



ADOPTING

the rights of
the child

A study on intercountry
adoption and its influence
on child protection in Nepal

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© United Nations Children's Fund (UNICEF) August 2008

ISBN: 978-9937-2-0792-8

Terre des hommes Foundation (Lausanne, Switzerland)

Jhamsikhel, Patan

P O Box 2430

Kathmandu, Nepal

Websites: www.tdh.ch, www.tdhnepal.org, www.childtrafficking.com

UNICEF Nepal Country Office

PO Box 1187

Kathmandu, Nepal

<http://www.unicef.org/infobycountry/nepal.html>

Members of the Steering Committee (SC)

Anand Tamang, CREHPA; Andrea Koller, Terre des hommes; Bhanu Pathak, UNICEF; Joanne Doucet, UNICEF; Joseph Aguetant, Terre des hommes; Lakshmi Prasad Dhakal, then Under Secretary, Ministry of Women, Children and Social Welfare, presently Joint Secretary, Ministry of Physical Planning and Works; Moni Shrestha, CREHPA; Muna Basnyat, Terre des hommes; Radha Gurung, UNICEF; Ramesh Adhikari, CREHPA; Shekhar Devkota, CREHPA

Convenor and Editor

Joseph Aguetant, Delegate, Terre des hommes Foundation (Nepal)

Project Coordinator and SC Chairperson

Andrea Koller, Terre des hommes Foundation (Nepal)

Principal Researchers

Anand Tamang, Director, CREHPA, Kathmandu anand@crehpa.wlink.com.np

Moni Shrestha, CREHPA, Kathmandu

Technical Supervisor

Marlène Hofstetter, Head of Adoption Department, Terre des hommes Foundation (Lausanne, Switzerland)

Language Editing: Susan Sellars-Shrestha susansellars@hotmail.com.

Design and Printing: Designed and processed by; PowerComm, 5552987

Photographs: Cover © Achinto Bhadra, Sanlaap, Tdh from the project *Another Me* Transformations from pain to power. See www.anotherme.org | Other photographs © Sylvain Monnard, Tdh | © UNICEF

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FOREWORD

by the UNICEF representative in Nepal

The best interests of the child must be the guiding principle for all those working with children, no matter how emotive or complex the issue. This principle is the essence of the Convention on the Rights of the Child, which Nepal has ratified. Adoption has always been a sensitive issue, with opinions often strongly polarised for or against intercountry adoption. The authors of this study are not trying to make a case either for or against intercountry adoption. It is simply an attempt to examine the situation in Nepal impartially, bearing in mind the best interests of the child.

The Convention on the Rights of the Child states that every child has, as far as possible, the right to know and be cared for by his or her own parents. Recognising this, and the value and importance of family in a child's life, both UNICEF, Terre des hommes Foundation and other partners believe that alternative means of caring for a child should only be considered when a child's family cannot be traced or the family is unavailable, unable or unwilling to care for him or her.

This study indicates that adoption in Nepal does not always take the best interests of the child into consideration. For instance, only four out of every hundred adoptions are domestic adoptions. Many of the children put up for adoption are not orphaned in the true sense of the word but are separated from their families. Siblings, even twins, have been separated. The study finds that the standards of care, protection and services in many child centres do not fully safeguard the human rights of the child.

What Nepal needs is adoption legislation that is in line with international standards and safeguards the rights of the child. It should make provision for alternative care for children who have lost one or both parents, and cannot be raised by family members or relatives. Institutional care should be used only as a last resort

and as a temporary measure. Intercountry adoption is one of a range of care options that may be open to children who cannot be placed in a permanent family setting in their country of origin, it may sometimes be the best solution. In every case, the best interests of the individual child must be the guiding principle in making a decision regarding adoption. It should not be guided by the interests of those working with children, or others who profit financially from organising intercountry adoptions.

Over the past 30 years, the number of families from wealthy countries wanting to adopt children from other countries has grown substantially. At the same time, a lack of regulation and oversight, particularly in countries of origin, coupled with the potential for financial gain, has spurred the growth of an industry around adoption, in which profit, rather than the best interests of the child, takes centre stage. Abuses include the sale and abduction of children, coercion of parents, and bribery, as well as trafficking by those whose intentions are to exploit, rather than care for, children.

Many countries have recognised these risks and have ratified The Hague Convention but Nepal has not yet done so. We urge Nepal to adopt this international legislation which is guided by the following principles: (i) that adoption is authorised only by competent authorities; (ii) that intercountry adoption enjoys the same safeguards and standards that apply to national adoption; and (iii) that intercountry adoption does not result in improper financial gain for those involved.

Adoption is a valid measure of protection and integration, as long as the rights of children are fully respected and that their best interests are placed above all else.

Gillian Mellsop

By Gillian Mellsop

ACKNOWLEDGEMENTS

The Steering Committee and Research Team would like to express its gratitude to the individuals and organisations who contributed their time and resources. This study could not have been accomplished without the commitment, understanding and support of the following.

- Children, 172 in total, who shared their thoughts with us
- All those who participated in the research including child centre staff, biological parents and other key stakeholders in the adoption process
- Berthylde Costille, Consule de France, French Embassy
- Bhanu Pathak, Child Protection Specialist, UNICEF Nepal
- Gael Robertson, Chhahari Nepal
- Joanne Doucet, Chief, Child Protection Section, UNICEF Nepal
- Lakshmi Prasad Dhakal, Joint Secretary, Ministry of Physical Planning and Works, Republic of Nepal
- Radha Gurung, Project Officer, Child Protection Section, UNICEF Nepal
- Raghu Adhikari, Central Child Welfare Board, Kathmandu
- Ram Lal Shrestha, Center for Mental Health Counseling, CMC-Nepal

- Shiva Prasad Paudel, Child Rights & Child Participation Advisor, Save the Children Norway-Nepal
 - Others too numerous to mention here
- Special thanks to Terre des hommes Foundation colleagues who supported this research in Nepal and abroad.

- Bhawesh Gautam, Intern, Terre des hommes Foundation (Nepal)
- Binod Tamang, Terre des hommes Foundation (Nepal)
- Christian Gemperli, Asia Desk, Terre des hommes Foundation (Lausanne, Switzerland)
- Eva Gorkhali, Administration and Finance Officer (AARR), Terre des hommes Foundation (Nepal)
- Muna Basnyat, Anti-trafficking Project Officer, Terre des hommes Foundation (Nepal)
- Nathalie Praz, Asia Desk Manager, Terre des hommes Foundation (Lausanne, Switzerland)
- Reinhard Fichtl, Delegate, Terre des hommes Foundation (Sri Lanka)
- Shilpa Dun Lepcha, former Programme Officer, Terre des hommes Foundation (Nepal)

STUDY TEAM

Convenor and Editor

Joseph Aguetant, Delegate
Terre des hommes Foundation (Nepal)

Project Coordinator and Chairperson of Steering Committee

Andrea Koller
Terre des hommes Foundation (Nepal)

Technical Supervisor

Marlène Hofstetter, Head of Adoption Department, Terre des hommes Foundation
(Lausanne, Switzerland)

Technical Adviser

Jeffrey Klinke, Ethica

Principal Researchers

Anand Tamang, Director, CREHPA, Kathmandu
Moni Shrestha, Research Officer, CREHPA
Ramesh Adhikari, Research Associate, CREHPA
Shekhar Devkota, Data Management Officer, CREHPA



Government of Nepal

MINISTRY OF WOMEN, CHILDREN AND SOCIAL WELFARE



Singha Durbar, Kathmandu
Phone: 4241816, 4241868
4241613, 4241728
Fax: +977-1-4241516
Email: mail@mowcsw.gov.np

PREFACE

The legal provisions on adoption were described in the written legislation of Nepal - National Code 1854 which was replaced by the National Code 1964. Since then inter-country adoption has been practiced in Nepal.

The first International Conference on Inter-Country Adoption was organized by the Ministry of Women Children and Social Welfare in collaboration with other concerned stakeholders from March 11-13, 2007 in Kathmandu. The outcome of the conference Kathmandu Declaration was agreed upon. The declaration noted that there is a need for improvement in the Nepali Legal system to make it in line with international standards. This also includes the ratification of the Hague Convention 1993.

Reaffirming the best interests of children is a paramount principle before taking any decision related to children. Therefore, it was agreed to initiate reforms regulating

inter-country adoption and for the overall development of Nepalese Children. As adopted by the declaration the New Terms and Conditions on Inter-country adoption has been introduced.

This study on inter-country adoption and its influence on child protection in Nepal conducted by UNICEF and Terres des hommes arrives at a critical and timely moment as the Government has initiated the drafting process of a separate Adoption Act.

The findings and recommendations highlighted in this study will definitely contribute to improve the legal systems and policies with regard to the inter- country adoption. The government of Nepal remains committed to fulfill its obligations towards the children of Nepal and will therefore adopt appropriate measures in line with the international instruments and standards in compliance with the Hague Convention 1993.

Date: 24 August 2008

Punya Prasad Neupane
Secretary

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ACRONYMS

BS	Bikram Sambat (Nepali Calendar)
CA	Central Authority
C&P	Conditions and Procedures 2008
CCWB	Central Child Welfare Board
CDO	Chief District Officer
CNET	Child Homes Network
CRC	United Nations Convention on the Rights of the Child, 1989
CREHPA	Center for Research on Environment, Health and Population Activities
CWIN	Child Workers in Nepal Concerned Center
DAO	District Administration Office
DCWB	District Child Welfare Board
FGD	focus group discussion
FWLD	Forum for Women, Law and Development
ICA	intercountry adoption
IDP	internally displaced people
INGO	international non-governmental organisation
MoWCSW	Ministry of Women, Children and Social Welfare
NCO	Nepal Children's Organization (Bal Mandir)
NGO	non-governmental organisation
NPR	Nepalese rupees (USD 1 = NPR 66 approximately)
SLC	School Leaving Certificate
SWC	Social Welfare Council
T&C	Terms and Conditions 2000
Tdh	Terre des hommes Foundation Lausanne
TDHIF	Terre des hommes International Federation
UNICEF	United Nations Children's Fund
VCA	Voluntary Coordinating Agency
VDC	village development committee

KEY FINDINGS

Many children living in Nepal's orphanages, children's homes and other institutions (referred to in this document as child centres) are not able to fully enjoy their basic rights—the right to a family, to identity, to freedom from physical abuse, and freedom of movement. While some child centres provide adequate essential support, others deny a wide range of rights, which can have lasting effects on the lives of affected children.

The key findings of this report are as follows.

1 A few child centres are up to standard, offering essential 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.
> Below the mark

2 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.
> Playing catch-up

3 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.
> Abandoned by the system

4 Orphans and children who have been 'abandoned' (once or several times) require psychosocial support. Child centres are not adequately equipped to provide this support.
> Mental pain: The untold story

5 A limited number of domestic adoptions are conducted (four per cent), while intercountry adoptions are widely practiced. Partnerships need to be created to remove legal, sociological and cultural barriers to domestic adoption. There is a general lack of alternative care for children in Nepal, such as foster care, that could act as alternatives to intercountry or domestic adoption, given that many children in child centres do have relatives.
> East or west, a real home is best

6 People managing or working in child centres are powerful decision-makers in the intercountry adoption process. There are limited checks and balances in place during the matching process. In addition, there is no centralized and systematic mechanism to plan, manage, authorize and monitor intercountry adoption.
> Matching: In whose best interests?

7 Intercountry adoption processes lack adequate transparency and accountability.
> Improper financial gain

8 Biological parents are not provided with accurate information on the adoption process. The relinquishment process is flawed, as free and informed consent is not guaranteed.
> The last to know

9 Families are divided and siblings, including twins, separated to increase their chances of being matched. **> Siblings parted**

10 While the recently enacted Conditions and Procedures 2008 offer a number of improvements over the previous Terms and Conditions 2000, they will not prevent malpractice. They do not provide sufficient guarantees to uphold the rights of the child.
> Too little too early

SUMMARY OF PROPOSALS

PROPOSED COURSE OF ACTION I: LEGAL REFORM

Child protection and care:

- Endorse the newly drafted minimum standards of residential care. (Finding 1.2)
- Develop uniform monitoring criteria and strict enforcement measures, including verification of accounts, registration of children and case files, and monitoring of the functioning of orphanages. (Finding 2.1)
- Strictly regulate the establishment of new child centres. (Finding 3.1)
- Expedite the adoption of the draft Child Rights (Promotion and Protection) Act, which integrates intercountry adoption procedures within the child protection and care system. (Finding 10.1)
- Establish clear placement priority principles and universal placement practices in national legislation to ensure that children receive support according to their needs, wants and best interests. (Finding 10.4)
- Prevention of family separation and family-based alternative care placements need to be reflected in national legislation. (Finding 10.4)
- The referral of children to institutions should only be carried out by VDCs and DCWBs to avoid child centre 'agents' recruiting children for the purpose of intercountry adoption. (Finding 3.7)

Domestic adoption:

- Promote and establish the principle of subsidiarity: intercountry adoption should only be accepted if there is no possibility for the child to be adopted domestically or put under the guardianship of relatives or Nepali citizens. (Finding 5.2, 10)
- Promote domestic adoption through an independent Voluntary Coordinating Agency (VCA) with the sole objective to promote domestic adoption. Any child proposed for adoption by child centres should be registered with the VCA and prioritized for domestic adoption. (Finding 5.4)
- The CCWB should register all domestic adoptions; the Land Revenue Office is not the appropriate entity for registering domestic adoptions. Social services should be involved in conducting home visits and in delivering agreements. (Finding 5.5)

Intercountry adoption:

- Expedite the drafting and submission of an Adoption Act in full consultation with child rights agencies. (Finding 10.5)
- Before a Central Authority is established, a detailed assessment of current adoption practices and procedures and of alternatives to parental

care should be undertaken. This assessment is recommended by The Hague Conference on Private International Law. (Finding 10.6)

- Create a central authority to receive, administer and keep files of all children in need of adoptive families to ensure that the children's eligibility for adoption is established prior to matching. Independent professional psychologists and social workers should be part of this authority. (Finding 6.1)
- All stakeholders engaged in adoption should clearly indicate that private adoptions are not allowed in Nepal. No files should be received directly from centres. Only duly accredited foreign agencies should be allowed to submit dossiers of prospective adoptive parents. (Finding 10.7)
- The accreditation procedure for foreign organisations/agencies should be further strengthened. Their number should be limited so that they do not exert pressure to obtain children. (Finding 10.8)

Matching:

- Matching for both domestic and intercountry adoption should be a professional, multi-disciplinary and qualitative decision, taken in the shortest possible time, on a case-by-case basis, by an independent entity, after careful study of the child and the potential adoptive family, and with care being taken to not unnecessarily harm the child in the process. Matching should not be carried out by child centres and prospective adoptive parents. (Finding 6.2)
- Clarify the respective roles of the Family Selection Boards and the Investigation, Recommendation and Supervision Board. Review membership of the Family Selection Boards and include independent professional psychologists and social workers. (Findings 6.3, 6.4)
- The use of a 'letter of guarantee' should be clarified by the Ministry and used to ensure that adopted children do not end up stateless. (Finding 6.5)

Consent:

- Counsel and inform children who are mature enough as to the effect of adoption and ask for their consent to the adoption. (Finding 6.6)
- Put strict measures in place to prevent undue pressure, coercion, inducement or solicitation of birth families to relinquish a child. Child centres found disrespecting these directions should lose their licence to conduct intercountry adoption. (Finding 8.1)

- In order to avoid biological parents being misled, all cases of relinquishment should be reconfirmed with the biological parents and a period of three months should be introduced for this purpose. (Finding 8.2)

Sibling separation:

- Twin separation should be prohibited by law. (Finding 9.1)
- The obligation that only children of the opposite sex can be adopted is obsolete and should be removed from the legal framework. (Finding 9.5)
- The adoption of siblings should be encouraged by law and simultaneous adoptions should be facilitated. (Finding 9.2)
- Child centres should be legally obliged to inform prospective adoptive parents of the existence of siblings and to facilitate contact between families by providing addresses of already adopted siblings to adoptive families. (Finding 9.3)

PROPOSED COURSE OF ACTION 2: POLICY DEVELOPMENT

Child protection systems:

- Develop child protection systems in which family support is prioritized. Alternatives to parental care need to be developed and should focus on family-type solutions, such as kinship care, foster care and domestic adoption. Intercountry adoption should only be envisaged if all other protection measures have been explored. Institutionalization should be the last resort and a clear policy on the institutionalization of children should be developed. (Finding 3.1)
- The DCWBs should be capacitated to establish, develop and coordinate activities in the field of child protection. (Findings 2.5, 5.1)
- Laws and procedures should provide for support to families in crisis, and, in cases where families cannot remain intact, counselling on the effects of giving consent to adoption should be provided. (Finding 8.3)

De-institutionalization:

- Inform the Nepali population about the risks and benefits of institutional care. (Finding 1.1)
- Inform families about the consequences of handing children over to child centres and the consequences of intercountry adoption. (Finding 8.4)
- Educational sponsorships should focus on children who are staying with their families as a measure to decrease the institutionalization of children. (Finding 3.3)
- Children with disabilities should not be excluded from intercountry adoption, as it can be a suitable solution for children with special needs. In some circumstances, intercountry adoption might be the

only solution for such children. Often, these children have been institutionalized because of their disability and there is no chance for them to be adopted nationally. (Finding 5.7)

Domestic adoption:

- Instead of visiting receiving countries only, the good practices of countries that have succeeded in promoting domestic adoption should be studied by lawmakers and key stakeholders (e.g., India, Brazil). (Finding 5.6)
- Build partnerships to remove religious, sociological and cultural barriers to domestic adoption through recognized religious leaders. A study on children from disadvantaged groups being adopted by parents from advantaged groups, and vice versa, could promote domestic adoption. (Finding 5.8)
- Highlight successful domestic adoption stories in the media. (Finding 5.9)

Financial accountability:

- The proposed Adoption Act and subsequent implementing rules should include a clear schedule of payments. Maximum amounts to be charged by child centres for adoption should be clearly specified. (Finding 7.1)
- Payments should be made only by an accredited agency; there should be no direct payments from prospective adoptive parents to child centres. (Finding 7.2)
- Donations should be allowed only after completion of the adoption procedure and only through an accredited agency. (Finding 7.3)
- Donations 'to improve living conditions' in child centres should be funnelled through official channels only, as children are purposely kept in deplorable conditions to attract donations. (Finding 1.5)
- Monitoring of centres should include the criteria of internal versus external sources of funding. Only centres that receive at least one-third of their income from Nepali sources should be licensed for intercountry adoption. This will decrease dependency on foreign funds, including adoption. (Finding 7.4)

Financial transparency:

- All child centres should make their sources of income entirely transparent to the government. (Finding 7.5)

Transparency of legal reform:

- Develop a mechanism to ensure that embassies, UNICEF and other concerned parties are consulted on legal reform issues. Authorities should publish a transparent monthly statistical report of adoptions (both intercountry and domestic). (Finding 7.6)

Monitoring:

- Monitoring of child centres should be prioritized over monitoring of adopted children abroad (Finding 2.9)

PROPOSED COURSE OF ACTION 3: CAPACITY DEVELOPMENT

Children's views:

- Listen to children's views by establishing child clubs or child committees in child centres. Make sure that their views are taken into account. (Finding 1.3)
- Establish links with child helplines (e.g., run by CCWB, CWIN) at all levels and nurture these links. (Finding 1.4)

Training:

- In order to ensure the implementation of minimum standards, in-depth training for monitors should be conducted. Listening to the views of children should be an integral part of such training. (Findings 2.2, 2.3)
- As part of child protection systems, social workers need to be trained to assist families and communities in identifying problems and seeking support services. (Finding 3.2)
- Develop a psychosocial training module for social workers involved in the adoption process and build the capacity of government-run social services. Linkages with existing social work trainings should be nurtured. Home visits should be conducted to assist social workers to understand the situation of the families. (Findings 4.2, 4.4, 4.5)

Counselling and mental health:

- Encourage child centres to make use of available mental health resources in the Kathmandu Valley and develop the capacity of such mental health programmes to support children in remote areas. (Finding 4.1)
- Conduct independent child counselling sessions, where appropriate, at the DCWB and CCWB levels. (Finding 4.3)

PROPOSED COURSE OF ACTION 4: MONITORING AND REPORTING

Licensing:

- Adopt a registration/licensing process for child centres that includes independent and rigorous monitoring. Centralize the registration system to conduct systematic monitoring of all child centres in Nepal. (Findings 1.2, 2.4)

Monitoring of child centres:

- Monitoring should be carried out by an independent body, preferably not from the same district. (Finding 2.5)
- The Women and Children Service Centre should support the tracking of unregistered child centres and facilitate access to the same. (Finding 2.6)
- Monitoring should be standardized and regularized. (Finding 2.9)
- Surprise visits should be carried out in addition to announced visits. (Finding 2.7)
- Child centres conducting intercountry adoption should report arrivals and departures of children once a month. (Finding 2.8)
- Monitoring bodies should be mindful of the practice of shifting children from unregistered centres to registered centres for the purpose of adoption. (Finding 2.8)

Record keeping:

- A centralized data repository system should be established to keep records of adopted children. The files should be kept for at least 80 years. (Findings 7.7, 7.8)
- Monitoring/supervision teams from the government should monitor record keeping. (Finding 7.10)

METHODOLOGY

In light of the malpractice that led to the suspension of intercountry adoption in Nepal in May 2007 as well as reports of abuse and violations of child rights in residential care, and cognizant of the domestic and international pressure to resume intercountry adoption, Terre des hommes and UNICEF joined forces in November 2007 to conduct research to identify the full scope of the problem and develop strategies to address it.

