their lives and they come forward to adopt.

Ms. Leila Baig, Honorary Secretary, CVARA, New Delhi

“It’s not just about adoption, but a question of custody of the child and how a decision in this regard affects his/her well-being”.

Ms. Debashree Mukherjee, Secretary, Department of Women and Child Development, Government of NCT Delhi

2. Lack of a comprehensive law

India does not have a comprehensive law on adoption in India, especially one focusing on the rights of the child and the responsibility of the State to ensure the protection of children from exploitation. There is also confusion regarding
adoption across religions. This is because only the personal law of Hindus allows adoption under what is known as the Hindu Adoptions and Maintenance Act, 1956 (HAMA). Indian citizens belonging to other religions use the Guardians and Wards Act, 1890 (GAWA), which allows a child to be placed under the guardianship of a parent instead of being adopted with the same rights as those of a biological child.

Further confusion was created when in the year 2000, the Juvenile Justice Act was amended to allow adoption of children in need of care and protection as an alternative to institutional care. It also opened adoption across religions, which in itself becomes an area of contention. The JJ Act does not lay down the procedure as such and nor does it clarify if it supersedes the personal laws.

The participants pointed out that this is one of the main factors that leads to unethical adoptions.

“When Lakshmi Kant Pandey case was taken up in the Court, the Court instead of looking at the specific violations, who are the perpetrators and how to penalise them or how to bring them within the framework of law and the legal system, stepped outside the jurisdiction of the judiciary and usurped the jurisdiction of legislature and started looking at the framework to be fixed with regard to the procedures to be followed in adoption. ...Out of this deviation was born something called CARA in our country, which was given some kind of a legal framework and is still in existence. But the whole process of having a comprehensive law on adoption got aborted and till date, we do not have a law, neither a discussion towards the direction of having a law on adoption.

The judgement revolved entirely around dealing with agencies involved in adoption, agencies within the country and agencies abroad, and evolved a certain procedure. Therefore, this case was a process by which children’s right to get into a comprehensive legal framework was missed and we have still not caught up with that process as such”.

Advocate D. Geetha, Human Rights Lawyer and Activist

The next question then is, what about the children who have already been adopted through an a-legal/illegal process? What are the guidelines in place to protect the rights of the child in such instances?

That a follow-up process after the child is given in adoption (a two-year follow-up post adoption – both inter and intra-country, per recent CARA guidelines) is currently not being implemented in our system is acknowledged by all concerned authorities. Yet nothing is done to check such anomalies.

“There are about 3000 crore children who are in need for care and protection and as per the Juvenile Justice Act 2000 (as amended in 2006), many such children could get a family through adoption. However, in Bihar for example, the estimated ratio of legal versus illegal adoption would be 1:50. There are serious inadequacies in our adoption system. Laws with regard to adoption need to be simplified in order to address the loopholes that pave the way for child trafficking”.

Mr. Amod Kanth, Chairperson, Delhi Commission for Protection of Child Rights
3. Failure to Adhere to Current Laws and Guidelines

Lengthy procedures have become an impediment and also a cause for concern for institutionalised children. They only further infringe upon the rights of the child. Bureaucratic apathy or court apathy subjects them to prolonged and totally unnecessary institutionalisation. Currently, we have no rules and laws to take children out of institutions and offer them a family. So the children continue to languish in these institutions. A lot of the existing legal procedures are not followed for various reasons, including lack of required infrastructure and implementation mechanisms. These include:

I. DILUTION OF THE PRINCIPLES LAID DOWN BY THE SUPREME COURT OF INDIA IN THE LAKSHMIKANT PANDEY JUDGEMENT.

Two important principles were decided upon in the Lakshmikant Pandey case. These were:

a). Only after exhausting the possibilities of adoption of a child within the country by Indian parents should any child be placed outside the country. The Court fixed a maximum period of two months for this. The only exception to this principle was the case of disabled children and children in very bad state of health.

b). There cannot be any payment involved in adoption except maintenance expenses and medical expenses incurred on the child if any.

Dilution of both these principles are visible:

- The CARA guideline, state only one month as the period for looking for parents within the country and even in that one month no one knows if there are efforts being made to look for parents in other states.

  For example if parents in Tamil Nadu want to adopt a child, whether the Delhi government or any other state is being looked at is not known. What procedures are being followed in this respect is also not known. There is no centralised list of adoptive parents available.

- Struggle for systematised and formalised inter-state Adoption Coordination Agency (ACA) coordination is yet another big hurdle in domestic adoptions. The Lakshmikant Pandey case resulted in setting up of ACAs to further enhance the efforts of the placement agencies to find domestic placements rather than inter-country placements. The ACAs seem to have an informal system where e-mail exchanges take place regarding children for whom an agency is unable to find a family locally. However, this system is not formalised and remains out of public domain. Parents in waiting should be able to access it too. Moreover, a formal exchange system would also help maintain updated information, track domestic adoptions and monitor the situation.

- A monthly income slab of Rs. 10,000 keeps away many potential parents.

- Dilution of this principle is evident in commercialisation of inter-country adoption and mal-practices surrounding it.

“Within the country means from Kashmir to Kanyakumari and from North-East to North West and so on. But we do not have a procedure today by which we can have a list of parents waiting for adoption within the country and it is just some agencies which decide whether they are able to find a family within the country or not and then they place the child outside the country”.

Advocate D. Geetha, Human Rights Lawyer and Activist
II. FAILURE OF CARA TO UPHOLD ITS MANDATE

CARA provides the framework within which adoption has to be carried out within and outside the country. It is also the authority for recognising and licensing agencies working on adoption. CARA has failed in both regards. Unfortunately there is no uniformity in any of the States on procedures, on what is allowed and what isn’t; No clear guidelines have been set in place across States. Also CARA has been faced with serious allegations of wrongful acts of licensing questionable agencies and directly or indirectly being involved in illegal adoptions and illegal procurement of babies. Clearly CARA has failed to promote and regulate adoptions and there is no comprehensive adoption programme in many states. There is also a need to look at people’s access to adoption programmes, where they do exist.

Adoptions are allowed only after a Child Welfare Committee (CWC) declares a child legally free for adoption. Such bodies need to be in place in all State districts and Union Territories, and this is not the case. Also, if a CWC is not in place, the District Magistrate (DM) shall have such powers. The unfortunate situation at the moment is that CWCs do not exist in each district as required by law. So, in the absence of these CWCs, as well as limited understanding of adoption issues, the DMs are failing to keep the best interest of the child at heart.

In the wake of such apparent failure of CARA in its mandate to ensure regulation of adoption, bring uniformity in procedures, to set effective guidelines, law needs to be written, guarantees need to be put in place; choice of parents, transparency and legality of the procedures are other important aspects that need to be worked out.

4. Adoption and Child Trafficking

The biggest challenge is that most agencies across the world fail to make the connection between adoption and trafficking. Even agencies like UNICEF, at the global level, hesitate to link adoption with child trafficking; they are rather reluctant to use the word trafficking in the case of adoption, though they do accept that children are bought and sold for the purpose of adoption.

Absence of a comprehensive, well-monitored adoption programme enables hundreds of children to be given away in adoption in informal and perhaps illegal ways.
In India, while the discussions in the Lakshmi Kant Pandey case went into the issue of trafficking and how, in the name of adoption, there are possibilities of children being trafficked and how children are suffering, the Court revolved more around the procedural aspects of adoption and did not look at the question of establishing the rights of the children in the context of trafficking for adoption.

In the wake of this lack of awareness, there are cases where children have been stolen, grabbed by the adoption mafias or just removed from the custody of their biological parents. Families register an FIR with the local police as a case of a missing child. These FIRs get documented and become some statistic somewhere. In some such cases, it has been later found that the children were placed in adoption to foreign parents through a legal process and they were living and growing abroad in a foreign country. This has created a situation where on the one hand, the biological parents who had lost their children want their children back, the rights of the children who lost their biological parents and are now with adoptive parents remain undetermined, and there is the question of the right of adoptive parents who adopted through a legal process to continue to have their children.

The common mind-set with which inter-country adoptions are promoted needs to be questioned. There also needs to be a new law on trafficking that covers all forms and purposes of child trafficking.

ARGUMENTS IN SUPPORT OF INTER-COUNTRY ADOPTION

There are several arguments made in favour of promotion of inter-country adoption:

- Inter-country adoption can help provide a better life to children. It is seen as taking children out of hell and into heaven. Those who contend this are seen as people against children and child rights.

- In India, there are no takers for certain children, even if they are for example, children with minor correctable disability. Therefore some children will never find an Indian parent and will have to be given to foreign parents, who do come forward to adopt them.

- There are hardly any numbers being placed in inter-country adoptions. In 2009, only 666 children were given in inter-country adoption as opposed to 1,852 placed in domestic adoption. The children who are going into inter-country adoptions are children who have repeatedly not been accepted by Indian families.

I would just like to emphasise and perhaps clarify who are the children who are not accepted by Indian parents. They are children with physical handicaps, children with minor to major medical problems, hair lip, hole in the heart, correctable conditions, they are older children, they are sibling groups, they are (sad to say) very dark children. In the ‘80s the demand for the male child was overwhelming, but today that no longer exists.

Ms. Leila Baig, Honorary Secretary, CVARA, New Delhi

“Adoption is not about taking people out of poverty and into wealthy situations (from rags to riches). It is providing a child a permanent and loving family”

Mr. Joseph Aguettant, Delegate, terre des homes foundation-Laussane, Kathmandu
ARGUMENTS AGAINST INTER-COUNTRY ADOPTION

Those that oppose inter-country adoption and favour in-country adoptions argue that the first choice for homes must be within the country, in a social milieu that they can identify with as they grow up; several other factors also come into play.

- How can the government allow inter-country adoption, when there are many Indian parents in waiting?
- While on one hand the linkage between the different states is poor, or simply not allowed when it comes to inter-state adoptions, on the other hand, there is a well established inter-country adoption system. This reflects on the lack of a political will to promote domestic adoptions.
- Just because the government has failed to invest in the care and protection of children, it cannot wish them away in the garb of giving children a better life through inter-country adoption. In that case the official number of 26% of India’s population below poverty line should be exported to other countries. Even the most backward states cannot justify foreign adoption on grounds of their inability to eradicate poverty.
- Inter-country adoption only promotes illegal sourcing of children. There are enough cases of inadequacies in the investigations carried out by the adoption agencies and CWCs in cases of missing children, who are later declared legally free for adoption. And with the law allowing surrender of children, illegal practices in procuring children through fraudulent surrender deeds has received a great impetus, despite steps being taken to address this menace.
- The ethics behind inter-country adoption comes to question when commercial interests take precedence over principles, making trafficking inevitable. With inter-country adoptions bringing in much higher revenue under the pretext of processing fees, the child is being regarded as a mere commodity.
- Can an agency of the Government of India put a price tag on a child? Is it not the state’s responsibility to take care of its children? Besides a fee for processing the adoption, expenses relating to a child’s care in an adoption agency is

“This has been quite successful for the last five years and our friends from Andhra Pradesh share their experiences. Today if a person wants to adopt a child from Andhra Pradesh, the waiting period is two years as there are no children available. This is because the sourcing itself is cut off, where children cannot be placed as they please to anybody they want to. The illegal sourcing or trafficking has been brought to an end. When it is so successful in one State, why can it not be followed in other states? This has to be examined”.