In order to gain a good understanding of the current situation of intercountry adoption from Nepal, the study team collected information from four study groups: key informants, child centre staff, children residing in child centres, and biological parents and guardians. In total, 10 questionnaires and a guideline for children's focus group discussions were developed to record the wide variety of information provided by the various study groups.

Government involvement

The Government of the Republic of Nepal has been associated with this study from the outset. It initially lent its support in the form of an endorsement letter, which was instrumental in securing the full cooperation of child centres. Furthermore, a focal person was appointed from the Ministry of Women, Children and Social Welfare to attend and actively participate in Steering Committee meetings. The Steering Committee planned and reviewed methodology jointly. It reviewed and discussed preliminary findings and the draft report. Its composition is detailed on page ii of this report.

Study areas

There are 1,048 child centres in Nepal.¹ Of these, 47 are reportedly involved in intercountry adoption. As most child centres engaged in intercountry adoption are located in the Kathmandu Valley (Kathmandu, Lalitpur and Bhaktapur Districts), the study team prioritized these centres for interviews. In order to understand the involvement of centres based outside the Kathmandu Valley, Pokhara (Kaski District) and the Far West (Kanchanpur and Kailali Districts) were identified as additional study areas. Interviews with child centre staff, children and key informants were conducted in these three study areas. All data have been disaggregated into the following three locations: Kathmandu Valley, Pokhara and the Far West.

Interviews in child centres

Child centres were primarily selected on the basis of their involvement in intercountry adoption. A list detailing 47 child centres in the Kathmandu Valley involved in intercountry adoption was received from the Child NGO Federation. Of these, 37 could be visited. Four centres refused to provide information, two centres claimed not to be involved in intercountry adoption and, therefore, refused to provide information, two centres had already been closed down, and one centre was based outside the Kathmandu Valley. Using the snowball technique, eight child centres (seven registered and one unregistered) based in the Kathmandu Valley and engaged in intercountry adoption were identified, in addition to those mentioned in the Child NGO Federation list. These 8 centres were also visited, resulting in a total of 45 child centres interviewed in the Kathmandu Valley. In Pokhara, 20 child centres were interviewed, of which 8 were unregistered, and in the Far West, 6 child centres were interviewed, based on information received from the Central Child Welfare Board (CCWB) and UNICEF. In total, 71 child centres were interviewed across the three study areas.

For practical reasons, two different questionnaires and a physical observation sheet were developed for interviews with directors, board members, administrative staff, caregivers and helpers of child centres. One questionnaire was used for child centres based in the Kathmandu Valley and another for child centres in Pokhara and the Far West. In nearly all child centres, two staff members were interviewed; however, in two of the 71 child centres, only one staff member could be interviewed, resulting in 140 interviews with child centre staff members.

A questionnaire was developed for interviews with children aged 12–18 years staying in child centres, and a separate guideline was developed for focus group discussions with different children from the same age group. Although the study team aimed to interview 5 children aged 12–18 years per child centre, only 172 children (94 boys and 78 girls) could be interviewed. An equal number of boys and girls could not be interviewed, as it was found that child centres housed more boys than girls in this age group. In addition to the individual interviews, eight focus group discussions were conducted: four in Kathmandu, two in Pokhara, and two in the Far West.

¹ Himal Khabarpatrika (2007) 'Where are they?', in *Nepali Times*, issue no. 335 (9–15 February 2007), Kathmandu.

Interviews with biological parents

Two questionnaires were developed for interviews with biological parents: one for biological parents whose children were already sent for adoption and the other for parents of children currently staying in child centres. The addresses of the majority of biological parents were received from the child centres, and a number of addresses were obtained using the snowball technique. A total of 44 interviews were conducted with biological parents from the districts of Lalitpur, Bhaktapur, Kaski, Kanchanpur, Kailali, Myagdi, Chitwan, Nawalparasi, Gorkha, Bardiya and Banke. Thirty-five of the 44 parents had children staying in child centres at the time of the research, and 9 of the 44 were biological parents of children who had already been sent for intercountry adoption.

Interviews with key informants

Six questionnaires were used for interviews with key informants from ministries, the Central Child Welfare Board, the police, District Administration Officers, Women Development Officers, embassies/consulates, international and national non-governmental organisations (INGOs and NGOs), and adoptive parents. A total of 36 interviews were conducted with key informants.

Data collection

Research instruments were pre-tested prior to the data collection phase, which took place from 28 January 2008 to 21 March 2008. Interviews with child centre staff members, interviews and focus group discussions with children, and interviews with biological parents were conducted by four field interviewers and four field supervisors from the Center for Research on Environment, Health and Population Activities (CREHPA). CREHPA research coordinators and assistants conducted a number of interviews with key informants, especially those based in the districts, while UNICEF and Terre des hommes representatives interviewed key informants in the government, embassies, consulates, and I/NGOs.

Customary rules pertaining to ethical research practices were strictly adhered to. Interviews were preceded by verbal informed consent. Consent was documented in writing by the interviewers. Particular emphasis was placed on ensuring that children and adult respondents were aware of the study's objectives. A reporting path for child abuse and exploitation issues was put in place prior to commencing data collection.

Study limitations

Due to limited time and resources, this study focused on child centres in six districts in the Central, Western and Far West Development Regions of Nepal. Although the study team aimed to identify an equal number of registered and unregistered child centres, only 9 of the 71 child centres visited were unregistered. Information on unregistered child centres was extremely difficult to obtain. In addition, a limited number of interviews with biological parents of children who had been sent for intercountry adoption could be conducted. Nevertheless, as this is the first study in Nepal to publish findings from biological parents, the results of these interviews will enable researchers to establish a baseline. Few interviews with adoptive parents or prospective adoptive parents were conducted, as they were not part of the study population. It is suggested that this might be a useful area for future research. It should be noted that dysfunctionalities in the system for intercountry adoption, in general, as well as the substandard condition of child centres, are likely to be underreported. It should also be noted that, while the study sample provides important insights into prevailing practices in institutional childcare and intercountry adoption in Nepal, no attempt has been made to verify whether or not the study sample and findings can be considered representative of all children in child care in Nepal or all children adopted from Nepal.

Definitions and terminology

For the purpose of this research an 'orphan' is defined as a child who has lost one or both parents (i.e., parents are known to be dead). A child who has lost one parent is sometimes referred to as a 'single orphan' and a child who has lost both parents as a 'double orphan'.

As a corollary to this definition, rather than calling the institutions examined in this study 'orphanages', it was decided to refer to them as 'child centres'. The term 'home' is also avoided as some institutions cannot be said to provide a satisfactory home for the children.

The term '(re)integration' refers to a range of exit strategies for children who have been living in institutions. They include reintegration into the birth family or community, as well as integration into foster care or an adoptive family through domestic or intercountry adoption.

In a number of countries, prospective adoptive parents can choose to adopt either with the support of a registered agency in the receiving country or on their own. In accordance with The Hague Convention, adoptions that are conducted by adopters on their own are referred to as 'private adoptions'.

The CRC² Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography states that "State parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of the child act in conformity with applicable international legal instruments" (Article 3, Clause 5). Nepal ratified this optional protocol in 2006. Although trafficking for intercountry adoption purposes does not necessarily fall within the purview of the Protocol to Prevent, Suppress and Punish Trafficking in Persons,

Especially Women and Children (usually referred to as the 'Palermo Protocol'), irregularities in intercountry adoption involving 'improper financial gain' where a child is moved from one place to another for the purpose of exploitation are deemed to constitute child trafficking for the purposes of this study.³

It was argued in other contexts that a child can be exploited as someone who is available for adoption. This form of exploitation becomes more evident when the adoption, or the way in which it is conducted, does not give due consideration to the child's best interests. This may be the case particularly when adoption takes place in breach of domestic law and relevant international standards and includes commercial transactions. A child can thus be used in an exploitative way in illegal adoption processes to create monetary gain for those organising the adoption.⁴

² United Nations Convention on the Rights of the Child 1989

³ Dottridge, M (2004), *Kids as commodities? Child trafficking and what to do about it*, Terre des hommes, Lausanne, p. 42.

⁴ UNICEF Innocenti Research Centre (2008) *Child Trafficking in Europe: A Broad Vision to Put Children First*, p. 13.

INTRODUCTION

NEPAL MUST ADOPT THE RIGHTS OF THE CHILD FIRST

If the Government of Nepal, child centres, orphanages and adoption agencies want to continue engaging in intercountry adoption, it is paramount that they start by fully adopting the rights of the child. They must make internationally accepted minimum standards their own. This means that Nepal must introduce new child rights legislation and new adoption legislation to bring it in line with the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption 1993 (The Hague Convention). If adoption is reopened without proper legal guarantees in place, then it will be hard to ensure that the adoption process is not undermined by commercial considerations and that children are fully protected and do not become vulnerable to trafficking.

There is nothing particularly complicated about intercountry adoption. It is a simple tool, one of a series of tools at our disposal to protect children. Intercountry adoption can help a child realize his or her rights to a childhood and to a family. It has benefited hundreds of thousands of children around the world and will continue to do so.

Over the last decade, however, intercountry adoption has been emptied of its original meaning. An increasing imbalance between the high demand for children in developed countries and the low number of children available for adoption has resulted in increased pressure for intercountry adoption. In some countries of origin, especially those with weak legislative frameworks, this has resulted in many cases of malpractice. Such malpractice may have been perpetuated by unscrupulous international agencies competing for quotas and by prospective adoptive parents acting alone through informal channels.

Governments of receiving countries have instrumentalized adoption in response to both the needs of adoptive parents and their own administrative concerns. Intercountry adoption is no longer an issue pertaining to the private sphere, governed by private international law. It is now a public matter. In recent years, and as seen in the context of Nepal, adoption has become an issue that is being dealt with at the level of Head of State or Prime Minister.⁵

This study found that financial transactions sometimes go far beyond those necessary for purchasing the professional services required to complete adoption procedures, and that, in some cases, children can be considered to have been 'bought' or 'sold' to satisfy a growing demand for adoptions.

Furthermore, although 62 per cent of the children in child centres examined by this study have living biological parents, some are being offered for adoption.

While worldwide the number of orphans and abandoned children is diminishing, in Nepal official records show that it appears to be increasing. Some centres report that they sent over 70 children abroad for adoption in a period of three years, with 100 per cent of adoptees being 'found by the police' or 'abandoned'. As a corollary to this, biological parents are misinformed and routinely asked to sign documents that they do not understand.

It was found that siblings (and in at least two instances, twins) are routinely separated to conform to an outdated and inappropriate legal framework. In addition, many children are deprived of their identity. It is almost certain that 15–20 years from now young men and women will return to Nepal to demand accountability, saying: "I had biological parents and for all these years my official papers from Nepal said that I was an orphan or found by the police. How could you let this happen?"



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⁵ The Government of Nepal decided to ease the ban on intercountry adoption after government heads of three European countries (France, Italy and Spain) wrote to Prime Minister Girija Prasad Koirala. Kharel, B (2007) 'Intercountry adoption speeds up: no decision on new applications', in *Kantipur*, 28 December 2007.

In 2007, intercountry adoption captured Nepal's national headlines, revealing disturbing levels of corruption and a lack of protection for children. Some adoption agencies were found to have tricked parents into parting with their children without telling them that their children were being given to adoptive parents. There were also cases where agents promised to bypass regulations and illegally procure babies for potential parents in exchange for large sums of money.

In one case, an eight-year-old girl told embassy staff that she had parents in Nepal and did not want to leave. Her adoption papers stated that she was six years old and had been 'abandoned' by her parents. She had been declared an 'orphan' as per the law. It turned out that she did indeed have biological parents who had entrusted their daughter to a child centre in the hope of securing a good education for her in Kathmandu. Consequently, the visa was refused.

Questioned about this case, the Ministry of Women, Children and Social Welfare eventually decided in May 2007 to put the country's adoption procedures on hold until effective laws could be enacted.

In May 2008, shortly after the 10 April elections, the Cabinet enacted new rules governing adoption, the Conditions and Procedures 2008⁶ (replacing the Terms

and Conditions 2000). Child rights organisations were not formally consulted in the drafting of the Conditions and Procedures 2008. Some felt that it would have been more appropriate to restart intercountry adoption following the promulgation of the Adoption Act, which is currently being drafted.

However, looking forward, to protect the full rights of children in Nepal, it is imperative that three fundamental things are accomplished:

- That every child has the right to know and be cared for by his or her own parents; that they are not sent abroad for intercountry adoption if they have parent(s) or relatives who can care for them.
- That the Government of the Republic of Nepal recognizes the value and importance of families in children's lives and actively discourages the institutionalization of children. Alternative means of caring for a child should only be considered when, despite assistance, a child's family is unavailable, unable or unwilling to care for him or her.
- That adoption is considered only for children who cannot be raised by their own families, as a last resort and as a permanent measure. Intercountry adoption is one of a range of care options that may be open to children and, for children who cannot be placed in a permanent family setting in their country 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.

With time, it is our strong hope and conviction that Nepal will join the fold of countries that recognize the risks intrinsic to intercountry adoption and that the Government of the Republic of Nepal will ratify The Hague Convention.

If all measures are in place, and if it is strictly controlled by a competent, independent authority, intercountry adoption can be a valuable tool. Above all, intercountry adoption should not result in improper financial gain for those involved: children are not for sale.



A child care centre in Kathmandu ©Tdh | Sylvain Monnard

Joseph L. Aguetant
Delegate
Terre des hommes

⁶ Formally entitled *Conditions and Procedures to provide Nepali Children to the Foreign Citizens under Adoption as Sons and Daughters, 2008*.

CONTEXT

Historical perspective

In 1976, intercountry adoption was formalized in Nepal when the National Code of 1964 was amended to enable foreigners to adopt Nepali children.⁷ Prior to 1976, only national adoptions were allowed.⁸ From 1976 to 2000 the Nepal Children's Organization (Bal Mandir), which was established in 1964 by the royal family, was the only entity mandated to conduct adoption in Nepal. The number of total adoptions conducted by NCO/Bal Mandir was not disclosed to the researchers, but according to statistics from Central Child Welfare Board (CCWB), 327 children were adopted through NCO between 1996 and 2000. In 2000, the now defunct Terms and Conditions⁹ opened up intercountry adoption to child centres other than NCO/Bal Mandir. Today, 47 child centres conduct adoptions and the number of adopted children for the period between 2000 and 2007 has reached 2161.

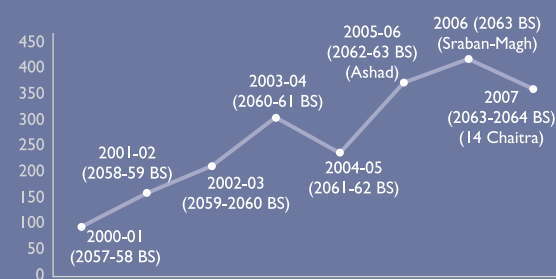
On average, the number of intercountry adoptions rose every year by 50-100 adoptions between 2000 and 2007. The State of the Rights of the Child published by CWIN reported in 2004 that the plan then was to authorize the adoption of 510 children annually.¹⁰

Irregularities increase with rising adoption numbers

This vast increase in adoptions has led to numerous irregularities, including alleged falsification of documents (children who have parents are declared orphans or abandoned), child centres buying children from biological parents and child centres charging excessive amounts to prospective adoptive parents.¹¹ A fact-finding mission by UNICEF/FWLD¹², which investigated a large-scale trafficking scheme in Humla, has confirmed that among the trafficked children, some had been adopted without the knowledge of their parents.

At the initiation of the Government of Nepal and other concerned organisations, an international conference was organised in March 2007 with a view to reforming the

Figure 1.1. Number of children adopted between 2000 and 2007



Source: CCWB

adoption process. This conference attracted broad public attention and resulted in the adoption of the Kathmandu Declaration.¹³

Adoption suspended in May 2007

Shortly after this international conference, a case arose of a girl, who had been declared an orphan for the purpose of adoption, but who in fact did have parents and did not want to leave Nepal (see Finding 4 for more details on this case). This triggered the suspension of intercountry adoption in May-June 2007. Over 400 intercountry adoption applications were suspended and no new applications accepted. Under strong pressure from prospective adoptive parents, the Government reviewed the situation and eventually approved the suspended files.

Improvements to legal framework

Foreign adoption agencies and local child centres, being eager to resume adoptions, exerted pressure in the beginning of 2008, resulting in the adoption of a new set of regulations. Embassies of receiving countries, however, committed not to resume adoptions from Nepal without a new improved legal framework, including an Adoption Act.¹⁴ With the endorsement of the new Conditions and Procedures in May 2008, new

⁷ Clause 12 'ka' of the Adoption Section of the 1976 amendment to the National Code states: "If any foreign national willing to adopt Nepali nationals eligible to be adopted under the code; the government of Nepal viewing the economic status and moral character of such foreign nationals may grant permission of adoption specifying appropriate conditions provided such foreign nationals have recommendation of the government or embassy of their Nation." Note that there is, however, no specific legislation on intercountry adoption in isolation.

⁸ Childless Nepali couples primary adopted sons from close relatives to secure the family property and ensure their death rites were taken care of by the adopted son.

⁹ The Terms and Conditions 2000 were replaced by new Conditions and Procedures 2008 in May 2008.

¹⁰ CWIN (2004) *State of the Rights of the Child in Nepal 2004*, CWIN, Kathmandu, p.34.

¹¹ Paudel, SP (2007) *Inter-country Adoption process in Nepal*, Paper presented at the International Conference on Intercountry Adoption, 11-13 March 2007, Kathmandu, Nepal, p.7.

¹² UNICEF and Forum for Women, Law and Development (2005) *Fact-finding Mission on Displacement of Children from Humla, December 29, 2004 – January 1, 2005*, (Unpublished Report).

¹³ Based on the paramount principle of the best interest of the child, the Kathmandu Declaration reaffirms the commitment to the Convention on the Rights of the Child, recognizes the values of The Hague Convention and expresses deep concern about the inadequacy of the Nepali legal system. Among others, the Declaration appeals to the Government to ratify The Hague Convention and calls for legal reform in accordance with the latter.

¹⁴ Interviews with embassies and consulates conducted in February 2008.

rules for intercountry adoption have been established replacing the Terms and Conditions 2000. (See Finding 10 for more details).

Poverty in rural areas

The ten-year civil conflict, which was peacefully resolved in October 2006, further destabilized an already impoverished nation (Nepal ranks 142 out of 177 in the Human Development Index 2007/2008). Rural areas were more affected by the conflict than the capital of Kathmandu, with schools closed or used as battlegrounds. Many families took loans to send their children to perceived safety in Kathmandu. However, some were severely cheated by adoption agents, as their children were declared 'orphans' and subsequently sent abroad for adoption without the parents' knowledge (see Finding 8). Although the conflict was resolved in 2006, parents continue to send their children to Kathmandu, where education opportunities are comparatively better. Illiterate parents (the rate of illiteracy is 48.6% among the adult Nepali population) from rural areas, who have rarely been to Kathmandu, are keen to trust anyone who promises a good education for their children, making easy targets for adoption agents.

Discrimination against women

Discrimination against women prevails in Nepal and is particularly pronounced in rural areas. Women who have either been left by their husbands or are widowed often cannot support themselves and their children. In order to survive, these women are frequently left with

no other option than to abandon their children. Only when they abandon their children to child centres can young widows remarry and older widows secure survival for themselves and their children. Women who have given birth out of wedlock are ostracized by their families and communities to such an extent that they cannot keep an 'illegitimate' child, but have to either kill it or abandon it in order to continue to stay with their families. The prejudice against unmarried or remarried mothers has been mentioned as a reason why babies are available for adoption in a number of countries.¹⁵ Nepal is no exception: the recently adopted Conditions and Procedures 2008 reflect and perhaps aggravate this prejudice as they specifically allow a mother who lost her husband and who is remarried to abandon her child/children 'voluntarily' (Section 2.F.2).

No family support

A lack of developed social welfare systems, including the full range of alternative care and family support services, can make reform difficult and complex. Not only single women are prompted to give up their children, widowers or fathers with disabilities or an alcohol or drug addiction frequently entrust their children to child centres, as they cannot take care of their children.

According to the Convention on the Rights of the Child, the state should provide adequate support to families (including single mothers and single fathers), so that children do not have to be institutionalized or adopted, but can be kept in the birth family.

¹⁵ Dottridge, M (2004) *Kids as commodities? Child trafficking and what to do about it*, Terre des hommes, Lausanne, p. 30

Finding I

BELOW THE MARK

QUALITY OF CARE AND PROTECTION IS SUBSTANDARD IN MANY CHILD CENTRES

Nepal lacks proper regulations to control who from the non-governmental sector can operate a residential care institution. Until recently, opening a residential care institution was a simple, unregulated and expedient process. This resulted in a high number of centres being ill-equipped and operating below internationally accepted minimum standards of care. In these centres, management is often less interested in the well-being and future of the children and more motivated by the potential financial gains to be made from intercountry adoption and sponsorships. One 14-year-old child in a Kathmandu Valley child centre told researchers: “A few months ago, we heard that this place was going out of business. All of us are happy that we won’t have to live here anymore.” This child reported serious abuse taking place in the centre.

Nepal has witnessed a substantial increase in the number of child centres over the last 10 years, and it is estimated that the number of centres involved in intercountry adoption has doubled in the last 5 years. Child centres are required by law to register with the District Administration Office. Of the 71 centres surveyed, 84 per cent were registered. Nearly all centres visited in the Kathmandu Valley (98 per cent) were registered, as were 60 per cent in Pokhara and 67 per cent in the Far West. The remaining two per cent in the Kathmandu Valley, 40 per cent in Pokhara and 33 per cent in the Far West were operating illegally, avoiding any form of control by local authorities or central government. The fact that many child centres are not registered does not prevent them from sending children abroad for adoption, although it is forbidden by law. The research team found that to avoid detection some unregistered centres were sending children for adoption through well-established registered child centres.

The total number of unregistered centres is unknown and interviews with government officials confirmed that this remains a serious concern. It is believed that the number of unregistered child centres in Kathmandu and other locations is actually much higher than estimated by this study. Due to the fact that these centres are often located on the outskirts of the Kathmandu Valley or in rural areas, it was not possible for researchers to identify and visit them. Only nine unregistered child centres were visited.

It must be acknowledged that many of the people and organisations running residential care institutions in Nepal have good intentions and implement good

practices. A number of institutions visited were above the mark in terms of minimum standards. However, researchers also found that, in some cases, business-motivated individuals were operating residential care institutions. There is a lack of regulation and control over whom from the non-governmental sector can operate a residential care institution, for what purpose, and what their rights and obligations are. For some people, opening a residential care institution has become a business opportunity, which satisfies a market need, particularly as Nepal lacks alternatives (e.g., foster care) for children who are abandoned or in need of short- and medium-term placement.

Increase in institutional care

Evidence from other countries does not support the notion that intercountry adoption reduces institutional care. On the contrary, data suggests that it may contribute to the continuation of institutional care and the resulting harm to children.¹⁶



Children taking a nap in an orphanage © Tdh, 2008

¹⁶ Browne, K; Hamilton-Giachritsis, C; Johnson, R and Ostergren, M (2006) ‘Overuse of institutional care for children in Europe?’, in *British Medical Journal*, 332, pp 485–87.

In recent years, there has been a large increase in the number of new child centres in Nepal. Just over half (56 per cent) of child centres in the three study sites were less than five years old. In the Kathmandu Valley, this figure rose to 61 per cent. In addition, 47 per cent of centres in Kathmandu and 58 per cent of centres in Pokhara had changed location at least once since they were established.

Researchers found that the government's Minimum Standards of Care for Residential Child Homes 2003 (hereinafter 'Minimum Standards') were not in place in the majority of child centres. Staff were either unaware of the minimum standards or held a negative view of them. In some cases, centre management seemed to react negatively to what they perceived as a top-down approach and the imposition of external rules on their centre. Minimum standards were mostly regarded as external interference.

According to a reliable embassy source, the smaller the centre, the worse it is for the children. Some centres are "really low class", the source added. Corruption is rampant, especially in smaller homes created purely

Substantial headway in monitoring child centres

As this study was being finalized, the Central Child Welfare Board presented a three-month nationwide survey to the Ministry of Women, Children and Social Welfare. This is seen as a positive development. Child centres are listed in four categories from A to D, 'risky' centres being rated as 'D'. The report indicated that the largest number of child centres (43 per cent) belonged to the 'C' category. Only two per cent of centres were in category 'A'.

The Secretary of the Ministry of Women, Children and Social Welfare, Mr Punnya Prasad Neupane, said that this report makes it easier for the government to "pull the strings" of children homes that are being run without registration or that do not meet standards. "Our message for such children's homes is – reform yourself or else be ready to close down", Mr Neupane said. In the past it was difficult to take action against unregistered homes because information was lacking. "Now we will not stay without doing anything. I have instructed the Central Child Welfare Board to make arrangements for the effective monitoring of children's homes in the programme of this fiscal year," Mr. Neupane said.

Source: Preparation to Pull the Strings, *Samay Weekly*, 22 August 2008

for adoption purposes. This trend to go against what is commonly understood to be good practice in residential care is worth noting. Smaller homes with good caretaker ratios and that are integrated with the community tend to be 'better' than larger homes, but only when they are well regulated and fit into a broader system of alternative care.

Neglect and abuse

Throughout the course of this study, researchers came across cases of child abuse and potential sexual exploitation in centres. Interviews with children revealed a high prevalence of child abuse. Although children and centre staff are likely to underreport instances of abuse, 7 per cent of children interviewed reported physical abuse and 15 per cent reported 'scolding' and verbal abuse. While all child centres have disciplinary rules in place, many of these rules are not pedagogically sound. Child centre staff reported scolding and 'shaming children in front of everyone', and giving children work such as cleaning the floor or the toilet as punishment.

Interviews with centre staff revealed that practices such as 'hitting children', 'isolating them' and 'locking them inside the toilet' are taking place. This was mentioned by the child centre staff themselves. Most centres treat boys and girls 'equally' in terms of punishment, but six per cent of child centre staff said that they apply softer rules to girls than to boys.

During the research, two cases of abuse were identified. They were immediately reported to the government focal point and to the Central Child Welfare Board for investigation. These cases confirm that child abuse takes place in child centres in Nepal and needs to be addressed in a standardized way throughout the country, particularly by addressing the accountability of the stakeholders involved.

During the study, researchers were told about a case of sexual abuse that had allegedly taken place in a child centre in the Kathmandu Valley. According to child centre staff, foreigners had offered to take the children on an excursion. Later the staff found out from the children that on this excursion the "foreigners had sexually abused them and even videotaped them performing sexual acts".

Physical abuse and humiliating treatment were reported to the research team at a child centre in the Kathmandu Valley. According to one child: "The caretakers hit me and all the other children often. The worst is when they hit the disabled boy; they hit him the most. They also shout at us for no reason. They make all of us work. We have to wash our clothes and we have to work in the kitchen, washing the dishes,

The case of children from Humla and Jumla

A well-documented case shows that around 1,000 children were transported from the mountain districts of Humla and Jumla to child centres in Kathmandu. The parents of the children were made to believe that their children would receive a good education in Kathmandu. Some of these parents paid between NPR 10,000 and NPR 20,000 for their children's education. However, the children were never admitted to school. Instead, some were sent to Indian child centres or to work in Indian circuses, and some remained in deplorable conditions in child centres in Kathmandu. Eventually after two years, one child was admitted to hospital suffering from severe malnutrition. This triggered an investigation, which uncovered large-scale neglect and abuse.

During the investigation, 22 of the children ranging in age from 5 to 11 years were found at one unregistered child centre that was operating illegally. The children were living in unhealthy and 'deplorable' conditions in a three-roomed residence. None had been sent to school.

According to the Central Child Welfare Board, only 400 of the 1,000 children could be traced, and were either returned to their families or placed in other child care institutions.

Source: UNICEF and Forum for Women, Law and Development, 2005, *Fact-finding Mission on Displacement of Children from Humla*, 29 December 2004–1 January 2005, Unpublished Report.

cutting vegetables and sweeping the floor. The helpers just watch us when we work. They don't take good care of us even when we are sick. For lunch, we get either biscuits or Wai Wai noodles, which are not enough for us, so we stay hungry. When foreigners visit the centre, the caretakers treat them very nicely but keep the presents, like shampoo, face cream, etc., that the foreigners bring for us children, for themselves. A few months ago, we heard that this place is going out of business. All of us are happy that we won't have to live here anymore."

Educational opportunities and living conditions

The study found that educational opportunities are by far the main motive for families to send their children to centres in the Kathmandu Valley. Other parents, often

single mothers or fathers, who are unable to care for their children, send their children to Kathmandu in the hope that they will receive not only a good education, but also food and lodging.

Child centre staff and children staying in centres revealed that the vast majority of children in child centres receive an education (99 per cent of child centre staff and 98 per cent of children reported this). Most of the children are enrolled in schools outside the child centre. Accordingly, the majority of child centre staff (93 per cent) reported that children in centres do not work; only 7 per cent admitted that children in their centres work either inside or outside the centre. Based on the Humla and Jumla case (see box), it is assumed that a number of centres that operate without registration do not send their children to school.

The assessment of physical facilities in child centres was not a primary focus of this research. This has been documented in a New Era study in 2005.¹⁷ Researchers, however, used physical observation and a checklist to record physical facilities.

Some children complained about the lack of separate bedrooms for boys and girls. It was found that sleeping arrangements were inadequate. In Kathmandu, from 4 to 24 boys slept in the same room and from 2 to 20 girls. In cases where boys and girls slept in the same room, the range was from 5 to 15.

Some children reported that they did not receive enough food (13 per cent in the Far West, but none in Kathmandu Valley or Pokhara), and some reported that there was insufficient water in the child centre.

Some children reported that they felt discriminated against and that staff sometimes threaten to send them home. Some 12 per cent of children reported that they could participate in child committees at their child centre. However, 84 per cent of children reported that there were no such opportunities, while nearly 5 per cent did not know.

Restriction of movement

Restriction of movement is a serious infringement of a child's rights. Twenty-nine per cent of children reported that they were not allowed to go out of the centre at all (19 per cent of child centre staff agreed). The remaining 71 per cent could leave the centre according to a certain schedule (76 per cent of child centre staff agreed). Only five per cent of child centre staff allowed children to move in and out the centre whenever they wanted.

¹⁷ New Era (2005) *Study of Children in Children's Homes in Nepal*, New Era, Kathmandu.

Contact with family

Contact with family is another important aspect of standards. Almost all child centres staff (98 per cent) reported that parents/guardians/relatives are allowed to visit the children at the child centres. Two respondents reported that they do not allow parents/guardians to visit children in the child centres. One of these two respondents stated that this would expose the child centre to the risk of parents taking their children away when they visited them. The other said that the child centre did not allow visits from parents/guardians as the centre had “already taken the responsibility for the child”.

Some 81 per cent of child centre staff reported that family members had in fact visited some of the children. Forty-eight per cent of biological parents indicated that they visited their child at least every six months, of

which nine per cent visited once a month and six per cent fortnightly. Interviews with children confirm this. Some 68 per cent of children said they had received visits from their families, mostly from their mothers or fathers, brothers, sisters or relatives. In addition, 84 per cent of centre staff reported that at least some of the children in their centres communicated in other ways with their family.

Standards for admission

One area of standards that is often overlooked is the admissions policy used by child centres. Most child centres did not follow clearly defined rules for when they should not admit children. Little effort is made to find an alternative to residential care such as foster care. Furthermore, child centres did not develop and regularly update a care plan for each child.

PROPOSED COURSE OF ACTION

- **Build awareness:**

Informing the Nepali people about the downside of residential care is essential. NGOs working in remote areas with families, communities, schools and local authorities should seize every opportunity to talk about the phenomenon of intercountry adoption and the risks involved. The Ministry of Women, Children and Social Welfare with the support of the Central Child Welfare Board and NGOs should support an information campaign on the risks and benefits of institutional care.

- **Endorse standards of care:**

The Ministry of Women, Children and Social Welfare should officially endorse the newly drafted Minimum Standards for Residential Care and adopt a registration/licensing process that includes independent and rigorous monitoring (see Finding 2), screening of professionals working with and for children, accountability of care staff, as well as training and awareness-raising on child rights and child protection.

- **Strengthen legal frameworks:**

Strong legal frameworks should support the development and implementation of standards of care.

- **Listen to children’s views:**

Establish child clubs or child committees in child centres to facilitate children to express their opinions and wishes, and enable child centre staff and monitors take these views into account.

- **Cooperate with child helplines:**

Links with child helplines (Central Child Welfare Board, CWIN helplines) should be established and nurtured.

- **Control donations:**

Prospective adoptive parents should be wary of making donations ‘to improve living conditions’ in centres, in order to prevent children from being kept in conditions that encourage donations. Donations should be funnelled through official channels only.

Finding 2

PLAYING CATCH-UP

STANDARDIZED MONITORING OF CHILD CENTRES IS LAGGING BEHIND

The number of child centres involved in intercountry adoption has more than doubled in the last 5 years, from 19 centres in 2003 to 47 in 2008. The Government's monitoring capacity, however, has not increased at the same rate. The Central Child Welfare Board (CCWB) and the District Child Welfare Boards (DCWBs) have made progress, but are still playing catch-up with the child centres. Child centres frequently move location, which makes monitoring extremely difficult. Until recently, no enforcement mechanisms existed. Resources for the national monitoring of centres are lacking. Meanwhile, large sums of money are invested in monitoring children who have already left Nepal and are now citizens of foreign countries.

According to a government official, as at February 2007 a total of 1,048 child centres were operating in Nepal, with 366 centres in Kathmandu District alone.¹⁸ A centre hosts about 15 children on average. Assuming that all 1,048 child centres host an average of 15 children, it can be conservatively estimated that 15,720 Nepalese children are currently living in residential care. The Government of Nepal has a duty to ensure that these children receive proper care and are protected from abuse, in accordance with the Minimum Standards for Residential Care endorsed in 2003. This includes ensuring regular contact with family, and making efforts to reunify children with their family, if it is in the best interests of the child. Cases of grave abuse ranging from child trafficking, foreign paedophiles running child centres¹⁹ and deplorable conditions in child centres have been reported by the Nepali media and are confirmed by this research (see Finding 1). Only regular monitoring carried out by an independent body abiding by uniform monitoring criteria and strict enforcement measures can ensure that children are safe and accounted for.

One-third of child centres never visited

Although the Government of Nepal initiated the monitoring of child centres in 2004 through the Central Child Welfare Board and the District Child Welfare Boards, according to government officials, only around 100 child centres have been monitored over the last two years. Of these 100 centres, 22 in the Kathmandu Valley alone were closed down because of mismanagement, exploitation of children (such as making children beg in the streets), and substandard conditions. According to government officials, most

monitoring visits are announced beforehand and only a few 'surprise visits' are conducted. This practice enables child centres to hide irregularities and instruct staff and children not to disclose any accounts of abuse or exploitation. Furthermore, monitoring at the district level is conducted by the DCWB, a body that often lacks capacity. Interviews with child centre staff confirm that monitoring has not yet achieved 100 per cent coverage: 31 per cent of the child centres in the study had never been visited/monitored (69 per cent had been monitored). In the Kathmandu Valley, 57 per cent were monitored compared to 93 per cent in Pokhara and 83 per cent in the Far West. Of the monitored centres, more than two-thirds (67 per cent) had been monitored once during the last year, 20 per cent had been monitored twice, and 7 per cent had not been monitored during the last year. The statement in the box shows that a systematic and standardized monitoring system has yet to be established in the districts.