Advocate D. Geetha, Human Rights Lawyer and Activist

“If you want to break the backbone of trafficking, you have to keep a check on inter-country adoption”

Mr. Ossie Fernandes, Director, Human Rights and Advocacy Research, Tamil Nadu

The state of Andhra Pradesh successfully disproves the myth that Indian parents are not willing to adopt or not willing to specifically adopt a girl child or a dark child. Andhra Pradesh has banned inter-country adoptions from the State...All adoptions are totally state adoptions i.e. anybody who wants to adopt has to apply through the state and there is no private agency operating. Today the agencies/institutions in Andhra Pradesh have only the right to provide care and protection and not adoption. Placement for adoption is a responsibility lying only with the state. As a result, currently, there are no children available in the state for adoption but there are parents waiting to adopt. So the Andhra Pradesh experience stands example to the fact that the whole myth of Indian parents not willing to adopt or not willing to adopt a girl child or a dark child is not true.
also charged, particularly from foreign nationals wanting to adopt from India. It is often argued that parents who have their own biological children invest in their medical care and such other expenses and therefore those who wish to adopt must also pay up for the quality care of the child they wish to adopt till such time that the adoption comes through. Charging PAPs to ‘ensure quality care’ makes no sense as that is precisely what the state should be doing, given that children in adoption agencies are children in need of care and protection and a primary responsibility of the state.

• Today, we are promoting inter-country adoptions in the name of children with special needs not finding Indian parents. Little have we tried and even less is the available documentation with respect to our efforts in this regard. There are people living with disabilities who want to adopt children, but they will not be considered as PAPs (prospective adoptive parents) because adoption for us is about placing children in a materialistically more comfortable place than ensuring that the child gets a loving and affectionate environment and remains in the same cultural milieu, where the child’s needs are best understood and his disability is truly appreciated. Also, if the state takes care of the treatment of kids with correctable forms of disability, we can certainly ensure these children a home in their own country.

• The ethics behind inter-country adoption comes to question when commercial interests take precedence over principles, making trafficking inevitable. With inter-country adoptions bringing in much higher revenue under the pretext of processing fees, the child is being regarded as a mere commodity.

**THE PARTICIPANTS CAME TO THE FOLLOWING CONCLUSIONS:**

**Dishonest and Illegal Practices Continue**

There can be no denial of the fact that illegal practices are going on in the name of adoption across the States. Prosecution of offenders in cases involving adoption and child trafficking is far more difficult in the absence of a comprehensive law. The existing legal framework and various dichotomies within that framework has only led to further vulnerability of the child to multiple exploitations. Ensuring ethical and legal adoptions in the best interest of the child is the way to check trafficking. Improper paper work and corruption make things worse. Making the implementing agencies transparent and accountable is therefore critical.

Even the Supreme Court of India acted on the petition in Lakshmikant Pandey case, which drew attention to how children given in adoption to foreigners were found ending up as beggars or in shelters in those countries. It would be dishonest and unreal to assume that post Lakshmikant Pandey judgement, illegal adoptions or adoptions that have led to exploitation of children have stopped, as there is enough evidence to this effect.
“In Tamil Nadu there are many cases where the biological parents have gone to the Court with the plea that they want their children back and now the Court has ordered an inquiry by the CBI, which is pending with them. In an international situation, the CBI also has to go through various procedures wherein they have to get the Interpol coming in, get the permission from the Government to go outside the country, interact with another agency in another country. With all these procedural delays nothing has been determined so far. …

What the agencies are doing is that they get some XYZ to execute a surrender deed saying that I am the mother of so and so and with that surrender deed the agency goes to the Court saying that this is a surrendered child. The Court does not look at the surrender deed because it does not call the people who executed the surrender deed and ask whether this is the child born by those claiming to be the biological parents; there is no DNA test which is being conducted and probably we should demand for that”.

Advocate D. Geetha, Human Rights Lawyer and Activist

The root of the problem lies in illegal sourcing of children

All agencies are deeply involved in accepting surrendered babies or procuring babies through brokers.

- The most common form of illegal sourcing thrives on exploiting the most vulnerable population of India – the poor.
- Recent fact-finding has brought to light the big competition among agencies to get babies from the government under the cradle baby scheme. Investigations have shown evidence of mothers either being coerced, tricked or surrender documents simply forged in order for brokers to acquire the babies through what appears to be a willing surrender. Currently, there are no DNA testing requirements in place.
- In Orissa, a study has been done on informal trafficking i.e. trafficking from hospitals/nursing homes. This study established that the hospitals have a whole list of parents or contact persons to whom they hand over abandoned children. Out of the children abandoned in the hospitals, only 10 per cent are coming to the recognised childcare institutions whereas 90 per cent of them go to the non-recognised agencies. Hospitals definitely need to be monitored
- Also, all hospitals need to ensure 100 per cent birth registration

“Percentage of families living below poverty line (BPL) in India is 26 per cent, but in UP it must be around 30-40 per cent. So there is bound to be lot of abandonment and unwanted children. There are 60 adoption agencies in 6 districts. Where do these children go?”