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¹⁸ Himal Khabarpatrika (2007) 'Where are they?', in *Nepali Times*, Issue no. 335 (9–15 February 2007), Kathmandu.

¹⁹ Verbakel, W and Van Klaveren, S (2008) 'Mushrooming orphanages – the use(lessness) of children's homes in Nepal', in *Nepali Times*, Issue no. 387 (15–21 February 2008), Kathmandu.

No monitoring system

“There is no monitoring system here. I have not monitored any centre thus far. I have participated in programmes organised by child centres. During programmes, the centres inform us about their activities. Only if someone complains about a centre do I send staff to monitor such a centre.”

A district official who is part of the child centre monitoring team.

No uniform monitoring criteria

At present, monitoring is not conducted according to standardized criteria, but varies greatly from one monitoring visit to the next.

Of the centres that were monitored, child centre staff mentioned that monitors examined the children's bedrooms (50 per cent), the food (43 per cent), assessed the children's education (34 per cent), and checked the health reports of the children (28 per cent). Child centre staff reported that a few monitors looked at the condition/situation of the children (18 per cent), examined the general records of the children (16 per cent), assessed the sanitation conditions (16 per cent) and looked at the kitchen (13 per cent). According to 11 per cent of respondents, children's clothes were examined, care and support was assessed, and toilets and bathrooms were looked at.

Government monitors focus primarily on infrastructure, health, nutrition and education; not much attention is paid to children's perceptions, the admission status of children, and the financial accountability and registration status of centres.

Children's perceptions and observations should be given due consideration by monitors. By listening to children's accounts, monitors may be able to detect potential abuse and exploitation of children. However, only 16 per cent of child centres reported that monitors interacted directly with the children.

Not enough attention is paid to verifying the status of children at the time of admission. The vast majority of children in care do not need to be there. They have family, including extended family, who may be able to provide care with proper support and some initial monitoring to ensure the child is safe. Clear admission guidelines and regular, documented reviews of a child's situation (often described as a 'care plan') should be on file at the care centre and available for monitors

to review and verify. Only six per cent of centres reported that the children's admission records were examined and two per cent reported that their police reports were examined.

Financial accountability and registration status

Only six per cent of centres reported that the children's admission records were examined and two per cent reported that their police reports were examined. It was not clear to the research team whether or not the Adoption Recommendation Committee was part of this monitoring. In only four per cent of cases was financial accountability assessed. Three per cent of child centres were asked to register as they were not registered at the time of monitoring. Only one per cent of child centres said the renewal of their registration was verified.

Illegality renders monitoring difficult

Unregistered child centres are of particular concern, as the lack of monitoring can allow child abuse and exploitation to remain unexposed. These centres operate outside the law. Furthermore, unregistered centres have been known to send children for intercountry adoption, albeit through well-established registered centres that officially conduct adoption. Among the nine biological parents interviewed for this study, it was found that two children had been transferred from Pokhara and Nepalgunj to Kathmandu prior to adoption. This research found that the majority of child centres visited (84 per cent) were registered either with the Social Welfare Council or the District Administration Office, but 16 per cent were not, with a much higher number of unregistered centres in Pokhara (40 per cent) and the Far West (33 per cent) than in the Kathmandu Valley (2 per cent). Another study conducted in 2005 of 335 child centres in 12 districts found that 81 per cent were registered and 19 per cent were not registered.²⁰

Plans for improvement

The Central Child Welfare Board has recently received a budget increase, and it is expected that monitoring capacities will be strengthened. The government is also preparing to conduct a baseline survey of child centres in Nepal. However, it also needs to ensure that baseline data are updated frequently so that unregistered child centres are detected quickly and cannot operate outside the law. Once the baseline data are established, uniform monitoring criteria need to be developed and, finally, regular and systematic monitoring needs to be conducted, followed by strict enforcement measures where necessary. The Minimum Standards 2003 are not detailed enough to guide the monitoring process,

²⁰ New Era (2005) *Study of Children in Children's Homes in Nepal*, New Era, Kathmandu.

but the Minimum Standards for Residential Care that are currently being developed provide more than 90 standards. These standards should be used as a basis from which to develop uniform monitoring criteria.

National monitoring a priority over international supervision visits

The Nepal Children's Organization (NCO) at Bal Mandir used to collect US\$ 300 from each set of prospective adoptive parents. Instead of being spent on monitoring children in child centres in Nepal – a much-needed activity – these resources were used to fund overseas monitoring trips of various officials. Under the Terms and Conditions 2000, there was an Adopted Children's Monitoring Committee under the Nepal Children's Organization. This committee (comprised of representatives of the concerned ministry and the Nepal Children's Organization) was to monitor the condition of adopted children's nourishment, education and health until the adopted children attained majority. The Adopted Children's Monitoring Committee was required to submit reports to the Ministry of Women, Children and Social Welfare. Under the Conditions and Procedures 2008, the Adopted Children's Monitoring Committee has been replaced by an Investigation, Recommendation and Supervision Board; however, the same practices are likely to continue. Section 16 of the Conditions and Procedures 2008 governs the Board's 'supervision' function in two ways: (i) the Investigation, Recommendation and Supervision Board may supervise child centres in Nepal "in cases it finds essential", and (ii) the Board will supervise foreign organisations or

agencies at least once a year by considering whether the organisations/agencies are complying with the standards for intercountry adoption. Judging by recent supervision trips to various western countries, it is probable that relatively few resources will be available for national monitoring. It should be noted that the Sher Bahadur Deuba government had halted this practice, considering it a wasteful exercise. Nepal is the only country to monitor the situation of adopted children so extensively. A similar task is performed by the receiving countries' child placement agencies on a regular basis. Moreover, Section 19 of the Conditions and Procedures 2008 stipulates that adoptive parents must submit a report about the adoptive child's condition including nurturing, health and education (as well as a postcard size photograph) to the Ministry of Women, Children and Social Welfare through the Embassy of Nepal in the adoptive parents' country.

The Government of Nepal's primary responsibility is to monitor Nepali children currently residing in institutions in Nepal. From the moment an adopted child receives foreign citizenship, the responsibility for post-placement supervision rests with the receiving country rather than with the Government of Nepal.

In addition, international law does not require adopters to send progress reports on the well-being of their child to the authorities of the adopted child's country of origin. Nevertheless, based on a mutual agreement between the country of origin and the adopters, such progress reports are often sent.

PROPOSED COURSE OF ACTION

- **Develop uniform monitoring criteria:**

The new Minimum Standards for Residential Care should be officially adopted. Based on these standards, uniform monitoring criteria should be developed and strict enforcement measures should be put in place. This process should be informed by the Formal Care Monitoring Guide produced by the Better Care Network. Standardized monitoring should include the verification of accounts, the registration of children and case files, as well as the functioning of the child centre

- **Ensure implementation of standards:**

Once the new minimum standards are adopted, in-depth training coordinated by the Ministry of Women, Children and Social Welfare should be conducted for monitors to increase awareness and ensure the internalization and implementation of the standards.

- **Consult children:**

Monitors should be trained to speak to children about conditions in child centres. The views of children should be duly considered.

- **Centralize registration system:**

One body for the registration and numbering of child centres should be established and centralized at the national level in order to conduct systematic monitoring of all child centres in Nepal.

- **Conduct independent monitoring:**

Monitoring of district-based child centres should be carried out by an independent monitoring body (not from the same district). The District Child Welfare Boards should be capacitated to establish and develop child protection systems.

- **Track unregistered centres:**

The Women and Children Service Centre (formerly known as the Women Police Cell) should support the tracking of unregistered child centres and facilitate access to them.

- **Carry out surprise visits:**

In addition to announced monitoring visits, surprise visits should be conducted regularly in all locations.

- **Report children's movements:**

Centres listed under Section 9 of the Conditions and Procedures 2008 as authorized to perform intercountry adoptions should be required to report the arrival and departure of children once a month, giving details about the children and the reason for their coming and going. Monitoring bodies should be mindful of the practice of moving children from one centre to another and of registered centres acting as 'umbrellas' for unregistered centres to carry out intercountry adoptions. The functioning of the Family Selection Boards will be contingent upon the establishment of such a reporting system.

- **Prioritize monitoring in Nepal:**

In view of past irregularities, the Investigation, Recommendation and Supervision Board should spend the majority of its resources on supervising child centres in Nepal. This supervision should be standardized and regularized, and not conducted only "in cases it finds essential".

Finding 3

ABANDONED BY THE SYSTEM

NOT NECESSARILY BY THEIR FAMILY

Article 7 of the Convention on the Rights of the Child (CRC) states that “The child has [...] the right to know and be cared for by his or her parents”. This study found that children were not necessarily abandoned by their parents, but rather by the system that was supposed to protect them. In some centres, 80 per cent of children had families that could look after them. The child protection system, which currently relies on institutionalization, should be refocused to provide better support for parental care. At present, child centre staff play the largest role in the referral process, according to biological parents. This should be changed, and referrals should be controlled by qualified professionals, for example, by the District Child Welfare Boards.

A high proportion of children in residential care (62 per cent) do not need to be institutionalized, as they could probably be brought up by their parents or immediate family members within the community.

This study investigated the causes leading to the institutionalization of children. Not surprisingly, economic difficulties were an important factor in the decision to institutionalize a child. As far as push factors were concerned, 89 per cent of biological parents cited poverty as a reason for sending their child to an institution. Nearly half (49 per cent) of the children cited poverty as the main factor leading to institutionalization. Research revealed, however, that poverty might be the foundation, but it is not necessarily the lone cause or determining factor behind the institutionalization of children. Additional determining factors were those affecting family unity or stability: the death of a parent(s), remarriage, an unsupportive father who is alcoholic or abusive, and the disability of one or both parents were also cited as factors. According to the children, father’s death (27 per cent) and death of both parents (18 per cent) were primary factors, in addition to poverty.

Comparison between sites showed that poverty was cited as the main reason by the majority of children interviewed in the Far West (68 per cent) and Pokhara (57 per cent), but by less than half (44 per cent) of children in the Kathmandu Valley. More than half (53 per cent) of the children in the Far West said that they came to the centre because they had lost their father, whereas in Pokhara and in the Kathmandu Valley about a quarter (27 per cent and 23 per cent, respectively)

reported the loss of their father as the reason. Only 18 per cent across all three locations said that they had lost both parents.

The push factors of poverty and family unity alone do not fully explain institutionalization, however, as the vast majority of destitute parents do not institutionalize their children. There are also a number of pull factors that encourage parents to send their children to institutions.

In terms of the perceived benefits of institutionalizing their child, a good education was mentioned by 100 per cent of biological parents and 33 per cent of children. When looking at the differences between sites, nearly one-half to two-thirds of the children staying at child centres in Pokhara (47 per cent) and in the Far West (67 per cent) cited education as the main reason for institutionalization. Only 22 per cent of children in the Kathmandu Valley felt that they were brought to the



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centre in order to receive a better education. Education facilities, but also good food, a good upbringing, and job opportunities (“so that my child’s future would be secure”) were clear expectations across all sites. Ultimately, pull factors seemed to take precedence over push factors, i.e., protecting the child from an insecure environment was mentioned by only 28 per cent of biological parents.

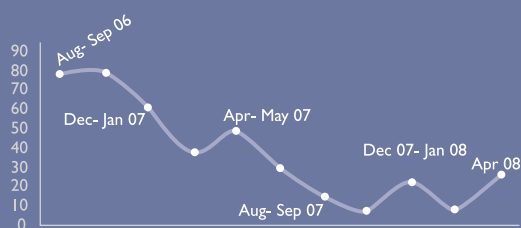
In Nepal, as in many other countries, providing the best schooling that parents can afford is a key concern for families, whether in rural or urban areas. Private schooling is clearly favoured, especially English medium schooling.²¹ English proficiency is perceived as the key to a better future, an index of social capital and a way to access better job opportunities beyond Nepal’s borders.²²

Abandoned by whom?

According to reports received from child centre staff, of all the 1,706 children residing in child centres across the 3 study locations, only 15 per cent were double orphans. Twenty-three per cent were single orphans (12 per cent had lost their mother and 11 per cent their father). The remaining 62 per cent of children still had both parents. Of all children, 33 per cent had been declared abandoned, according to child centre staff. Interestingly, centres that conduct adoption in the Kathmandu Valley report much higher numbers of ‘abandoned’ children (44 per cent) compared to child centres that do not conduct adoption located in Pokhara (8 per cent) and the Far West (8 per cent). It is possible that the difference is attributable to the practice of declaring children as abandoned to facilitate the adoption process.

According to children interviewed in centres (who are by definition older than those usually sent for adoption), 18 per cent were double orphans, 41 per cent were single orphans, 10 per cent reported that they did not have any information about their parents (probably really abandoned), and 31 per cent reported that both their

Figure 3.1 Number of children found abandoned in 2006-2008



Source: Women and Children Service Centre (two-month averages, for Nepali fiscal year 2063-2065 BS)

“Property rights are a big issue that needs to be addressed. One reason children are brought to orphanages after the death of one parent is to disinherit them. Land and property are taken away from the children and it is given to their family members, usually their maternal or paternal uncle.

What is terrible is that all of this is done under the guise of what’s good for the kids.”

An experienced INGO worker

parents were alive. Firstly, these figures suggest that the proportion of children who do not have any information about their parents (and are probably abandoned) is lower for older children than for younger children, and secondly that for at least 31 per cent of the children, plus some of the single orphans, institutionalization could possibly have been avoided.

The trend of child abandonment in the Kathmandu Valley seems to clearly follow the trend of intercountry adoption (See Figure 3.1). The lowest number of abandoned children was recorded after intercountry adoption was suspended in May–June 2007. The number of abandoned children picked up again in December 2007 after the announcement by the government that adoption would be reopened to process the residual caseload.

The fact that notices are published in newspapers for a longer period of time does not prove that the child is available for adoption and does not protect the child’s rights. Similarly, a police search through the Women and Children Service Centre (formerly the Women Police Cell) is not proof that a child is abandoned. There is a State responsibility under the CRC (Article 19 in particular) to support the caregivers and establish ‘social programmes’ to provide necessary support for the child and for those who have the care of the child. By systematically declaring children with living parents to be abandoned the State is failing in its duty to protect the rights of the child.

Just as the number of children found abandoned by the police dropped considerably after May 2007 when intercountry adoption was suspended, so did the number of child abandonment notices published in the Gorkhapatra newspaper (Figure 3.2).

A police search by the Women and Children Service Centre (formerly the Women Police Cell) should not

²¹ Caddell, M (2007) ‘Private Schools and Political Conflict in Nepal’, in P. Srivastava & G. Walford (eds) *Private Schooling in Less Economically Developed Countries*, Symposium, Oxford.

²² Liechty, M (2003) *Suitably Modern: Making Middle-Class Culture in a New Consumer Society*, Princeton University Press, Princeton.

be considered as sufficiently comprehensive to permit a child to be declared abandoned. Similarly, the fact that abandonment notices are published in a newspaper for a certain period of time should not mean that a child is available for adoption. Indeed, according to the Women and Children Service Centre, only one or two children per year out of an average of 500 published abandonment notices are reunited with their families. This suggests that the current search mechanism needs to be thoroughly overhauled.

By crosschecking data in interviews with key information obtained from stakeholders, it was found that children were regularly declared as 'abandoned' when it was possible that their biological parents were still alive and potentially able to care for them.

The higher number of abandoned children reported in the Kathmandu Valley can also be explained by the legal framework and prevailing practices, which make it much more expedient for a centre to declare a child as abandoned than to go through the relinquishment process. In the case of a child 'abandoned', 'found on the street' or 'found at a hospital', the process is much easier than the relinquishment process. To certify a child as 'found by the police' involves a simple police report and a certificate to that effect. In the case of a child abandoned at a hospital, a simple letter from the hospital is required. The involvement of a local body is not required in the case of abandonment.

By contrast, the relinquishment procedure is much more complex (and potentially hazardous for child centres) as it requires the involvement of the biological parents. Relinquishment requires the involvement of a local body such as a village development committee (VDC) or a municipality. The local body submits a recommendation and provides an explanation of the financial, cultural and social circumstances that led to relinquishment.

The Conditions and Procedures 2008 have not challenged this broad interpretation of the term 'orphan'. The procedure remains minimal for an abandoned child found by the police or at a hospital. Both categories continue to be regarded as 'orphans' for the purpose of adoption.

This has far-reaching consequences for children in Nepal and for their families. Firstly, it artificially creates orphans when a substantial number of these children have a mother, a father or both. In addition, it denies the child his or her identity and creates a false sense of confidence in prospective adoptive parents.

Contact with family

Anecdotal evidence shared by embassy officials suggests that children who were in the process of

Figure 3.2 Number of abandonment notices per month 2006 and 2007



Source: Gorkhapatra (Average 2 Months)

being adopted had returned to visit their parents or relatives one last time, leading to some confusion on the part of prospective adoptive parents.

Reports from child centre staff indicated that children staying in child centres do have frequent contact with their families and relatives. Forty-eight per cent of biological parents indicated that they visited their child at least every 6 months, of which 8.6 per cent visited once a month and 5.7 per cent fortnightly.

Interviews with children confirm this. Four-fifths of the centre staff respondents (81.4 per cent) reported that children's families came for visits to the centres. In addition, the majority of the respondents (84 per cent) reported that at least some of the children in their centres communicate with their family. Similarly, more than four-fifths of the respondents reported that they have a record of the biological parents/family.

Almost all child centre staff (98 per cent) reported that parents/guardians/relatives are allowed to visit the children at the child centres. Two respondents reported that they do not allow parents/guardians to visit children in the child centres. Out of these two, one respondent stated that this would expose the centre to the risk of parents taking their children away when they visit them. The lack of a variety of options within a child protection system puts residential care in competition with parental care. Instead of putting children in child centres, the government should plan support programmes for families in order to avoid relinquishment of children.

Referrals by centre staff

As mentioned above, push and pull factors influence the decision to institutionalize a child. The study also found that child centre staff play a key role in referring a child to a centre. Asked how children were referred to the child centre, biological parents cited centre staff (31 per cent), relatives (20 per cent), and neighbours and friends (17 per cent each). Five per cent of parents had heard about the child centre through the print media. Fourteen per cent of children reported that

they were brought to the child centre by a member of its staff. Four child centres in the Kathmandu Valley reported having 'field staff' whose job it was to 'explore the villages and bring in children'.

Figures don't match

In one leading child centre, 78 intercountry adoptions were conducted over the last 3 years, with 100 per cent of the children being reportedly abandoned (see Figure 3.3 below). According to the figures provided by the centre itself, all the abandoned children were 'found by the police'. However, when comparing this with the breakdown of children currently residing at the centre, the percentage of abandoned children drops from 100 to 12.5 per cent. Similarly, another centre reported 21 abandoned children out of the 21 adoptions conducted. Out of those, 19 children were found by the police (90 per cent) and two were brought to the centre by relatives. However, only 16.9 per cent

of the children currently residing at the same centre were reported as 'abandoned'. Seen as a whole, these figures indicate that an adopted child is three times more likely to have been found by the police than a child residing at a centre. One possible explanation is that these abandonment procedures are undertaken specifically for intercountry adoption purposes.

Key stakeholders also explained this discrepancy by the fact that 'orphan' declarations often post-date the child's arrival at the child centre and the matching process. In other words, in many instances, the paperwork undertaken by the police or hospital is completed after a child's file is matched to a prospective adoptive family. Given the costs involved, most centres prefer to incur expenses after prospective adoptive parents have already paid an initial down payment or when they are reasonably sure that their costs will be recovered.

PROPOSED COURSE OF ACTION

- **Make adoption part of child protection systems:**

Adoption cases should be addressed within child protection systems. Children in need of special care and protection should have access to services, starting with family support. If required, out-of-home services should provide the best available alternative care to parental care. Nepal needs to affect a paradigm shift from the current situation in which the most common protection measure is institutionalization for children who cannot live in their own family. Options should focus on family-type solutions, such as kinship care, foster care and domestic adoption. Institutionalization should be the last resort. Intercountry adoption should only be envisaged after child protection services have explored all other protection measures at hand. Before applying the Conditions and Procedures 2008 for intercountry adoption, there should be a clear policy on the institutionalization of children. The Government of Nepal needs to put in place stringent rules on the opening of new centres, whether they are involved in intercountry adoption or not.

- **Recruit, train and retain social workers:**

An important part of the alternative care system, social workers can assist families and communities and support them in identifying problems and seeking support services.

- **Promote educational sponsorship within families:**

Emphasis should be placed on providing educational sponsorship for children in their families. A full assessment should also be conducted on the linkages between sponsorship and intercountry adoption.

- **Stop orphanage proliferation:**

A fundamental shift away from over-reliance on institutional care can be supported by actively discouraging the creation of institutional care facilities and by developing foster care as an alternative to institutionalization. International experience demonstrates that once an institution is built it will be filled, irrespective of children's needs. Residential care, when necessary, can take place in small groups and family-type settings.

- **De-institutionalize:**

The Ministry of Women, Children and Social Welfare should actively promote a de-institutionalization policy by encouraging alternatives to institutional care. A range of alternative services such as day care centres, child development centres, maternal assistants and universal cash benefits need to be developed and good practices should be promoted, leading to a widespread understanding of the importance of alternatives to institutional care.

- **Involve local bodies:**

The involvement of a local body (e.g., the VDC or Municipality, etc.) should be required in establishing whether a child has been abandoned.

- **Control referrals:**

Referrals to institutions should only be undertaken via VDCs and District Child Welfare Boards to avoid child centre 'agents' recruiting children on their own. This would also allow the Central Child Welfare Board and District Child Welfare Boards to keep track of numbers, thus avoiding a repeat of the Humla–Jumla case.

Figure 3.3

COMPARISON OF ABANDONMENT BETWEEN CURRENT RESIDENTS IN CHILD CENTRES AND ADOPTED CHILDREN										
Child centre (Serial number)	Children currently at the centre					Children already adopted				
	Total number of children currently at the centre	Total number of children abandoned	Of abandoned children, total number found by the police	Percentage of children abandoned	Percentage of children found by the police out of total	Total number of children adopted (ICA)	Total number of children abandoned	Of abandoned children, total number of children found by the police	Percentage of children abandoned	Percentage of children found by the police out of total adopted
Centre No. 9 Kathmandu	32	4	4	12.50%	12.50%	78	78	78	100.00%	100.00%
Centre No. 70 Kathmandu	68	7	7	10.29%	10.29%	70	70	70	100.00%	100.00%
Centre No. 30 Kathmandu	40	22	22	55.00%	55.00%	50	38	38	76.00%	76.00%
Centre No. 68 Kathmandu	59	18	10	30.51%	16.95%	21	21	19	100.00%	90.48%
Centre No. 26 Kathmandu	21	21	10	100.00%	47.62%	22	22	10	100.00%	45.45%
Centre No. 17 Kathmandu	59	18	10	30.51%	16.95%	21	21	19	100.00%	90.48%
Centre No. 1 Kathmandu	54	10	10	18.52%	18.52%	20	11	11	55.00%	55.00%
Centre No. 19 Kathmandu	33	15	9	45.45%	27.27%	15	12	9	80.00%	60.00%
Average				37.85%	25.64%				88.88%	77.18%

Source: CREHPA. For centres with more than 10 adoptions where full data was available.

Finding 4

MENTAL PAIN: THE UNTOLD STORY

PSYCHOSOCIAL APPROACH MISSING IN RESIDENTIAL CARE

A widespread misconception is that infants and young babies suffer less than older children from the effects of family separation, as they are supposedly unaware of what is happening to them. Irrespective of their age, children lose out by being taken from their biological family and losing their identity. Irregularities in the process of adoption are likely to prevent an adopted child from being able to trace his or her birth parents, creating a potential problem later on. While local resources exist in the form of psychosocial projects and organisations specializing in mental health issues, they are not being adequately used to prepare parents and children for domestic and intercountry adoption. Orphans and children who have been abandoned once or several times require this type of support.

This study attempted to fathom the depth of the psychosocial issues affecting children in institutions. To our knowledge, this has never been researched in relation to intercountry adoption in Nepal.

It was found that Nepal is no exception to trends observed elsewhere in the world. Globally, it is increasingly argued that young children with a background of institutional care may have significant delays in brain growth and in social and cognitive development.²³ The insecurity these children feel makes them vulnerable and their permanent care complex. Once the decision to adopt has been made, the transition between home, any temporary alternative placement and the adoptive home, if not handled sensitively and carefully, can provoke further distress and anxiety for the child.²⁴ Throughout the transition, adopted children go through a series of losses,

including the loss of their biological family, extended family, previous carers, and peers in institutional and/or foster care.

Psychosocial issues are not usually addressed and little attention is paid to their root causes or potential consequences. According to child centre staff members, children are affected by a number of psychosocial problems: 50 per cent of staff cited depression, 31 per cent cited loss of concentration, 54 per cent cited stress, and 15 per cent cited mental disturbance. Some also mentioned instances of children crying frequently, waking up and screaming at night, as well as sleepwalking.²⁵

Child centre staff reported that they try to help children by talking to them personally (24 per cent), showing them love (45 per cent), trying to understand the child's problem (19 per cent), etc. Emphasis was also placed on providing entertainment such as taking the children out for picnics (28 per cent). Half of the child centres in the Kathmandu Valley reported providing some form of psychosocial support. However, this proportion dropped to 47 per cent in Pokhara and 17 per cent in the Far West.

Asked whether older children who had been matched with prospective adoptive parents suffered when intercountry adoption was suspended, child centre staff responded that "children were affected psychologically, fearing that they would lose their secure future and education" (20 per cent), "the feelings and attachment



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²³ Johnson, R; Browne, K and Hamilton-Giachritsis, C (2006) 'Young children in institutional care at risk of harm', in *Trauma Violence and Abuse*, 7:1, pp 34–60.

²⁴ Yarrow, LJ and Klein, RP (1980) 'Environmental discontinuity associated with transition from foster to adoptive homes', in *International Journal of Behavioural Development*, 3, pp 311–22.

²⁵ Percentages exceed 100 per cent owing to multiple responses.

Psychological Turmoil

For one year and four months the prospective adoptive mother and a yet-to-be-adopted child lived together in Kathmandu. The adoptive mother had taken a Nepali course at a university to obtain a one-year visa. During this time living together, a strong bond was created and the girl was prepared to live in her new country in Europe. Following a number of irregularities in her file, including the fact that the girl had living biological parents, the eight-year-old was sent back to the child centre that she had come from. For a while, she thought that she would stay at the centre and one day return home to her village. Eventually she visited her biological parents in the company of the prospective adoptive mother to have relinquishment papers signed. Once again, it was explained to her that she had to leave her biological parents to live in a distant country. Although she agreed, her papers were not approved by the ministry, and she had to remain at the child centre without either a biological family or an adoptive family.

between the adoptive parents and the selected children had been established since they were already familiar with each other” (18 per cent), “they felt exactly as if they had lost their own parents” (17 per cent), “they felt bad since they were mentally prepared to go abroad” (15 per cent), and “younger children were not affected” (15 per cent).²⁶

Professional counselling non-existent

Despite the recognition that children suffer from psychological issues, none of the centres reported having professional child counsellors on the payroll or a retainer. A third of centres reported having no private space for the biological family or relatives to meet with the child (asked whether they arranged a private space for family visits, 67 per cent of child centre staff responded yes, 33 per cent said no). Only 10 per cent of centres reported having a special ‘counselling room’.

Centre staff did not seem to be aware of the importance of providing professional support to children who experienced psychological problems, and professional psychological support was not mentioned as a need (see box). One centre director seemed totally unaware of the psychological issues involved in separating siblings. He indicated that it was quite ‘normal’ to separate siblings including twins.

Small lies, big consequences

The study found evidence that disingenuous information was provided to biological parents, such as that their child would return to them after they reached the age of 16 or 18 years. Asked what could be done to ensure greater enforcement of the law, one child centre staff said that “there should be a law that says the child can come back to Nepal after reaching the age of 16 years”. Anecdotal evidence suggests that, in some cases, misrepresentation goes further: “The staff told my sister that the children would be taken by foreigners who would treat them like their own children and bring them back every year”. Whatever the reason may be for such statements to biological parents, they do not take into account the psychological aspects and deep-rooted distress they will create in the long-term. On the legal side, adoption – or at least closed adoption – has typically involved the cessation of any legal relationship or contact between the child and his or her biological parents. The secrecy associated with closed adoption makes it difficult or impossible for a child to ‘know’ his or her biological parents even if she or he, as an adult adoptee, wishes to conduct a search. It is probably nearly impossible for an adult adoptee to trace back through questionable records and find their biological family in Nepal. Moreover, many adoptions frequently involve the loss of the original name given to the child by the birth parents. The vulnerability of children to having their names changed, concealed, or lost entails long-term consequences and a loss of identity.

Searching for roots

Many receiving countries have laws that entitle adopted adults to find out the identity of their biological parents. Even if countries of origin have laws and conditions that forbid such searches (e.g., India), they are nevertheless more and more open to helping adoptees find their biological parents, being aware of the necessity and the right to know. Nepal will inevitably be confronted with this problem in the future.

Consequences of bogus adoptions

A well-known child psychiatrist with many years of experience in intercountry adoption, Fanny Cohen-Herlem, worked on the consequences of abusive adoption procedures. She points out that adopted children are fragile psychologically as they have suffered one or more separations after birth. To grow up they need the ongoing support of trustworthy adults.

To be adopted through an abusive procedure invariably causes psychological damage to the child concerned. For example, if a child knows intimately that he or she has living parents, brothers and sisters, but was told

²⁶ *Ibid.*

by the child centre to forget them (because he or she has been declared an 'orphan'), it is difficult for the child cope with such a secret. How will the child grow up with this enormous psychological burden? How will the child deal with the feelings of guilt?

Cohen-Herlem believes that the lies imposed on these children by adults places them in an unbearable situation and jeopardizes their development. A feeling

of guilt develops; the child might feel depressed or hateful towards adults and lose their self-esteem. If they realize that their adoptive parents knew about the 'secret' or could have known, but chose to ignore it, they might lose confidence in themselves and in adults. Telling lies can become a mode of communication in itself. These children start thinking that they have been misled, dreaming about their 'real parents', and their adoptive parents become the 'false ones'.

PROPOSED COURSE OF ACTION

- **Encourage psychosocial and mental health programmes:**
Encourage child centres to make use of available mental health resources in the Kathmandu Valley and develop the capacity of such mental health programmes to support children in remote areas.
- **Develop and deliver a tailor-made psychosocial training module:**
Develop and deliver a tailor-made psychosocial training module for social workers involved in the adoption process in Nepal.
- **Conduct independent child counselling sessions:**
Conduct independent child counselling sessions where appropriate at the Central Child Welfare Board and District Child Welfare Board levels.
- **Build the capacity of government-run social services:**
The new Adoption Act (currently being drafted) should make provision for home visits, reports on psychosocial status, and other important assessments to help understand the situation of a family, especially in the case of relinquishment. The Act should require the involvement of professional social workers trained as child counsellors. These counsellors should be sufficient in number and operate at an acceptable professional level.
- **Train social workers:**
Linkages should be developed with existing social work training (e.g., Saint Xavier's Campus) and social workers and their trainers sensitized to adoption issues.

Finding 5

EAST OR WEST, A REAL HOME IS BEST

CENTRES AND AUTHORITIES MUST FOCUS ON DOMESTIC SOLUTIONS

The majority of centre staff declared that they prefer domestic adoption over intercountry adoption. However, in practice, an extremely small number of domestic adoptions are conducted (four per cent) and intercountry adoption is, in reality, the chosen option. It was found that alternatives to institutional care and intercountry adoption are numerically insignificant and not adequately promoted. This research uncovered the need for an improved domestic adoption mechanism. To achieve this, partnerships need to be created to remove legal, sociological and cultural barriers. A menu of options should be explored (not just adoption) including maternal care, community-based support and foster care.

While almost all centres (97 per cent) intend to (re)integrate the children under their care, planning for (re)integration happens at a very late stage. Planning does not start when the child first arrives in the centre: about a third of centres (31 per cent) plan to (re)integrate children after completion of their School Leaving Certificate (SLC), while about a quarter (24 per cent) plan to reintegrate children when they reach the age of 18 years. Similarly, about 18 per cent plan to (re)integrate children after completion of Grade 12.

Not surprisingly, the majority of centres (70 per cent) said that they plan to integrate some children through adoption. In the Kathmandu Valley, apart from two centres, all plan to integrate some children through adoption. These centres reported that they plan to integrate children through adoption after amendment to their institutional constitution, indicating a wish to commence intercountry adoption. Only two centres in the Kathmandu Valley plan to integrate children through domestic adoption (see box).

Children with special needs

Those centres that reported planning to integrate children through adoption were asked whether children with special needs (e.g., children with a disability) had been sent for intercountry adoption. More than a third of child centre staff did not know whether children with disabilities were sent for adoption, while about a third of centres stated that children with disabilities were not sent for adoption. A number of centres in the Kathmandu Valley (11 centres) reported that children with disabilities were sent or could be sent for adoption. This is seen as a positive indicator that children with special needs can potentially be included in the process. A change in attitude and beliefs is necessary for

many, however. At present, centres provide children primarily to satisfy the wishes of adopters, rather than considering whether or not intercountry adoption is in the best interests of the child.

Intercountry adoption preferred

Those centres (46 centres) that have plans to integrate children either through intercountry adoption or domestic adoption were asked about the number



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Focus on domestic adoption

A child centre in the Kathmandu Valley reported having conducted 21 domestic adoptions and only 2 intercountry adoptions since its inception. Their stated preference for domestic adoption was based on the assumption that the “child belongs to Nepal and should have a chance to grow up in Nepal, in his or her own country and culture”. Asked what kind of adoption reforms were needed, the director suggested: “There should be a law or act on adoption, which should be strong and transparent. Children who have at least one biological parent still living should not be given up for adoption.”

of children adopted from their centre. It was found that intercountry adoption was performed only from child centres in the Kathmandu Valley. A total of 867 children had been sent for intercountry adoption in the sample group, since the opening of the centres.

Although the majority of child centre staff declared that they prefer domestic adoption (61 per cent), very few centres are engaged in the process of matching children with Nepali couples. For example, only 34 children (4 per cent) were adopted domestically; the remaining 833 children (96 per cent) being sent for intercountry adoption since the inception of the child centres. Only one centre specialized in domestic adoption and was not sending children abroad. It had conducted four domestic adoptions. Nineteen centres specialized in intercountry adoption and had not sent any children for domestic adoption. The Nepal Children’s Organization (which was one of four centres that did not fill out the detailed questionnaire) indicated that it conducts three to four domestic adoptions a year. When staff at the Nepal Children’s Organization were asked their opinion about organisations that conduct up to 20 domestic adoptions a year, they indicated that these adoptions were not legally processed through the Land Revenue Office. According to the Nepal Country Code 1963, nationally adopted children have to be registered at the Land Revenue Office.

While local solutions need to be promoted in accordance with the principle of subsidiarity, effective systems that safeguard the rights of the child also need to be in place. Informal kinship or foster care practices are widespread and can be used nominally for domestic adoption purposes. However, children in such circumstances must be adequately protected (see box). It may be advisable to ensure that safeguards and monitoring applied to child centres and intercountry adoption are also made functional for foster care or other domestic arrangements.

As mentioned in Finding 3, the lack of a variety of options within the child protection system puts residential care in competition with parental care. Instead of putting children in child centres, the government should plan support programmes for families in order to avoid relinquishment of children. The former replaces the latter, even in cases where parents are able and willing to take care of their child.

Children not aware of domestic adoption

While more than 63 per cent of children had heard about adoption, only 8 per cent had heard about domestic adoption. A higher proportion of children in the Kathmandu Valley (73 per cent) had heard about adoption compared to the Far West (60 per cent) and Pokhara (43 per cent). Among these children, 56 per cent had heard about both domestic and intercountry adoption.

Domestic adoption for domestic help

In this case study, domestic adoption was a social arrangement with no legal foundation. With his parent’s permission, a seven-year-old boy from far western Nepal was taken by his maternal uncle to live with his mother’s younger sister in eastern Nepal. He assumed the duties of a biological son in relation to his adoptive mother – to care for her, inherit her property, and ultimately perform her funeral rites. While this was an informal arrangement (with no registration of the adoption at the Land Revenue Office), it was understood he would not be able to perform the funeral rites for his biological parents nor inherit their property.

Unfortunately, the relationship with his adoptive mother did not flourish. The boy proved to be a good student; however, he was continuously abused by his adoptive mother. At times he was sent to work in other people’s homes where his board and lodgings were minimal. His ‘bratbandh’ or thread ceremony was never performed. When he grew older, the boy eventually left for Kathmandu where he completed his bachelor degree and found work. He maintained a certain distance from his adoptive mother, visiting her only occasionally, but sent money to her when he could. His adoptive mother let him know that she no longer cared for him and that she had arranged for someone else to perform her funeral rites. She also transferred her property into the name of another nephew. In the end, he was doubly disinherited and lost the honour of performing the funeral rites for both his biological parents and adoptive mother.