Ms. Nina Nayak, Ex-Chairperson, Child Welfare Committee
Bangalore and Member, Karnataka State Council for Child Welfare

“In Tamil Nadu the scrutiny officer was able to show that the signatures of parents obtained in at least 30 surrender deeds were identical and those of the notary public who has to countersign all such documents was also identical. So they had a common notary public and in one agency the same people were signing for the surrender signatures. And this is not just in Tamil Nadu”

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Mr. Arun Dohle (Adopted child associated with ACT Germany)
• Only 20 per cent of our districts have a CWC. Lack of CWCs in many of the districts also leads to child trafficking through not only the non-licensed agencies but licensed agencies and many of the hospitals and/or childcare centres as well.

• Also, members of Coordinating Voluntary Adoption Resource Agency (CVARA) or Adoption Coordinating Agencies are adoption agencies themselves. The membership is therefore biased. Such a conflict of interest further highlights the vulnerability of the child to exploitation. Several case studies have brought to light the possibility of numbers of children being brought into the adoption process being fudged.

5. Additional Gaps and Challenges

LACK OF STATE RESPONSIBILITY

Legal activists are of the view that a close reading of the Lakshmi Kant Pandey judgement (AIR 1984 SC 469) in entirety reveals how it has failed or even neglected to look at the responsibility of the State vis-à-vis the rights of children because it does not fix a responsibility on the State agency. It has evolved a different procedure outside the State agency and formed an independent institution called CARA, where there is no major responsibility of the State. In fact, CARA is a very loose formation of independent agencies.

States have a responsibility to take care of their children, to be the primary duty bearer, and to be accountable to these children. The number of surrendered children is four times higher than abandoned children. Instead of following a policy of marginalising the already marginalised, the State should create alternative ways to alleviate the socio-economic distress amongst the most vulnerable population. Support systems and services for such children must be in place so that families can keep their children instead of abandoning them. Many, like Ms. Pauline Hillen, Manager, Wereldkinderen, Den Haag, Netherlands feels “…the aim of adoption should be that fewer children should have the need to be adopted, especially inter-country” The State’s three important intervention strategies should be – prevention of abandonment, re-integration of children within biological families, and to promote and support foster care.

This is very important in cases of children with special needs as well. These children have just become a new market, a new brand – children who can be treated in their own country and not treated there, but merely exported through inter-country adoptions.

LACK OF DATA AND DATA-MANAGEMENT SYSTEMS

It is virtually impossible to obtain statistics on the issue of adoption and child trafficking. What is available is largely in the form of experiences, case-studies, fact-finding reports, news clips, papers written by some people.
Despite demand for state-wise information on adoptions, CARA has failed to provide such information for public consumption. It has also failed to provide information about the number of Indian and Foreign parents in waiting and number of children in waiting per adoption agency in different states.

The number of children going into illegal adoptions remains untracked every which way. Time and again officials have pointed to the need for an integrated data-base and MIS, which could be used for tracking adoptions as well as child trafficking. Customised data-base and data-management systems are therefore the need of the hour to assess the situation of children falling out of the safety and security net and to trace them out. This also calls for convergence between various Departments and Government bodies such as the Child Welfare Committees, various state adoption agencies, CARA and the Police. There is the missing child record in the police station but the same child goes through the Social Welfare Department, the CWC, gets a destitute certificate and then gets placed before the Court.

**THE NEED OF ADOPTED CHILDREN TO SEARCH FOR ROOTS CALLS FOR ATTENTION**

Many adoptee children are found to be in search for their roots. However, countries like India have failed to provide assistance to these adoptee children as root search is not part of any adoption programme and has not received encouragement from the adoption agencies either. Indeed root search implies proper documentation in the sending country that would enable it. Given that children are sourced illegally and that when a parent surrenders a child, no efforts are made to ensure a proper surrender with necessary records, root search remains an unattended area. There is a lot of pressure now on the government and CARA to include root search in the new guidelines being framed on adoption. This has come about as a result of litigation by adoptee children searching for their roots as well as NGOs who have exposed illegal surrenders being encouraged by certain adoption agencies.

Ms. Pauline Hillen and her organization has been facilitating adoptions for 30 years and has so far received 35,000 children from 20 different countries in the world. They have found that almost all the adoptee children come back to search for their roots. It is essential that at that stage these people are able to find their birth parents in their country of origin. Pauline Hillen and her organization who work towards helping such adopted children trace their roots find that very poor documentation makes it very difficult to trace parents in India. Their experiences of trying to trace parents has led them to believe that there is a lot of malpractice involved in adoptions. Why else is there no proper paperwork available?

Over the years, based on its experience with adoption and the malpractices involved in it, her organization has shifted its focus from facilitating adoptions to three important intervention strategies – prevention of abandonment, re-integration of children within biological families, and to promote and support foster care in other countries.
She raised the following questions:

• What would constitute trafficking?
  When a mother is traced finally and she says that she did not realize that she would be giving away her child for ever because there was no proper counseling for her through which procedures were explained to her – should that too not be seen as trafficking?

• Why was the emphasis not completely on ensuring in-country adoption?
  Referring to the CARA guidelines Ms. Hillen pointed out that every Indian adoption agency is supposed to place 50 per cent of children into adoption within the country. Foreign adoption is supposed to be an option only after all possibilities for domestic adoption have been exhausted. When partner organisations of adoption agencies source children, they can never tell if this procedure has been followed.

• Why are the adoption agencies not maintaining proper documentation? Are they part of the trafficking racket?
  Welderkinderen’s experience has shown that when they get back to the partner adoption agencies, whom they trusted, for information in order to help an adoptee child trace his/her roots, they find a lot of resistance which makes them suspicious. The organisation wants to know everything because it is important for the adoptees; it is important for them to know where they came from and whether they were sold.