PROPOSED COURSE OF ACTION

- **Establish child protection systems:**

Emphasis should be placed on child protection systems at the district level. All activities in the field of child protection (placements in institutions and their supervision, guardianship, foster care and homes, and domestic adoption) should be coordinated by one entity at the district level. State and non-State actors should join forces to capacitate the District Child Welfare Boards in selected districts of Nepal.
- **Promote the principle of subsidiarity:**

Intercountry adoption should be accepted only if there is no possibility of the child being adopted domestically or being placed under the guardianship of relatives (irrespective of their citizenship) or other persons who are citizens of Nepal. This principle should be firmly established and promoted.
- **Develop alternatives to residential care:**

Alternative care should focus on families. Supervised foster care and kinship care (care by the extended family) are options that should be considered. Where the child is living in another family or with relatives for some time, the status of the child need not be changed and no legal decisions need to be taken. The child can return to the biological family if the situation improves.
- **Promote domestic adoption:**

Promote the establishment of an independent voluntary coordinating agency (VCA) with the sole objective of promoting domestic adoption. This agency should be independent from the central agency and should ensure that a child who is declared 'adoptable' is first prioritized for domestic adoption. Homes and orphanages should have to register each child they propose for adoption with the VCA. VCA clearance of every child's file should be necessary prior to intercountry adoption matching. The ratio between domestic adoption and intercountry adoption should be brought up to 50:50, thereby reducing the need for residential care and leading to the closure of some child centres. Once the VCA is established, centres that do not have at least 50 per cent domestic adoptions should be barred from intercountry adoption procedures. Domestic adoption should be included in the accreditation criteria under the Conditions and Procedures 2008. No child centres should 'specialize' in intercountry adoption. Centres should be strongly encouraged to explore a wide array of options for children. Reintegration planning should happen the day the child is admitted to the centre.
- **Remove legal barriers:**

The Land Revenue Office is not the appropriate entity for registering domestic adoptions. It would be more appropriate to involve social services in conducting home visits and delivering agreements than using the Land Revenue Office as an entity for registering domestic adoptions.
- **Study best practices:**

Instead of visiting receiving countries, lawmakers and key stakeholders should study and visit countries that have succeeded in promoting domestic adoption (e.g., India, Brazil). Promoting domestic adoption is considered an effective way of controlling the growth of intercountry adoption and residential care.
- **Focus on children with special needs:**

Children with disabilities should have equal opportunities for intercountry adoption as it can be a suitable solution for children with special needs. In some circumstances, intercountry adoption might be the only solution for such children. Often, such children have been institutionalized because of their disability and there is little chance of them being adopted domestically.
- **Create alliances:**

Build partnerships to remove religious, sociological and cultural barriers to domestic adoption through recognized channels. A study on children from disadvantaged groups being adopted by parents from advantaged groups, and vice versa, could help promote domestic adoption.
- **Engage the media:**

Highlight successful domestic adoption stories in the media as a means of creating a favourable culture for domestic adoption.

Finding 6

MATCHING: IN WHOSE BEST INTERESTS?

CHILD CENTRES ARE THE MAIN DECISION MAKERS

In Nepal, child centres identify which children are in need of adoption. However, no one knows how many adoptable children there are in Nepal. Children who still have parents are routinely declared 'orphans' or 'abandoned' when adopters show interest in them. Prospective adopters can choose children and are bonding with them before state authorities establish the child's eligibility to be adopted, leading to distressing experiences if the adoption fails.

According to The Hague Convention, matching means that for each child in need of adoption the best prospective adoptive parents should be identified. The matching decision is made either by an accredited body from the receiving country or by authorities in Nepal, and then confirmed by the prospective adopters and authorities in the receiving country. According to Article 29 of The Hague Convention, direct contact between the prospective adoptive parents and the biological parents or guardians of the child is not permitted before verification of the adoptability of the child and of the suitability of the prospective adoptive parents. This practice guarantees that evaluations are made in the best interests of the child and allows for freedom of consent from the child's biological parents or guardians. It is important to note that Article 29 also applies to private adoptions, i.e., adoptions without the involvement of agencies.

The director of a leading child centre told researchers that he "did not like the principle of the best interest of the child". In his view, this principle was used negatively to curb intercountry adoption.



In a Kathmandu child centre ©Tdh in Nepal, 2008

Premature matching

According to the Terms and Conditions 2000, child centres used to be able to put prospective adoptive parents in contact with children prior to verification of the child's eligibility for adoption. Accordingly, prospective adoptive parents could establish a bond with the child before the child was declared eligible for intercountry adoption. This resulted in extremely painful experiences for both the child and prospective adoptive parents if the adoption failed.

As stipulated in Clause 9(1) of the Terms and Conditions 2000, prospective adoptive parents first identified a child and then submitted their application documents to the Adoption Recommendation Committee through either the Nepal Children's Organization or the District Administration Office.²⁷ Only then were application documents verified and the child's eligibility for adoption confirmed or rejected by the Adoption Recommendation Committee. Final approval was given by the Ministry of Women, Children and Social Welfare.

Upon payment, child centres provided prospective adoptive parents with the child's file via email, or presented children to prospective adoptive parents upon their arrival in Nepal, without first verifying the child's status as an 'orphan' or 'voluntarily waived child'. It is not clear whether child centres verified the eligibility of prospective adoptive parents before introducing them to the children or not.

To minimize costs, many child centres in Nepal only declared a particular child to be an 'orphan' or 'relinquished', once prospective adoptive parents had selected the child.

²⁷ In the case of children residing in the Nepal Children's Organization, the application was submitted to the Adoption Recommendation Committee of the Nepal Children's Organization, and in the case of children residing in other child centres the application was submitted to the District Administration Office. The Nepal Children's Organization and District Administration Office then forwarded the application to the national Adoption Recommendation Committee.

Accordingly, 79 per cent of child centre staff reported that prospective adoptive parents first meet the child after they receive the child's file from the child centre. Nine per cent reported that prospective adoptive parents first meet the child when signing documents at the District Administration Office. Four per cent reported that prospective adoptive parents first meet the child when selecting a child in the child centre. Only eight per cent reported that prospective adoptive parents first meet the child at the end of the adoption procedure after the child's and the adoptive parents' eligibility has been established.

Adoptive parents can choose a child

About a quarter of child centre staff (27 per cent) said that prospective adoptive parents could choose a child if they wished (i.e., they can do their own matching). Four per cent reported that prospective adoptive parents could also change to another child after an initial matching was done.

According to 20 per cent of child centre staff, prospective adoptive parents prefer children aged less than 1 year, 13 per cent believe that children aged less than 2 years are preferred, 19 per cent believe that children aged less than 3 years are preferred, and 7 per cent feel that children aged less than 4 years are preferred. Twenty-two per cent believe that children aged 1–5 years are most favoured, and 18 per cent believe that children aged 0–8 years are most favoured.

According to 20 per cent of child centre staff in the Kathmandu Valley, adoptive parents prefer girls, 4 per cent believe that adoptive parents prefer boys, and 76 per cent think that adoptive parents do not have any preference. If child centres and adoptive parents continue to be in charge of the matching decisions, there is a risk that prospective adoptive parents will be able to pick and choose children, not considering the child's best interests. Child centres will do their best to satisfy the demand for children aged less than five years, especially girls. This might contribute to the 'supplying' of 'desirable' children and the deception of biological parents.

Private adoption

Centres that conduct private adoption have an increased risk of failed adoptions. In the absence of an accredited agency from the receiving country, the prospective adoptive parents' eligibility (home study) is often not established prior to their arrival in Nepal, which can result in the refusal of the file. With 33 per cent of child centres reporting receiving adoption files directly from prospective adoptive parents, 48 per cent stating that they would not receive files directly from

adoptive parents and 19 per cent who did not know, the rate of private intercountry adoptions from Nepal is likely to be high.

Failed adoptions

As seen in Finding 3, up till now, effective verification of a child's 'orphan' or 'relinquished' status has not been conducted and is unlikely to be conducted properly under the Conditions and Procedures 2008. The eligibility of a child for adoption is often based on falsified documents, which are easily obtained from officials. The use of fraudulent documents should be criminalized by law, as stipulated in Article 3 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

Fifteen per cent of child centre staff responded that their centre had started an adoption process that had failed. Eighty-five per cent did not report any failed adoptions. If there was true verification of a child's status, the percentage of failed adoptions would initially be much higher than the 15 per cent reported by child centre staff, as many children would not be deemed adoptable.

Twenty-five per cent of failed adoptions reported by child centre staff failed because the child was not eligible for adoption. The reasons given for failure were: "the biological mother was found after the child was said to be abandoned and she claimed the child and stopped the adoption process"; "the child was in the process of being adopted and a guardian claimed the child one year after the notice for the claim had been published"; and "a motherless child could not be given away by the father".

Eight per cent of adoptions failed because the prospective adoptive parents were not eligible for adoption: "the government stopped the process because the prospective adoptive parents did not have any marriage certificate". Sixteen per cent of the adoptions failed "because the child was either too young or too old"; it is unclear, however, who stopped the process. Eight per cent failed because the process was "stopped by the Chief District Officer because of problems". Twenty-five per cent failed because "they had asked for a lot of money for the process, right from the Chief District Officer to the ministry". Other reasons mentioned for halting the adoption process included "discrepancies in the ministry", political reasons, and change of government. These failed adoptions exemplify the painful separations that both children and prospective adoptive parents may experience if eligibility has not been ascertained prior to the matching process.

Matching not centralized

The Conditions and Procedures 2008 introduce various boards that are relevant to the matching process: the Investigation, Recommendation and Supervision Board, and the two Family Selection Boards. However, the respective roles of these boards in the matching process are unclear.

According to the Conditions and Procedures 2008, child centres have to submit the personal details of children to be adopted to the Family Selection Boards (Section 14, Subsection 3).²⁸ The Family Selection Board then presents these details to the Investigation, Recommendation and Supervision Board (Section 9, Subsection 5).

The Family Selection Board does not seem to have a role in the selection of prospective adoptive parents, as the completed application from prospective adoptive parents is received directly by the Investigation, Recommendation and Supervision Board (Section 8). In their application, prospective adoptive parents are required to give details of the child to be adopted ("age, gender, and other matters of the children to be adopted"). In addition, the prospective adoptive parents' application should include a letter of guarantee, which is issued by the government or the embassy of the receiving country, "stipulating the status of the children to be adopted". If the letter of guarantee continues to include the child's name, date of birth and a photograph, as was the case under the Terms and Conditions 2000, it clearly identifies the child to be adopted and, thus, would have a post-matching function. Nevertheless, embassies should continue to issue a letter of guarantee, but at the beginning of adoption procedure, as it presents an important safeguard for the child's treatment as a fully-fledged citizen of the receiving country and also avoids statelessness.

In the Conditions and Procedures 2008, there are no provisions to prevent matching through child centres before the file of the child is sent to the Family Selection Boards or the application of the prospective adoptive parents is submitted to the Investigation, Recommendation and Supervision Board. In addition, no provision is made in relation to when child centres must submit details of children to be adopted to the Family Selection Boards. Hence, child centres can still certify only those children that prospective adoptive parents would like to adopt as either 'orphans' or 'voluntarily waived children', and submit only the files of these children to the Family Selection Board.

A positive aspect of the 2008 regulations is that it removed the matching role from child centres. Ministry

officials confirmed that the latter will not submit adoption files to the Family Selection Board. They will reportedly submit a list of children deemed adoptable on an annual basis.

Children not adequately consulted

According to Article 4, Paragraph (d) of The Hague Convention, children, according to their age and maturity, need to be counselled and duly informed of the effect of adoption and of their consent to adoption. Consideration needs to be given to the child's wishes and opinions, and consent has to be given freely and in writing, without having been induced by payment or other compensation.

In Nepal, the data collected for this study suggests that there are cases in which prospective adopters choose a child for adoption. Cases were identified in which children who were old enough to be consulted were not adequately informed of the effects of adoption and their consent not sought. Twenty-one per cent of child centre staff stated that children are not prepared in any way, while 79 per cent said that children are 'prepared' for the adoption process. In the majority of child centres this preparation amounts to showing the children photos of either their prospective adoptive parents or their future house and telling the children that their new parents will come to meet them and take them abroad.

According to child centre staff, 89 per cent reportedly ask children of 6 years and older what they think about adoption, 9 per cent do not consult the children, and 2 per cent did not know. The nine per cent who do not consult children say that they cannot consult the children as they are too young. However, none of the child centres mentioned informing the children of the consequences of adoption and seeking their consent. On the contrary, some child centres tell the children that they can come back to Nepal at the age of 18 years, and others tell children that they can come to Nepal if they wish, which is true in so far as the children are able to come back to Nepal as tourists, but they lose their Nepali citizenship.

Children's files not kept safely

There are two levels of record keeping. First, the regular systematic collection and review of children's information at the level of the child centre. Secondly, the collection and tabulation of this information, which is verified through monitoring by a central authority.

There is no central authority in Nepal to safely keep information about a child's origin or about the identity

²⁸ Note that two different Family Selection Boards are established (Section 14, Subsections 1 and 2); one for children residing in the Nepal Children's Organization and another one for children residing in other child centres.

of their biological parents as prescribed in Article 30 of The Hague Convention. Adopted children, have a right to access such information. In the case of 'voluntarily waived children', adoptive parents receive a file, which includes the names of the biological parents and their place of residence. However, as the majority of adopted children have been declared 'orphans' for the purpose

of adoption, although many of them still have either a father or a mother, and sometimes both, their adoption files do not list the names of their biological parents. The child centres to which biological parents entrusted their children are the only holders of such knowledge. However, only 55 per cent of centres reported keeping records and 45 per cent reported destroying them.

PROPOSED COURSE OF ACTION

- **Create a central authority:**

A central authority should be created to receive, administer and keep the files of all children in need of an adoptive family. This will ensure that a child's eligibility for adoption is established prior to matching. Independent professional psychologists and social workers should be part of this authority.

- **Conduct professional matching:**

Matching for both domestic and intercountry adoption should be a professional, multidisciplinary and qualitative decision, taken in the shortest possible time, on a case-by-case basis, after careful study of the child and the potential adoptive family, with care being taken to not unnecessarily harm the child in the process. Matching should not be done by the prospective adoptive parents, either by selecting an appealing child in person or through a photo listing. Matching should never be done by child centres via the internet. Child centres should accept requests from prospective adoptive parents only if they come from accredited bodies of a contracting State to The Hague Convention. Child centres should not be allowed to be in contact with prospective adopters before the Family Selection Boards have identified a child for prospective adoptive parents, i.e., before matching is done.

- **Clarify roles of boards:**

The respective roles of the Family Selection Boards and the Investigation, Recommendation and Supervision Board should be clarified, and an independent entity should be established to conduct professional matching. These bodies should ensure that they cooperate and communicate with each other effectively, with an exchange of information and good practices.

- **Review Family Selection Boards:**

The membership of the Family Selection Boards should be reviewed and include independent professional psychologists and social workers.

- **Clarify use of guarantee letter:**

The Ministry of Women, Children and Social Welfare should clarify the use of a 'letter of guarantee' to be addressed to the Investigation, Recommendation and Supervision Board. A letter of guarantee from the receiving country is important as it states that the child will be treated as a fully-fledged citizen. In the current form, the 'letter of guarantee' is a post-matching requirement. The 'letter of guarantee' should be issued at the beginning of the adoption procedure to avoid statelessness of adopted children.

- **Consult children:**

Children who are mature enough need to be counselled and informed of the effects of adoption, and asked for their consent to the adoption. Consideration should be given to the child's wishes and opinion, and consent should be given freely and in writing.

Finding 7

IMPROPER FINANCIAL GAIN

ADOPTION PROCEDURES LACK ADEQUATE TRANSPARENCY AND ACCOUNTABILITY

The Hague Convention (Article 32) contains clear requirements that: “(1) No one shall derive improper financial or other gain from activity related to an intercountry adoption. (2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid. (3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration, which is unreasonably high in relation to services rendered.” One of the best protections against misuse of a system and exploitation of children is full transparency. Laws, regulations, policies, fees and processes should be clearly defined and clearly communicated to all who use the system. Transparency enables users (especially prospective adoptive parents) to see what protections are in place and to identify where actual or potential abuses of the system may occur.

Assuming a conservative average fee of US\$ 5,000 per adoption, the total annual income for the adoption industry in Nepal was estimated to be US\$ 2 million in 2006, with a cumulative income of at least US\$ 10 million since 2000. This is excluding fringe benefits and contributions provided by adoptive parents to centres. It also does not include accommodation and maintenance costs for adoptive parents who stay at hotels recommended by child centres for prolonged periods of time. Keeping such figures in mind, as well as the realities of the post-conflict economy, it is not surprising that some child centres have been opened with the expectation of benefiting financially from intercountry adoption. Some centres have been opened by former staff of other centres who have acquired firsthand experience of intercountry adoption. Recognizing malpractice as a major risk in intercountry adoption, The Hague Convention strictly prohibits any improper financial or other gain from any activity related to intercountry adoption. However, it allows

for reasonable professional fees for persons involved in adoption procedures.

Much needed reform in fee structures

Prospective adoptive parents who have already bonded with a child are seen as more likely to pay large sums of money. According to reliable sources, fees charged to prospective adoptive parents range from US\$ 3,000 to around US\$ 25,000, inclusive of all donations. When looking at the economic issues involved in adoption, it is important to consider ‘side costs’ in addition to official fees. These additional costs include, in no particular order: lawyers’ fees, ‘processing’ costs and donations, purchasing of equipment for centres, an obligation to sponsor a child in the centre for a number of years (frequently until SLC exams), often with three years being paid in advance.

The new fee structures issued by the Ministry of Women, Children and Social Welfare provided some clarity to the issue of payments. The specified amount paid directly to child centres pursuant to clause (d) sub-section (1) Section 19 will be US\$ 5,000. In addition, child centres have to submit a description of “how the money was spent” to the Investigation Board.

Unofficial fees however remain a concern. An embassy official revealed that some centres were insisting that prospective adoptive parents sponsor other children in the same centre (at approximately €150 per month, which needed to be paid in advance for the first three years). In addition, the same embassy reported that centres request donations in the form of material support (e.g., fridges, washing machines, and so on). A common request is foreign visa sponsorship. Another



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embassy source mentioned that prospective adoptive parents were compelled to sponsor the centre director for visa purposes, as this was the last step in procedures before signing at the ministry. The director would not sign the file without receiving assurances that he would be sponsored for a trip abroad.

According to reliable sources, district levels require between NPR 10,000 and NPR 50,000 per file to process documents; the central level requires a similar amount, although newly established centres are likely to pay more, around NPR 26,000 per file. There is also a pre-defined, informal cost for recommending children as 'found on the streets'. Police sources indicated most children are 'found on the streets' in Lalitpur District as there is a high concentration of child centres there. In terms of means of payment, researchers received reliable information that part of the fees were paid in cash. A well-established international adoption agency, which had conducted dozens of adoptions, admitted paying half of the fees to the child centre's account and the other half to a private account in the name of a relative of the director. In the same manner, an embassy official reported that a prospective adoptive parent had to pay €200 to receive the file of a child via email.

Internal vs. external funding

Child centres reported multiple sources of funding for their operations, including: 'friends', the local community, local organisations, monasteries, the Nepal Army or the government.

Having analyzed the various responses under this heading, it transpired that the financial sustainability of child centres is a major concern. Being almost 100 per cent dependent on intercountry adoption, many centres would not have survived if the suspension had continued for a longer period. Around half of the centres reported having internal funding (59 per cent of respondents), but at the same time receiving donations from foreigners (56 per cent) as well as institutional foreign aid (48 per cent).

Approximately 40 per cent of child centres do not have any internal funding source. This means that they rely exclusively on fund transfers from abroad. The remaining 60 per cent (which reported having internal funding sources) also report receiving foreign funding. This creates a heavy dependency on foreign income, including on adoption.

Amounts charged and received for intercountry adoption were found to be underreported by child centres. The highest amount reported was NPR 500,000 or USD 7,900. Almost half (49 per cent) of centres reported charging adoption fees as a lump sum,

which implies that prospective adoptive parents do not necessarily know how the money is spent. Only 13 per cent reported charging fees on the basis of detailed expenses.

An official at the Ministry of Women, Children and Social Welfare was of the opinion that child centres demand large sums of money from adoptive parents, not only for 'processing' documents, but also for 'maintenance' of the child in the centre. Less than one-tenth of centres reported charging separate fees to prospective parents for child maintenance, while one-third said that they do not charge prospective parents separate maintenance fees.

Additional fees

The new regulations provided for two more sets of fees:

- Fees chargeable for listing and renewal of children's welfare homes, orphanages or children's organisations.
- Application fee and renewal fee for listing of an organisation or agency.

The fee relating to monitoring, as referred to in Subsection C, is not new. It is encouraging to note that, according to a high-level Ministry official, this fee will be spent on domestic monitoring, not only on international monitoring.

Need for stricter regulation

Stressing the need to make payments transparent, a senior government official confided: "We know that all child centres take money from prospective parents and, as there is no transparency in relation to the funds received, malpractice is high. Unfortunately there is no law to make such payments transparent (between the centre and prospective parents). It is, therefore, necessary to make all service charges transparent. There has to be a law to control malpractice."

Improvements in transparency needed

Key organisations and individuals who have a stake in the adoption process were not adequately consulted during the drafting of the Conditions and Procedures 2008. An embassy official said: "I was surprised to see embassies mentioned in the Conditions and Procedures 2008 as one avenue to submit adoption dossiers. In the absence of a foreign agency, I would not refer cases through this embassy. We have a specific role as an embassy (a consular one), which is not really this one."

A national-level stakeholder contended: "The Hague Convention should be ratified. Intercountry adoption should have national accountability. Adoption of children should not be a business."

No central repository of information

Information is scattered among child centres, making it difficult for either the Ministry of Women, Children and Social Welfare or the Central Child Welfare Board to collect reliable information (see box). There is no authority that collects all data in relation to adoptable/adopted children and keeps it up to date. Child centres have to notify the Central Child Welfare Board and the District Administration Office about the admission of a child, but there is no obligation to keep them informed once the child has been declared an 'orphan'. There are no official figures on adoptable children and their characteristics in Nepal today. It will be difficult for the Family Selection Boards to do their job under these circumstances.

Personal records destroyed

Eighty-nine per cent of child centres reported keeping separate records for children who have been adopted, three per cent do not keep separate records, and eight per cent did not know. The new regulations do not specify how long personal records need to be kept. Some centres (such as the Buddhist Home) keep them indefinitely; however, most institutions do not. Out of the centres that keep separate records, 55 per cent reported keeping records for as long as the child centre continues to exist, 23 per cent say that they keep records until the child is 18 years old, 10 per cent keep records until the child is 16 years old, and 8 per cent keep records "as long as possible". The remaining

All documents had disappeared

Madhuri Hoegger, 26, hopes to find the sister with whom she shared her mother's womb, and whom she never had the chance to know. The twins were born in Bir Hospital, Kathmandu, in 1982. Their mother died immediately after giving birth, and their grandmother, who had accompanied her daughter-in-law from Dhading District, deserted the twins.

All that Madhuri knows about that time is that her twin was given to a family in Thimi, while she was adopted by a Swiss couple.

When she arrived in Nepal to start her search, she headed to Bir Hospital to collect information about the people who had adopted her sister. She was disappointed to find that all her documents had disappeared. It appears that such documents are cleared out of the hospital every five years.

Source: Sangraula, B (2003) 'Desperate quest to reunite with twin sister', in *Kathmandu Post*, 29 July 2003.

4 per cent stated that they keep records for 3–12 years. This suggests that up to 45 per cent of centres will destroy personal records at one stage or another.

PROPOSED COURSE OF ACTION

- **Improve financial accountability:**
The new Adoption Act (currently being drafted) and subsequent implementing rules should include a clear schedule of payments. Maximum amounts to be charged by child centres for adoption should be clearly specified. In India, for example, a child centre cannot charge more than US\$ 3,500.
- **Ensure payments via an agency:**
As adoption dossiers have to be sent through an accredited agency, payments should be made only by the agency (no direct payments from the parents).
- **Control donations:**
Donations should be allowed only after completion of the adoption procedure and only through an agency. The latter should be controlled to make sure that donations are not linked to 'promises' as to the future allocation of children. The Guide to Good Practice for the implementation and operation of The Hague Convention can be used as a tool to deal with donations.²⁹
- **Monitor sources of funding:**
Criteria on internal versus external sources of funding should be included in the government monitoring of centres and to put centres on the list of institutions authorized to conduct adoptions. To be accredited, such centres should receive at least one-third of their income from Nepali sources. This should help decrease dependency on foreign funds, including adoption.
- **Ensure financial transparency:**
All child centres should make their sources of income entirely transparent to the government.
- **Promote transparency of legal reform:**
Develop a mechanism to ensure that embassies, UNICEF and other concerned parties are consulted on legal reform issues. This could take the form of an informal contact group. Authorities should provide a transparent monthly statistical report of adoptions (both intercountry and domestic).
- **Centralize record-keeping:**
A centralized data repository system should be established.
- **Ensure that full personal records are kept:**
Keeping personal records is particularly important in Nepal because it might be the only information available to trace biological parents. When adoptions are transparent, the adoptive parents receive all information contained in the file and, in most cases, the adoptee will not find more evidence by verifying his or her file in the country of origin.
- **Specify time for keeping records:**
It should be compulsory for child centres and concerned authorities to keep files for at least 80 years. Keeping records until children are 18 years old is insufficient. Based on worldwide experience, many adoptees only start searching for their roots later in life.
- **Monitor record-keeping:**
Government monitoring/supervision teams should monitor record-keeping.
- **Itemize expenses:**
Ensure that each expense associated with an adoption is itemized by agencies for full transparency. Medical, counselling, legal or child welfare services must be delivered by parties other than adoption agencies.
- **Scrutinize financial benefits received by child centres:**
Ensure that salaries, fees and wages received by child centres in relation to adoptions are not contingent on the number of children placed, and are in line with other social service work in the country.

²⁹ UNICEF, Better Care Network (2008) *Manual for the Measurement of Indicators for Children in Formal Care*, March 2008 (unpublished; on file with the authors).

Finding 8

THE LAST TO KNOW

BIOLOGICAL PARENTS ARE MISINFORMED, DECEIVED AND 'SOLICITED'

This research found instances of undue pressure, coercion, inducement and solicitation of birth families to relinquish a child. Parents were misinformed about adoption, and misled, deceived or solicited with financial inducements. They were led to believe that their children would be sent abroad for a period of time only in order to obtain a good education and upbringing. They were led to believe that their children would return to Nepal when they reached the age of 16 or 18 years. The legal consequences of intercountry adoption were either not explained at all or not explained fully. As a result, biological parents were unaware that once the intercountry adoption procedure was finalized they would lose custody of their child forever. They were also unaware that their child would lose his or her Nepali citizenship. In other cases, biological parents were not informed that their child had been sent abroad for adoption.

The study team interviewed nine biological parents of children who had been sent abroad for adoption in five districts of Nepal. The contact details of these parents were received from five different child centres that had arranged the adoption of their children.

Child centre staff revealed that 98 per cent of child centres require biological parents to sign relinquishment documents. However, one per cent said that parents do not sign consent, and one per cent did not know. While 93 per cent reported that biological parents are informed about the consequences of giving their child up for adoption, 4 per cent admitted that biological parents are not informed about the consequences of intercountry adoption, and 3 per cent did not know.

When asked whether the consequences of intercountry adoption were explained to biological parents, the majority of centre staff (70 per cent) stated that they told biological parents that they would lose parental authority over their child after he or she was given up to the adoptive parents. In addition, 19 per cent told biological parents that adoptive parents would be responsible for providing food, shelter and clothes for the child. Twenty-six per cent of child centre staff said that biological parents would receive regular information on their child's health and well-being, that they could contact their child and would receive photos. Between one per cent and four per cent said that the child could return from abroad and take care of their biological parents; that the child could return at the age of 16 or 18 year, if he or she wished to; that a meeting could be arranged with the child; and that the child would support the biological parents.³⁰

Misinformed: Documents signed without understanding

The majority of biological parents (seven out of nine) said that they signed documents without understanding them. The legal consequences of their signature were not explained to them. These documents were exclusively prepared by child centre staff.

In one case, the biological parents said that they had not signed any documents for their three-year-old child's adoption. They said they were not asked to



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³⁰ Percentages exceed 100 per cent due to multiple responses.

sign any relinquishment papers. It is probable that the child of this couple was declared an 'orphan' to satisfy eligibility criteria for intercountry adoption.

In another case, a biological parent was forced to fingerprint an adoption document, although she was literate and could sign her name: "A staff member of the child centre told me that I had to go with him to the District Administration Office to sign the adoption documents. On the way, he took me to a small shed, where a man introduced himself as a lawyer from the District Administration Office. He asked me to fingerprint both documents. When I told them that I would not sign or fingerprint any document without reading it, they pushed me to fingerprint it without reading. After I fingerprinted it, the lawyer asked me whether I knew what adoption meant, I replied no. Then the lawyer told me that my daughters would never come back and scolded me for having so many children."

Misled: "You will receive regular reports"

Child centre staff often promised biological parents that they would receive news and photos of their children from abroad. However, the majority of the centres did not provide such information to biological parents. As many biological parents still consider themselves the guardians of their children, they suffer accordingly when they do not receive any information. Only one biological parent out of nine reported receiving photos regularly from the child centre. Others tried to obtain information about their children, but to no avail.

The biological father of an adopted six-year-old girl stated: "When we visited the child centre to inquire about our daughter, the staff told us that the letter and the picture were stored in the computer and told us to come back later. We have already been to the centre three times for this."

Misled: "Your child will come back"

This study found that, to most biological parents, the word adoption means that their child will be brought up by foster parents abroad and that the child will eventually come back to Nepal, well educated.

The biological mother of an adopted four-year-old girl said: "We were told by the child centre staff that our daughter would only be able to stay abroad until she was 18 years of age, that she would become a doctor, and would then come back to Nepal."

In one case, a father who could read and write signed "a white document containing a little text" at the child centre. By making the father believe that his daughter would be brought back by the adoptive parents every four years, that she would receive dual citizenship of

the adoptive country and Nepal, and that she would come back after finishing her education abroad, this father was persuaded to sign the document.

Four of the seven biological parents who signed documents were illiterate. However, the child centre staff who arranged the adoption read the documents out to the parents before the parents fingerprinted or signed them. This study found that child centre staff often do not actually read what is written in documents to parents, but say whatever will convince parents to sign the documents. Although three parents were correctly informed that according to the document they would lose legal custody over their children, they were also told that the adoptive parents would bring back their children every 3–5 years and that the children could come back to Nepal at the age of 16 or 18 years. In reality, any link between the biological

I had three children, now I don't have any

"Their father took my eldest daughter. I was left with one daughter and one son. My daughter was granted a scholarship from a child centre that included school fees, school dress, stationery and health care. I also wanted to keep my son at the centre. I couldn't provide proper food for my children.

My neighbours knew about my problems. One neighbour convinced me to give my two children to the child centre. I had to sign four or five documents. Apparently, the documents said that I am very poor, that it is difficult for me to provide my children with basic needs and that I am unable to raise them due to illness. I didn't receive any money from anyone. I had already signed the documents when I was told that I could not claim my children back. Before sending my children to the centre, I went to the child centre to request a scholarship for my son. If they had provided a scholarship, I would not have sent my children away.

I don't know where my children are, I just know that they are in America. At the time of departure, my daughter was seven and my son was four. I didn't receive anything. I didn't even receive photos. I heard that their photos are in Kathmandu. My children are not staying with the same family, but they are in the same country."

Source: Interview with researchers

parents and their adopted child is severed with the finalization of the adoption procedure and adoptive parents have no obligation to bring back their children to Nepal. The adopted children could eventually come back to Nepal on a visit, but they lose Nepali citizenship when acquiring the nationality of their adoptive parents and, hence, will not necessarily settle permanently in Nepal.

Two illiterate mothers reported that the documents they signed were read out to them by the child centre staff, but they did not understand them and do not remember what they signed. Of all nine biological parents, only two had retained a copy of the documents they had signed.

Most biological parents did not necessarily want to give their children up for adoption, but were looking for a way to support their upbringing. As is the case throughout Nepal, they were particularly concerned about providing a good education for their children. When poor parents find out that child centres provide free education, food and lodging, they do not need much convincing to enrol their children. If child centres, in addition, pledge to send children abroad for good education and upbringing without the biological parents incurring any costs, along with the promise that the children will return at the age of 16 or 18 years, biological parents are quick to accept the offer. This, they believe, is the only opportunity to provide the best education for their children, while alleviating the burden on the rest of the family.

All nine biological parents interviewed cited poverty as the main reason for sending their children to the child centre. They were all initially approached by a person they knew with the suggestion of sending their children to the child centre for better care and education; in eight of nine cases, it was relatives or neighbours and, in one case, it was the wife of a child centre staff member. However, not all biological parents were aware that child centres send children abroad. Only five of nine biological parents were informed at the time of enrolling their children that the child centres would send the children abroad for education, but they were not told that the children would be adopted. Four biological parents sent their children to the child centre with the intention of only securing a good education, food and lodging for them; they did know that the child centre sent children abroad. Only after enrolling the children in the centre did they find out that it sent children abroad for adoption. However, all nine biological parents were hoping that by allowing

their children to be sent abroad their children would receive a good education and upbringing.

The biological mother of a girl who was adopted stated: "My daughter was five years old when she was sent to Spain. A staff member of the centre made the adoption arrangements. He did not ask me whether I was willing to send my child or not. I do not know how the adoption arrangements were made. I am afraid that I might never see my daughter again."

Deceived: Children disappearing

There are numerous cases of parents who were deceived by child centres and whose children disappeared from centres or hospitals. They almost always follow the same pattern. Fake documents are used stating that the child is an 'orphan' or that his or her parents cannot take care of him or her, enabling the child centres to send the child abroad.

Biological parents, who believe that their children are receiving a good education in a child centre in Kathmandu eventually learn when they visit the child centre that the child has been adopted by foreigners and that they will not be able to see their child again. The suffering of these parents has been well documented by a UNICEF/Forum for Women, Law and Development³¹ report in 2005 and by Nepali and international media.

In the UNICEF/Forum for Women, Law and Development report on missing children from Humla (see Finding 1), many of the parents who had sent their children to Kathmandu for education stated that the Chief District Officer or Village Development Committee officials had issued 'recommendation letters' to the person who took the children away. Recommendation letters give child centres full authority to send children for intercountry adoption, as they either state that the biological parents are too poor to take care of the child and the child will be looked after by a child centre or certify that the child is an orphan. Recommendation letters enable child centres to send children in their custody for intercountry adoption, without consulting the biological parents.

The case of a mother who dowsed herself in kerosene and set herself alight after discovering that her child had been sent for intercountry adoption without her consent has been documented in a book published in Italy.³² Sunita had entrusted her child to a child centre until her financial situation improved and would allow her to take care of her child again. In the meantime, the

³¹ UNICEF and Forum for Women, Law and Development (2005) *Fact-finding Mission on Displacement of Children from Humla*, 29 December 2004 - 1 January 2005 (Unpublished Report).

³² Gillioi, A (2007) *Premiata macelleria delle Indie*, Biblioteca Universale Rizzoli, Milan.

You can see your son for US\$ 3000

According to the UNICEF/Forum for Women, Law and Development report, a biological father reported that his son was taken to Kathmandu, as he understood, for a good education. However, in reality, his son was sent abroad for adoption. When the father went to visit his son, he was told that his son had been sent to another country and he would have to pay NPR 200,000 (US\$ 3,125) to see him. At the time the father sent his son to Kathmandu, the Chief District Officer had prepared a recommendation letter stating that the child's parents were dead. The Chief District Officer allegedly told the father that this was the only way for his son to receive a good education.

Source: UNICEF and Forum for Women, Law and Development (2005) *Fact-finding Mission on Displacement of Children from Humla, 29 December 2004 – 1 January 2005* (Unpublished Report).

child centre sent the child abroad for adoption. Sunita, in her grief, wanted to end her suffering. However, she survived and decide to seek justice, but the authorities she turned to simply ridiculed her and told her that she would never see her child again.

In 2004, the Samay National weekly reported that Nirmala, a widow and mother of seven children had entrusted all her children to a child centre.³³ Three of the children had been sent abroad for adoption to three different families without her consent. Nirmala wants justice: "I only want my children back!"

Notwithstanding that the majority of child centres do favour stricter and more transparent laws, a minority of respondents (two per cent) stated that "there should be a law that parents are not able to claim their child once the child is recommended as abandoned". One per cent said that there "should be a law that the child could return to Nepal at the age of 16 years".

Solicited: Inducement or incentives

Seven of the nine biological parents had met the adoptive parents at least once. In three cases, the adoptive parents and biological parents had signed documents at the District Administration Office (most likely relinquishment documents). Most biological parents did not receive any financial support from adoptive parents. Three of the nine said they did. In two cases, adoptive parents promised to sponsor the education of siblings staying at child centres and, in the third case, biological parents had "received NPR 10,000 (US\$ 150) from the adoptive parents just before their departure".

It was found that biological parents do not usually receive financial incentives from centres or intermediaries. As noted above, the prospect of providing an education to their child is often enough of an inducement. In eight of nine cases, no money was reportedly exchanged between the child centre and the biological family. In one case, the biological family received NPR 11,000 (US\$ 170) from the child centre for their son's education and some clothes for the elder daughter. Nevertheless, free education is sometimes offered to siblings of adopted children and, in one case, a biological mother was given a job in another child centre.

³³ Bhandari, K (2004) 'The business of foster children', in *Samay Weekly*, 27 August 2004, Kathmandu.