• What should the reunion with the biological/birth mother be like?
  Welderkinderen is working with Columbia, Indonesia, Korea, Philippines and Thailand and setting up the root search programme in some of these countries.
  It has been found across the world that the reunion between the adoptee child his/her biological mother is healing experience for both for both. But, because of social taboos that women face, particularly in countries such as India, Welderkinderen prefers to help all adoptees search for their roots provided the biological mother’s privacy is guaranteed.
Adoption is still at a very nascent stage in our country. Several reasons are currently contributing to a general failure of adoption as a measure of alternative care for children in need of care and protection in India today. There is currently no comprehensive law on adoption, a topic still subject to personal laws. Also, a lot of the existing legal procedures are not followed for various reasons, including lack of required infrastructure and implementation mechanism. While the Juvenile Justice (Care and Protection of Children) Act, 2000 followed by its amendment in 2006 do provide for adoption of orphaned, abandoned and surrendered children, it is only paper legislation. This law fails to lay down the procedures to be followed and leaves that to CARA guidelines. CARA, unfortunately, has not only failed in its mandate to ensure regulation of adoption and bring uniformity in procedures, even its guidelines fail to guarantee children their right to protection in all situations.

When procurement of children (often leading to illegal adoptions) has its basis in exploitation of any kind, especially the outright sale of children, it implies child trafficking. Even if the adoption that results from such sale is legal, the fact of sale clearly makes it a case of child trafficking.

There is also a need to address concerns regarding sourcing, inter-country adoptions, recognition and licensing of placement agencies, and blatant gaps in the system today that are used to enable taking away of babies from parents, agencies and even hospitals. There needs to be more inter-face between the Executive and the Judiciary as well.

It is worth noting that there is a slow shift in the adoption scenario today, where we are looking for a family for a child and not a child for a family. A rights-based approach – an acceptance of the legal and moral obligations of the state

“There is a shift in the adoption scenario today, where we are looking for a family for a child and not a child for a family. A rights based approach to adoption as a form of non-institutionalised care for children who deserve and can have a family, must be ensured. Monitoring the system and holding it accountable is a critical element of it”.

Dr. Bharti Sharma, Former Chairperson, Child Welfare Committee, New Delhi
and its institutions to fulfill its duties and responsibilities towards children in the best interest of the child – must govern all actions concerning children, including efforts to make adoption a form of non-institutionalised care for children who deserve and can have a family.
The State must take responsibility for its children, who are arguably the most vulnerable of its citizens. There is need for an adequate and functional child protection system in the country. The present system is neither comprehensive nor functional in all States even in its existing form. This has failed to ensure care and protection for children in difficult circumstances.

Instead of creating adoption agencies, it is important to create support systems for poor families than following the state policy of marginalising the already marginalised.

It is important to work towards putting in place a National Policy Framework on Adoption, which at present is lacking. It is this framework that should form the basis of a national law on adoption.

There is need for greater advocacy for not just a national law on adoption, but also a law on child protection, including child trafficking in all its forms and purposes.

CARA guidelines and the very functioning and structure of CARA needs a careful re-examination since evidence clearly suggests that this agency has failed to fulfil its role.

Since the Ministry of Women and Child Development is drafting new CARA guidelines, it must hold wider consultation with civil society groups before finalising the guidelines.

In order to promote and ensure ethical domestic adoptions, it is imperative to stop inter-country adoptions as a strategy for some years. There were two views on this – one that wanted a complete ban on inter-country adoptions as a matter of principle and another that would rather put a moratorium on international adoptions for five or ten years, till such time that domestic adoptions become the norm. Examples of countries that have put a moratorium on adoptions existed and so did example of the state of Andhra Pradesh. After discussions, the majority of the participants agreed on campaigning for a moratorium on inter-country adoptions for ten years.

Lengthy and cumbersome adoption procedures too have failed to ensure ethical domestic adoptions. Adoption procedures thus need to be streamlined, with checks and balances, for instant checks on the money flux in all adoptions, particularly international adoptions.

It is important to ensure that all adoption agencies, whether or not funded by the State are registered under Section 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006. This is necessary to put in place a child tracking system, as registration under the JJ Act would imply sharing of information regarding number of children admitted by the various institutions on a regular basis, those restore to their families, those placed in foster care or adoption etc.
• Government must be able to provide state-level data on adoptions (in-country, inter-state and inter-country), number of parents in waiting, number of children in waiting, number of abandoned/surrendered children received by adoption agencies, hospitals (including private hospitals and maternity/nursing homes), police and Child Welfare Committees (CWCs).

• It is important to ensure that all surrender deeds are signed before the Child Welfare Committee (CWC). If a parent surrendering a child is unable to go to a CWC, members of CWC should reach them at the time when the surrender deed is being signed. This will help check mal-practices surrounding fake surrenders and will also help maintain a record of such cases.

• Orphaned, abandoned or surrendered children with correctable disability must be treated within India before the state thinks of putting up these children for adoption.

• Charging fee in the name of ensuring quality care should be stopped. If fee is to be charged for processing the adoption process, it must get deposited in the court that finalises the adoption, than with the adoption agencies.

• Trafficking of children from nursing homes and hospitals needs to be monitored and checked. There is no record of births and movement of children in such institutions. It must become mandatory for these institutions to make all such information available to the public eye. At the same time, all hospital staff needs to be trained on child protection, including CARA guidelines relating to adoption, the juvenile justice system, trafficking and the role of hospitals in such situations.

• There is need for convergence between the police and the social welfare or child welfare departments so that data-base of missing children can be compared with children who come up before the CWCs for adoption. Since photographs and description of missing children/ lost and found children is put up by the police on the missing children website, CWCs need to check them before declaring any child legally free for adoption.

• Last but not the least, India must ensure 100% birth registration.
The money involved in inter-country adoptions has led to several malpractices. Since inter-country adoption allows agencies to charge a fee and seek donations (money) from prospective adoptive parents for the upkeep of the child till the adoption takes place, the greed for dollars has led to a flourishing adoption racket. Also, as a result, very little efforts are made for domestic adoptions and after sometime, agencies tend to suggest that the child is unable to find a family within the country. States do not link up to ensure that if a child does not find a family in one state, efforts are made for the same in other states. Over the years, with a couple of media stories on the adoption rackets and active involvement of NGOs and campaigns in monitoring the situation, the official number of inter-country adoptions has indeed gone down from 1298 in 2001 to 666 in 2009. Clearly, India is capable of taking care of its children! Why should it then place any of its children in inter-country adoption?

Moreover, the argument given by CARA and adoption agencies that children with disability seldom find an Indian family stands no ground. There is no data to suggest so. In fact many children with correctible disability have been placed in inter-country adoption so that the need to invest in treatment of such children can be evaded.

Illegal adoptions and large-scale trafficking of children for the same, failure of existing rules and regulations to check such commoditisation of children, large number of Indian parents and children awaiting adoption, and most importantly, the business interests of the adoption lobby turning it into a racket, demands immediate moratorium on inter-country adoption.

It was thus resolved by a majority vote that India should put a moratorium on inter-country adoptions for 10 years.

This resolution demanding for a moratorium of 10 years on inter-country adoptions was argued and discussed at length. It was agreed upon by all participants that such a resolution was required both as a principle and as a strategy to put a check on malpractices involved in the adoption sector and to ensure that all adoptions are in keeping with the principle of best interest of the child, as contained in the UNCRC.
ANNEXURE 1

ROOTS WERELDKINDEREN

ROOTS Wereldkinderen
• General questions
• Requests for search
• Tours to motherland

ROOTS Wereldkinderen
• General questions
• Requests for search
• Tours to motherland

General Questions
• Questions about the adoption file
• Questions for the institutions involved in the native country

For whom?
• Adoptees
• Adoptive parents
• Biological parents
Requests for Search

Stage 1:
- Interview with Social Worker at Wereldkinderen
- Study of the Rootsfile

Stage 2:
- The search

Stage 3:
- Visit to motherland and meeting with relatives

For whom?

Adoptees (also if not adopted through Wereldkinderen)

Where?

Wereldkinderen would like to make search possible in all native countries, provided that the biological mother’s privacy will be guaranteed.

Obstacles?

- The vulnerable position of women and taboos on women’s sexuality
- The provision of information at the agencies in the native countries is limited or unobtainable

Searches through Wereldkinderen in 2008

- Brazil
- Colombia
- Indonesia
- Korea
- Philippines (in the making)
- Thailand (in the making)

Roots Tours

- Meeting the biological family
- Discovering the native country
- For adoptees and their adoptive relatives or partners
**Principles**

- Integrity and discretion towards the biological relatives
- Professional preparation of the adoptee, adoptive parents and biological relatives
- Counseling by professional during the meeting

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**Questions?**

- Roots
- Ethiopia
- Haiti
CHILD TRAFFICKING OR ADOPTION?

Child trafficking or Adoption?

Status: Preet Mandir

- The Mumbai High Court allowed Preet Mandir to continue its adoption work. Although the court cases are still pending and not concluded
- Cara directly renewed the licence
- The Danish Investigation found nothing wrong. But based their findings only on CARA’s findings.

Status Malaysian Social Service

- The Danish Report clearly pointed out that the fees paid by Nordic agencies were far in excess to what was allowed by the CARA guidelines
- Priyadarshani is still licensed for ICA

- The Dutch investigation still waits for the Indian investigation to be concluded
- Only in December 2008 the CBI request has reached the Netherlands
- Only 4 cases are investigated.
- The Dutch agency Melling continues to work
Status Madras Social Service Guild
- Madras Social Service Guild is still licenced to do In-Country Adoptions
- The Rollings Case is already filed in Court

Status Chaya’s Case
- The Case is since 2006 pending in the Bangalore High Court.

Status Tender Loving Care
- Sister Theresa was convicted
- She continues to run the orphanage
- Fatima still waits to see her daughter

Status Sanjeeva Rao (ASD)
- He was freed by the Court from all charges

Missionaries of Charity (Delhi)
- Seema Knuth case: stolen child was returned by the adoptive parents
- More cases are questionable
- CARA never reacted
- MOC is nicely continuing its adoption work

CHSF INDIA COST
- Application Fee: 545 $
- Adoption Study: 3000 $
- Agency Fee: 5400 $
- India Child Care: 3500 $
- Aid to Social Service projects in India 6000$
- Government Processing: 1125 $
- Total: 19,600 $$
Market in Children?

- Demand is very high
- Adoptive parents spent easily 20,000 $ for a child
- David Smolin explains in his article that Childtrafficking in the context of Adoption does legally rarely exist.

UNCRC

- Article 20
  - 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
  - 2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
  - 3. Such care should include, inter alia, foster placement, adoption or other permanent placement in a family or in any suitable manner be cared for in the child's country of origin;

Art. 21 b

- (b) Recognize that inter-country adoption may be 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;

Hague Convention

- Preamble: Recognizing 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.

Exporting Children???

- Can India not take care of 1000 Children per year??????
- Are we not worth it?
- Or should India Export 10,000 Children???

Regulation?