PROPOSED COURSE OF ACTION

- **Ensure voluntary relinquishment:**

Strict measures should be put in place to prevent undue pressure, coercion, inducement or solicitation of birth families to relinquish a child. Child centres found to be misinforming, misleading, deceiving or soliciting biological parents should lose their licence to conduct intercountry adoption. Severe sanctions should be put in place against the centre director and staff involved.

- **Confirm consent to relinquishment:**

According to The Hague Convention, biological parents have to provide written consent to the adoption of their children, confirming that they fully understand the consequences. The Convention is clear that the decision to place a child for adoption should not be induced by payment or compensation of any kind. An independent entity should reconfirm all cases of relinquishment with biological parents directly, as biological parents are routinely misled. A period of three months should be introduced for confirmation of the relinquishment consent. The provision in the Conditions and Procedures 2008 stating that biological parents can claim their child 'prior to departure', is insufficient, as the child might leave within a short period or might stay in Nepal if the parents are/become residents.

- **Assist biological families:**

As recommended by The Hague Conference, and as a matter of good practice, laws and procedures should provide for services for families in crisis, including family preservation services; arrangements for temporary care; counselling services for families of origin; and, where a family cannot remain intact, counselling on the effects of giving consent to adoption.

- **Raise awareness:**

Information campaigns on the consequences of intercountry adoption and possible consequences of handing children over to child centres should be conducted.

- **Prohibit payment of inducements:**

Prohibit payments associated with locating a child for adoption, care of the birth mother while pregnant, or any other payment that may be used as an inducement for families or mothers to relinquish their child.

- **Ensure parents are free from obligation:**

Ensure that the provision of services does not obligate a parent to place a child for adoption.

Finding 9

SIBLINGS PARTED

LEGAL FRAMEWORK THREATENS THE FAMILY UNITY PRINCIPLE

Past practices and an obsolete legal framework have led to the separation of siblings, including twin brothers and sisters. The Conditions and Procedures 2008 have not removed the derelict obligation to adopt children of different sex, resulting in sibling separation. There is also no mention in the Conditions and Procedures 2008 that twins should be adopted by the same family. Prospective adoptive parents are not necessarily informed that their adopted child has siblings. If adoptive parents later find out from their adopted child about siblings, child centres often do not assist adoptive families to contact the siblings of their child. There is no obligation in practice to maintain family unity.

The Terms and Conditions 2000 and the Conditions and Procedures 2008 limit the adoption of siblings. According to the Terms and Conditions 2000, adoptive parents could adopt a maximum of two children in Nepal, but not of the same sex, and the second adopted child needed to be younger than the first adopted child. These provisions are still valid in the Conditions and Procedures 2008 (Section 7, Subsections 3 and 4). A positive aspect of the new legal framework is that adoptive parents can adopt one older sibling of a child that they have already adopted. However, it is unclear whether siblings of the same sex can be adopted.

Although prospective adoptive parents can adopt siblings, it is unclear whether siblings can be adopted under the same adoption procedure. According to Section 7, Subsection 4, it appears that adoptive parents have to finalize the adoption of the first child before they can adopt a sibling. It is striking to note that there is no provision that would allow twin sisters or twin brothers to be adopted by the same adoptive family. The stipulation in the Terms and Conditions 2000 according to which “twins [...] may be given to one and the same family” has been deleted in the Conditions and Procedures 2008.

In addition, the minimum of 30 years age difference between the adoptive parents and the child to be adopted remains in the Conditions and Procedures 2008, an additional barrier to the adoption of older siblings.

Painful loss

Children who have been placed in child centres and have, thus, already been separated from their parents or abandoned by them, are often left with only their siblings, who, in many cases, stay in the same child

centre. According to the children, about a quarter of them have siblings living in the same centre. In the absence of their parents, these siblings take care of each other, just like a family. Of the 147 children who had siblings, 9 children (6 per cent) reported that their siblings (14 in total) had been adopted by foreign parents while they stayed behind. The sense of loss caused when one sibling is adopted and the others are left behind is considerable.



© Thomas Kelly

Separated twins reunited

Twenty-six-year old Madhuri was adopted by a Swiss family in 1982 after her mother died in childbirth in a hospital in Kathmandu and her family allegedly abandoned her. At the age of 20 years, Madhuri's adoptive parents told her that she has a twin sister.

“The revelation shook me to my foundation and left me with a queer sense of pain. Ever since, I have been living with one dream: to meet my blood relatives. Where and how might my twin sister be living? They say that twins feel similar things at all times. Is it true? I want to ask this thing of my sister.”

Madhuri visited Nepal to search for her sister and first found her father. Her father had been looking for the twins since they had disappeared from the hospital. He had not been told that his daughters had been taken to a state-owned orphanage and adopted from there. Madhuri eventually located her twin sister, who was adopted by a Nepali family from Thimi, and is slowly building a relationship with her.

An adoptive parent expresses the pain children face when they are separated from their siblings: “My son's biological parents died, then he and his little brother were separated from their older sisters and, finally, one day, his brother disappeared from the orphanage and my son found out that he had been adopted. It was painful and traumatic to lose his last family member. It took him three years to get over his losses and I think they will never be completely gone.”

Another adoptive couple, whose six-year-old son has a three-year-old sister who was adopted in a neighbouring country, tried to contact the adoptive family of the younger sister by posting messages on a website: “We got to know our son's little sister when we adopted our son a year ago. We know that the girl has been adopted by a Spanish family, but the child centre from where she and our son were adopted do not want to give us the contact details of the girl's adoptive family.

Our son often asks about his sister and we thus hope that someone can help us by contacting us.”

According to child centre staff, nine per cent of child centres that conduct adoptions have sent siblings for adoption. Of these 9 per cent, the vast majority (80 per cent) reported that siblings were separated and adopted by different families. According to child centres, separation is a result of the legal framework (the Terms and Conditions 2000) or because adoptive parents only want to adopt one child.

One child centre reported: “All the files were completed to send two brothers to one family in France. But later, the ministry stopped the process, saying that siblings cannot be adopted.”

Among the biological parents who were interviewed, all had several children, leading to sibling separation. In one case, all other siblings stayed in child centres; in two cases, older siblings stayed in child centres and younger siblings stayed at home with their biological parents; in two cases, all other siblings stayed with biological parents at home; in another case, two younger siblings were adopted by two different adoptive families (in the same country) and the older sister stayed at home; in another case, the mother envisaged also sending the younger sibling abroad, whereas the older son was left in a centre; in another case, two siblings were separated through adoption by two different adoptive families (in the same country); and in another case, the adoptive parent of one sibling would like to adopt the eight-year-old brother, but other siblings will have to stay behind, some in child centres and some with the biological parents.

“Sibling separation is a big issue. We know of three little boys who were sent to three different families in the United States. One sibling was left behind as his visa was rejected. He is now in a deep identity crisis as an adolescent. He just can't understand why his three brothers are in the US and not him.”

An experienced INGO worker

PROPOSED COURSE OF ACTION

- **Prohibit separation of twins:**
Twin separation should be prohibited by law in a new legal framework.
- **Encourage adoption of siblings:**
Adoption of siblings should be encouraged by law. A new legal framework should clarify that prospective adoptive parents are allowed to adopt siblings of the same sex.
- **Inform adopters about siblings:**
Child centres, the Investigation, Recommendation and Supervision Board, and the Family Selection Boards should systematically inform prospective adoptive parents of the existence of siblings, including twins. For already passed adoptions, child centres should be legally obliged to provide the addresses of adopted siblings to adoptive families so that adoptive families can contact with each other.
- **Adopt siblings simultaneously:**
A legal framework for the simultaneous adoption of siblings needs to be created.
- **Abolish same sex provision:**
The obligation that only children of the opposite sex can be adopted is obsolete and should be removed from the legal framework.

Finding 10

TOO LITTLE TOO EARLY

NEW RULES WILL NOT PREVENT REPETITION OF A PATTERN OF MALPRACTICE

The Conditions and Procedures 2008 have some comparative advantages over the previous rules, but do not provide sufficient guarantees to fully uphold the rights of the child. Stakeholders in the intercountry adoption system remain the same, with little change in the authority, motivation and capacity to prevent flawed adoption practices. Some changes are significant, but they are not the legal reforms needed to stop child abuse. A total paradigm shift is needed to prevent the repetition of previous malpractices. In addition, a well-resourced, well-trained, and cooperative social welfare department, with the social work capacity to monitor and implement standards and guidelines, is critical for any legal reform to take root in daily practice.

The Conditions and Procedures 2008 introduce a few important changes to the legal framework when compared to the Terms and Conditions 2000. The main differences include: (i) the centralization of procedures at the ministry level (the District Administration Office will continue to deal with the declaration of orphans and relinquishment issues); (ii) the listing of foreign organisations/agencies; and (iii) the creation of two new entities, the Investigation, Recommendation and Supervision Board and the Family Selection Boards.

While these differences can be considered positive and likely to strengthen the rights of the child, other changes are not so constructive. Overall, it seems that the majority of regulations will speed up the process of intercountry adoption, instead of promoting a more regulated and careful approach. For example, the requirement for an infertility certificate has been removed and the definition of 'orphan' extended. Of grave concern is the change to the definition of adoptable children, which is now extremely broad and likely to lead to more children being declared 'orphans' for the purpose of adoption.

Comparative advantages

A positive development in the Conditions and Procedures 2008 is that duly registered child centres will have to be accredited or listed for the purpose of acting for intercountry adoption. In order to be listed, centres will have to provide their 'charter' and renewal documents, a recommendation from the Central Child Welfare Board certifying compliance with "basic criteria for the operation and management of a children's home" and "directives for the operation of a children's welfare home" prescribed by the Ministry of Women, Children and Social Welfare. Institutions will have to apply to the ministry for renewal every two years.

The fact that the Investigation, Recommendation and Supervision Board "may give essential directives by making inspection and supervision of the listed [institutions]" is seen as a positive step. However, inspection/supervision is not mandatory and will only be undertaken "if it is seen as essential"; this is an important limitation.

Pursuant to Section 21 (3), pending files (47 at the time of writing) can be processed under the Terms and Conditions 2000. This is in accordance with the general principle of legality and non-retroactivity.

The conditions for prospective adoptive parents to adopt in Nepal remain unchanged. For example, a single woman can adopt in Nepal, while the global trend in adoption finds it preferable for a child to have both parents.

Child centres occupy centre stage

The inclusion of listed foreign organisations or agencies in the procedure is an encouraging measure. However,



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as it is also possible to apply through an embassy, the positive inhibiting effect of this requirement is limited. Experience has shown that this kind of procedure is synonymous with private adoption. Prospective adoptive parents can easily communicate with a child centre to inquire about the possibility of adoption before applying officially. Unless the Investigation, Recommendation and Supervision Board and the Family Selection Boards take a number of bold steps, child centres are likely to continue occupying centre stage and the Boards will merely confirm matching decisions already made by child centres and agencies/private individuals.

Definition of orphan extended

The definition of 'orphan' for the purposes of the Conditions and Procedures 2008 has been broadened and includes the following.

- (a) Children found by the police in "unclaimed conditions".
- (b) Children "left in the hospital in unclaimed conditions"; this widens the criteria from the previous "mother disappeared from the hospital after giving birth".
- (c) Children whose "father and mother are not found".
- (d) Children whose "family members, relatives or successor are not found following the death of both father and mother and having no property". It is not clear whether this is an exclusive or cumulative criteria.

Of the four categories, (c) is the broadest and can be easily utilized, especially as there is no timeframe involved in the definition. Moreover, category (d) has been amended from "both parents are deceased" (the internationally accepted definition of orphan). The circumstances under which categories (c) and (d) can be established are extremely vague. In addition, it is not clear whether they require a police report, which should, in principle, be mandatory.

Relinquishment procedure obsolete

Little has changed in relation to the definition of 'voluntarily waived children' or relinquishment. Poverty ('having no property') is given as a sufficiently good reason for relinquishment by both parents. There is inequality between the mother and father: the mother has to have more than one child before she can give one for adoption after the death or incapacity of the father; no such constraint is placed on the father. The criterion "remarried mother and father is deceased", while reflecting the reality of prevailing culture, provides an extremely broad framework for relinquishment and probably leads to more relinquishments than necessary.

There is no set period provided for biological parents to retract their consent to relinquishment. Normally, such laws impose a three-month retraction period. Furthermore, there is no notion of 'informed consent', requiring parents to be duly informed of the consequences of their relinquishment.

Principle of subsidiarity threatened

In this case, 'subsidiarity' means the recognition that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child's best interests. The notion of the best interests of the child is absent literally and in spirit from the Conditions and Procedures 2008. The fact that child centres should actively look for domestic solutions is mentioned in passing under the section relating to listing of child centres (Section 9). The requirement to show an 'appropriate attempt' to find a domestic solution is weak and ineffective.

Composition of Boards

The Family Selection Board is required to include a social worker or a trained psychologist capable of undertaking matching. The Hague Convention recommends that matching be assigned to a team composed of child protection professionals trained in adoption policies and practices. They should preferably be specialists in psychosocial fields. This will not be the case under the Conditions and Procedures 2008.

In addition to the above, the National Children's Organization benefits from a separate procedure. The Central Child Welfare Board will not be represented on the Family Selection Board for children from the National Children's Organization. Representatives from the police and the Home Ministry are included on the Family Selection Board for the National Children's Organization, but not on the other Family Selection Board, which deals with children not from the National Children's Organization.

Section on twins deleted

Comparing an earlier draft of the Conditions and Procedures 2008 submitted to the Ministry of Women, Children and Social Welfare with the final enacted regulations, it should be noted that the section on twin adoption has been deleted. The proposed clause stated that "[s]ubject to the other provisions of these Conditions and Procedures, there should be no objection in giving away twins or triplets for adoption to one and same foreign national". A similar clause existed in the Terms and Conditions 2000.

Direct payments to centres continue

Under the Conditions and Procedures 2008, partial payments will continue to be made directly to child centres, pursuant to Section 19 sub-section (1) clause (d).

No clear procedure to re-claim a child

Section 6 provides for the possibility of a relinquished child being returned to his/her biological parents in cases where the “father and/or mother desires to take the child back”, and the child also wishes to return to his or her biological parents. It is assumed that this procedure will take place prior to the child’s departure from Nepal. This possibility is not available to children who are declared ‘orphans’. The law is silent on the fact that biological parents might re-claim the child after the child has left Nepal. Section 5 (6), which pertains to newspaper notices, only envisages the case where the claim would be ‘baseless’.

Looking for parents a passive requirement

The legal notice period used to be 31 days. It is now 35 days with an extension of 21 days. However, there is still no active obligation placed on government agencies to locate biological parents (see Finding 3).

Principle of family unity violated

It is still forbidden to adopt two children of the same sex, an obsolete restriction that leads to the separation of siblings (see Finding 9). It would be interesting to examine to what extent separating siblings has yielded additional resources for centres, as it yields several adoption procedures instead of one.

Ministry retains upper hand

The Ministry of Women, Children and Social Welfare’s “power to remove obstructions” is clearly affirmed in Section 20. No equivalent was found in previous regulations. The Conditions and Procedures 2008 will take precedence over “any obstruction [or] any difficulty”, which the ministry shall have the power to remove, “subject to the National Code and this condition and procedure”.

In summary, in the Conditions and Procedures 2008, responsibilities and tasks are not defined, procedures are not clearly laid out, and conditions for relinquishment are obsolete. If malpractice and abuse is to be stopped, a complete overhaul of the regulations is needed.

PROPOSED COURSE OF ACTION

- **Develop integrated child protection and care system:**

Expedite the adoption of the draft Child Rights (Promotion and Protection) Act. Intercountry adoption procedures should be set within an integrated child protection and care system. Intercountry adoption should not be a stand-alone procedure. Government policies should work to promote family preservation and national solutions.

- **Promote government support for families:**

Ensure that the Government of Nepal recognizes its responsibility to provide extended child welfare services and poverty reduction initiatives to help families in need. It should promote legislation and policies that emphasize the role, importance and priority of parents in caring for children.

- **Review social welfare policy:**

Intercountry adoption should be incorporated within a comprehensive child and family social welfare policy. Important steps toward this goal include coherent legislation, complementary procedures and coordinated competences. Such a policy would ultimately incorporate support for families in difficult situations, prevention of separation of children from their families, and the reintegration of children in care into their family of origin, into kinship care, or through domestic adoption, and, as more temporary measures, into foster or residential care.

- **Enact good legislation for alternative care:**

Establish clear placement priority principles and universal placement practices in national legislation to ensure that children receive support according to their needs, wants and best interests. Prevention of family separation and family-based alternative care placements need to be reflected in national legislation.

- **Finalize drafting of the Adoption Act:**

Expedite the drafting and submission of an Adoption Act, in full consultation with child rights agencies.

- **Undertake detailed assessment:**

As recommended by The Hague Conference on Private International Law, Nepal should undertake a detailed assessment of its current adoption practices and procedures, including existing programmes for children deprived of parental care, and procedures for the evaluation and preparation of prospective adoptive parents. The assessment should be undertaken before making decisions on how to set up a Central Authority and how to structure child protection and adoption policies. The following steps may be involved in developing an implementation plan: develop an assessment strategy, mechanisms and tools; assess the internal situation; review the internal assessment results; determine whether emergency measures are needed; develop a long-term plan; develop a short-term plan; produce a written implementation plan; and manage ongoing assessment and control.

- **Mobilize embassies:**

All stakeholders engaged in adoption should clearly indicate that private adoptions are not allowed in Nepal. No files should be received directly from centres (unfortunately, this is a possibility under Chapter 4, Section 9, Sub-section (5) of the Conditions and Procedures). Only duly accredited foreign agencies should be allowed to submit dossiers to the Investigation, Recommendation and Supervision Board.

- **Strengthen accreditation procedure:**

While the listing of foreign organisations/agencies is a good initiative, the requirements are modest. The following information should be contained in applications by foreign organisations and agencies: (i) constitution/statute/rules or regulations of the agency; (ii) list of officers/staff, their qualifications, professional experience and salaries; (iii) list of members of the management/executive committee/board of directors; (iv) annual budget; (v) list of expenses for one adoption; (vi) area of coverage/jurisdiction/provinces in which the agency is permitted to operate from and to place children; (vii) statistics of adoptions processed during the past five years; (viii) information about post-adoption services available; (ix) information about child protection projects supported by the agency, if any; (x) annual reports for last five years; and (xi) declaration to pursue non-commercial and non-profitable objectives. The selection of organisations/agencies should be based on the above information. Accepting all applications would mean a lot of pressure to obtain children (the more agencies accepted, the more children required). It is not necessary to have several agencies working from the same receiving country.

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These references can be found at: <http://www.childtrafficking.com>.



Terre des hommes in Nepal
Jhamsikhel, Lalitpur,
P.O. Box 2430, Kathmandu, Nepal
Email: tdhnepal@wlink.com.np
Phone: +977 | 5555 348
Web: www.tdhnepal.org



United Nations Children's Fund
Pulchowk, Lalitpur,
P.O. Box 1187, Kathmandu, Nepal
Email: kathmandu@unicef.org
Phone: +977 | 5523 200
Web: www.unicef.org