- ‘...I am convinced that these Conventions, Regulations and Guidelines are not appropriate instruments because they do not address the main concerns... Instead of taking away threats, it takes away transparency and causes a mystification of reality. The more adoption is regulated and monitored, the more politically correct objectives get distanced from daily practice... The transparency of surrender and adoption procedures is obscured by the taboo on the financial component of adoption...’ [1]

[1] Once a mother; Pien Bos; 2007; page 241
ACT!

- India has Hague Compliant System since 1995
- India can make a DIFFERENCE
- Be an example for other countries
- The "Circus" is now moving to Africa
DEVELOPING A RIGHTS-BASED APPROACH FOR ANTI-TRAFFICKING ACTIONS IN SOUTH ASIA

Developing a Rights-based Approach for Anti-trafficking Actions in South Asia

Project Duration: 1st March 2006 – 28th February 2009

The Overall Objective of the Project

• To contribute to the development of good governance on the issue of trafficking in women and children at national and regional level in South Asia (Nepal, India and Bangladesh), by creating a congenial environment to effectively hinder the supply and demand dynamics of trafficking across the borders as well within the countries.

Specific Objective of the Project

• The project will contribute to promote a rights-based approach in the development of the legal and social measures taken to combat internal and cross-border trafficking, with a particular attention to the rescue, recovery and rehabilitation of the victims.

Countries Covered

• Bangladesh
• India
• Nepal
**Bangladesh**
International Partner Organization: Tdh-Italy, Tdh-Netherlands
National Partner Organization: Jagorani Chakra Foundation

- Project Targeted Districts:
  - Kurigram
  - Dinajpur
  - Rangpur
  - Jessore

**India**
International Partner Organization: Tdh-Suisse; Tdh-Germany
Working area and National Partner Organizations:

- New Delhi HAQ
- Bihar (4 Districts)
  - Balsakha
  - Boomikha Vihar
- West Bengal (3 Districts)
  - Jabala
  - WIF
- Orissa (9 Districts)
  - CPSW

**Nepal**
International Partner Organization: Tdh-Lausanne
National Partner Organizations:
- Center for Legal Research and Resource Development
- Kathmandu School of Law

- 28 Districts

**Diagram**
- RESULT 1: Humanization of anti-trafficking legal framework with international standards
- RESULT 2: Strengthening of local institutions to develop a rights-based approach to A.T. interventions
- RESULT 3: Awareness campaigns and services to the survivors. The approach is preventing human trafficking
ENSURING PROTECTION TO VICTIMS OF TRAFFICKING:
A MEMOIR FROM A MAGISTRATES’ CASE DIARY

Dr. Leena Mehta

Methodology: Case Study

- A case is a unit of Human Activity embedded in the real world
- This can be studied or understood in its context
- Which exists in here and now
- That merges with its context so that precise boundaries are difficult to draw

Bill Jinnen quoted by Prof TSN Pitali, 2005

Methodology: Case Study

- Repeated interviews
- Participatory Observation
- Collateral Interviews of
  - Father, Grandmother
  - Staff members & Peer inmates of Protection Home
  - Police Constables
  - Case Worker
- Secondary source data
  - Case files & records
  - Media reports
  - Paintings by client
**Focus of Case Study on:**

- The process and direction of change in the clients’ behavior
- The Juvenile Justice Systems’ response
- At times change induced by the author herself as a part of the system

**Media’s description of the case…**

*Landmark decision may help change her destiny*

From Resistance… to Acceptance

**Process routinely followed so far was…**

- Case reported to the police
- Order by JWB to admit in Observation/Protection Home
- Identify the parents / guardians
- Return/Repatriate custody to parent mechanically
- Psycho-social assessment/treatment/rehabilitation usually neglected
- Victims sent back to their same unsafe & vulnerable environment
- So, the cycle of victimization continues…

**The difference in approach…**

**Assessment**

- Careful observation, interviewing
- Using non-conventional resource agencies
- Active involvement of civil society
- Special attention to unusual behavior for proper assessment

**The difference in approach…**

**Intervention**

- Strong rapport, assured confidentiality
- Genuine concern, observe clients’ pace
- No undue pressure to reveal details

**Use of Social Work techniques**

- Case/Group-work/Art therapy
- Client given opportunity to express her talents
- Protection from HR violations
**Drawings by the client...**

- Clients' imaginary telephonic conversation with the author... Seeking emotional support
  - "Hello Leena Madam!"

**Systemic Changes Introduced...**

- Improved system record keeping and documentation
- Tapped and used indigenous resource system, e.g. Caste-Community
- Systematized assessment, intervention, rehabilitation process
- Sensitized Human Resource within the system to shirk indifference and respond more positively and proactively
- Made use of technological advancements-e communication
- Ensured transparency by establishing dialogue with all stakeholders and taking them into confidence

**Rehabilitation**

- No routine order of repatriation
- Home environment found unsafe, parent expressed inability to protect child's interest, thus,
- Conditional release to ensure child's right to protection, safety and education
- Resistance of System + Community and negative interpretation of media was converted into wholehearted support and cooperation
- Protection offered to other five siblings in similar vulnerable conditions

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4th INTERNATIONAL CONGRESS ON WOMEN WORK AND HEALTH, NEW DELHI, INDIA
27-29 NOVEMBER, 2006

**Thank You!**

ENSURING PROTECTION TO VICTIMS OF TRAFFICKING: A MEMOIR FROM A MAGISTRATES' CASE DIARY

Dr. LEENA MEHTA
“CANDLES IN THE WIND” – MISSING CHILDREN

Sylvia Mao & Dr. Leena Mehta, Faculty of Social Work

Rationale
- Across the country, on an average 120 children go missing per day.
- 44,000 children go missing every year.
- 11,000 are never traced.
- In Gujarat, 136 children were kidnapped in 2007. [Bhavnagar-27, Kutch Bhu]-27, Anand-26, Ahmedabad-24

Aims and Objectives
- Generate awareness on the phenomena of missing and sexually exploited children
- To prevent, protect and intervene in cases of missing children
- Inform the stakeholders of the various measures that can be taken to tighten the system.

Convention for the Rights of the Child, 1989

The right to be protected:
- from economic exploitation and harmful work
- from all forms of sexual exploitation and abuse
- from physical or mental violence
- children will not be separated from their family against their will.
**Article 34**
* States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For those purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
  (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
  (b) The exploitative use of children in prostitution or other unlawful sexual practices;
  (c) The exploitative use of children in pornographic performances and materials.

**Article 35**
* States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

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**The Constitution of India**

- **Art. 21.** Protection of life and personal liberty.
- **Art. 23.** Prohibition of traffic in human beings and forced labour.
- **Art. 24.** Prohibition of employment of children in factories, etc.

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**Juvenile Justice Act, 2000**

Missing Children are covered under the category of "children in need of care and protection"

**Section 63 :** The creation of juvenile police units to look into cases of missing children

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**Juvenile Justice (Care and Protection of Children) Amendment Act, 2006.**

- Mandatory for the states to set up Juvenile Justice Boards and protection homes at district levels.
- There should be a child welfare committee in each district of the police.

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**Police Intervention**

- Publishing of the picture of the missing child in newspapers.
- On television
- Railway stations, inter-state bus stops;
- Railway Police alerted
- Details circulated in the Prevention of Crime Branches in India.

- The Supreme Court ordered a multi-task force to trace missing children in all states.
- It has been six years since that order, and the states are yet to respond.
Poonam Lal Case, 1988
- Poonam Lal, a 17 yr old went missing in 1988
- Mother Pushpa Devi and father Hori Lal moved the Supreme court for help
- Supreme Court issued directives to track missing children
- She was traced 10 years later.

Renuka Shinde and Seema Gavit
- Renuka Shinde and Seema Gavit kidnapped 14 children 1990-1996
- Killed 10 of them.
- Used the children for thefts and begging.
- In 2007, the Supreme Court upheld death sentences for the two women.

Nithari killings, Dec 2006
- 38 missing cases between 2004-2006 in Noida
- The skeletal remains of 20 children in Dec 2006 discovered from the accused’s house
- Sexually tortured and killed
- “Small and routine incidents” says Uttar Pradesh Public Works Department Minister Shivpal Singh Yadav.

Researches
- The National Crime Record Bureau (NCRB): cases of kidnapped 3196 for the year 2005. The number of missing children below 18 is only 66.
- The United Nations Office on Drugs and Crime (UNODC): India is a top source, transit and destination country for human trafficking.

National Human Rights Commission Study
  - Maharashtra yearly average: 13,881
  - Delhi: 6,227
  - Madhya Pradesh: 4,915
  - The average number of children “missing” annually 44,476 — 122 each day
  - Average of 11,008 children remains missing.

Baroda
- 2002-2006: a total of 289 missing children
- 209 children found either by the police or returned back on their own
- 80 still missing.
- 10 of these children between 1-10 years of age
- 70 children 11-18 years of age.
Facts and Figures: 2006-07

- The majority of the missing children: 15-18 yrs.
- 52 children missing between the ages 15-18.
- 2 missing children in the ages between 5-9.
- 3 missing children between the ages 11-14.

- 33 missing females as compared with 25 males.
- Females still missing are between 15-18 years of age.
- The majority of the missing children were runaways, returned home on their own.
- 44 found and 14 still missing.

Prevention Measures

- Life Skill Education for Children
- Capacity building of parents, schools and communities
- Local and national networking
- Child protection is a shared responsibility of government, family, community, professionals, and civil society

Control Measures

- Special squad to investigate missing cases;
- A centralized police information network
- Special Beat Policemen at railway stations and bus depots to spot children in distress
- Provide adequate funding for program development, training for practitioners and the police.

• Broadcast special child protection messages through talk shows, news broadcasts, educational programmes, etc.
• Disseminate information regarding services available for children in distress
• Print and disseminate Information, Education and Communication materials like Posters, Pamphlets/handbills, Booklets, etc. on child protection issues
References

• National Crime Bureau of India
• Prevention of crime, Baroda City Police
• www.unicef.org
• www.n-cat.com
• www.ungift.org
• Indian express
• Times of India
• CNN

Dedicated to all the Missing Children-
May you find your way home soon

Thank You
ADOPTING THE RIGHTS OF THE CHILD

Key Findings

Below the mark
A few child centres are up to standard, offering acceptable services to children in need. However, the quality of care and protection in many centres is substandard and is not provided in the best interests of the child.

Playing catch-up
Although monitoring of child centres has improved, it is still not satisfactory. Monitoring is not systematic (one-third of centres have never been visited). The absence of monitoring in rural areas puts children at risk of abuse.

Abandoned by the system
The majority of children surveyed have living relatives from whom they have been separated, these children have often been abandoned by the child protection system rather than by their parents.
Further resources:

www.childtrafficking.com
Run by Terre des hommes

Schuster Institute for Investigative Journalism
www.brandeis.edu/investigate and
www.adoptionproblems.org

Check the interactive map.
**ANNEXURE 3**

**NATIONAL CONSULTATION ON COUNTERING CHALLENGES IN ADOPTION: COMBATING CHILD TRAFFICKING**

10-11 January 2009, Jamia Hamdard, New Delhi

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