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Adoption Practices Fuelling Child Trafficking In Ghana

Introduction:

Adoption is one of the oldest social institutions. Historically, adoption occurred primarily to preserve and transmit family lines or inheritance, to gain political power or to forge alliances between families. Adopted persons were usually adolescents or adults who could guarantee the continuation of the family line. The notion that adoption was a means for promoting children's welfare did not take hold until the mid-nineteenth century. Today, the principle of ensuring that the best interests of the child are served by adoption is the paramount consideration enshrined in most adoption laws. Literary and legal sources indicate that adoption was widely practised in many ancient societies (Brosnan, 1922; Huard, 1956). From the frequently cited example of the adoption of Moses to that of the Emperor Octavian Augustus, adoption played a "major part in the traditional law of many Eurasian societies" (Goody, 1969, p. 55).

While adoption may be as old as human society itself (Benet, 1976), the motivations for adoption have changed markedly over time. Today, adoption is undertaken mainly to provide a home for children deprived of parental care and to satisfy the desire of individuals or couples to care for and rear a child (Goody, 1969; Tizard, 1977). In contrast, societies of the past regarded adoption as a means for preserving family lineage, enabling the continuation of ancestor worship, creating political alliances and ensuring care for adoptive parents in their old age (Derrett, 1957; Gardner, 1998, and Huard, 1956). The norms regulating adoption have also shifted over time. In many early laws, for instance, persons with children of their own, individuals of reproductive age and women were not allowed to adopt. Further, ancient laws often did not permit the adoption of minors, clear evidence that the welfare and best interests of children were not the paramount consideration in the decisions related to adoption. Nevertheless, ancient legislation is the source of many of the key features of modern adoption laws, including the acquisition by the adopted person of the name of the adoptive parents, the right to inheritance from the adoptive family and the termination of the birth parents' guardianship rights. It is fitting therefore to begin this overview of adoption trends and policies by focusing briefly on the past, to uncover the roots of today's norms and practices.

Method of Analysis

This paper will deploy a mixed methodology to analyse adoption (domestic and inter-country) in various countries. Using qualitative, quantitative analysis and a case study. This method was chosen as a design to incorporate both a broad reaching evaluation of mechanisms within the convention on protection of children and co-operation in respect of inter-country adoption and how it tends to regulate inter-country adoptions. To assess adoptions in Ghana, the analysis was based on the existing historical context of adoption, legislation and the Convention on protection of children and co-operation in respect of inter-country adoption. These documents and research materials evaluate the dynamics of adoption internationally and Ghana in particularly in developing and improving the adoption system in Ghana.

Historical Context and Background on Adoption

Adoption clearly played an important part in ancient life as attested by literary and legal sources dating back almost four millennia. To understand the complexities and advantages of adoption there is the need to briefly reflect on adoption and how they have shaped current laws on adoption. Specific information on ancient adoption legislation remains, however, highly fragmented and it is difficult to reconstruct a comprehensive chronology of the history of such laws. One of the earliest legal texts referring to adoption is the Code of Hammurabi. This code, dating from the eighteenth-century B.C., contains many features that are still relevant to modern adoption law (Cole and Donley, 1990). For example, the code established that adoption was a legal contract that could only be executed with the consent of the birth parents. Information on adoption in the early Modern Era is highly fragmented and it is difficult to reconstruct an overall picture of the legal practices in effect during this period. The first modern adoption laws were passed in the second half of the nineteenth century in response to the increasing belief that society should play a more proactive role in promoting the welfare of children. Under the influence of this new ideological framework, adoption began to be advocated not simply as a legal mechanism to establish heir status but as a means of promoting the best interests of children (Sokoloff, 1993). The Massachusetts Adoption of Children Act is widely recognized as the first modern adoption law. Enacted in 1851, this statute required the written consent of the birth parents, a joint application by the husband and wife and a complete severance of the child from its family of origin (Sokoloff, 1993). In many other countries, however, adoption legislation focused primarily on upholding the inheritance rights of legitimate descendants.

A large number of countries enacted new adoption laws during or in the aftermath of the Second World War. Typical amongst them are Tanganyika (now the United Republic of Tanzania), the first adoption legislation—the Adoption of Infants Ordinance—was introduced in 1942, based on the English Adoption of Children Act of 1926 (Rwezaura and Wanitzek, 1988). This act was subsequently amended by the Adoption Ordinance of 1953. In Ireland, the first adoption law—the Adoption Act—was passed in 1952 (O'Halloran, 2006). It recognized that adopted children should enjoy the same rights and duties as legitimate offspring. In India, the Hindu Adoptions and Maintenance Act was introduced in 1956 (Lilani, 1995). This Act recognized the equivalence between natural and adoptive filiation but also contained the proviso, as in the 1926 Adoption of Children Act of England and Wales. In Ghana, the Adoption Act 1962 (Act 104) was passed to regulate adoption procedures. During 1940-1980, several countries also introduced amendments to earlier legislation. Many of these changes were aimed at broadening the effects of adoption and at better protecting the adopted person's welfare. A number of countries also modified existing legislation to allow for new forms of adoption.

Overview of Inter-Country Adoption (ICA) In Ghana and the Welfare of Ghanaian Children

Inter-country adoption is a relatively uncommon phenomenon in Ghana. Children have always occupied a special position in Ghana because they are considered the custodians of the future. In the pre-colonial days, children were the most precious of one's possessions (Gyekye, 1996). Although no child welfare system existed per in the pre-colonial Gold Coast, it was customary for the extended family, through kinship foster care and other community networks, to provide care and protection for children whose parents were unable to do so (Goody, 1966). Cultural practices including “Zuguliem” (*the practice among the Dagomba's where drummers take their sisters' and daughters children to*

rear and train them in their profession) Oppong (1973). Orphans were also cared for by childless members of the clan. Community members were also committed to the welfare of children because they believed it “took a village to raise a child”. Therefore, when children did not have biological families to care for them, the community felt indebted to provide guardianship (Ansah-Koi, 2006).

The advantage of this system for children was that they always had more than two adults whom they could depend on and who were concerned about their welfare. The kinship foster care was based on the values of reciprocity, altruism and the fear of reprisal from dead kinsmen (Ansah-Koi, 2006). Kaye (1962: 37) notes that the extended family took care of orphans because they feared:

“The spirits of the dead parent, particularly that of the mother, is watching to see how the child is treated, and will reward with misfortune and calamities those foster-parents who neglect their charges”.

The close pattern of settlements and living arrangements made it easier for such a welfare system to operate (Nukunya, 2003). Most extended families, consisting of several generations, resided in the compound houses in small rural communities, which made it easier for family members to provide substitute parental care. Anecdotal evidence suggests that among the Akan descent groups, certain women had designated responsibilities of taking care of children, orphans and the elderly. These women were then taken care of by the other family members and they could only get married if their husbands agreed to reside within the wife’s family house.

De-facto adoptions- *meaning the practice of caring for a child either temporarily or permanently without a legally recognized contract*—have long been practiced in many parts of Ghana.

However, the traditional society did not remain static. As a result of social change and economic pressure, the kinship foster care system gradually lost some of its capacity to respond to the requirements of children needing alternative parental care. The advent of colonial rule saw the beginning of modern cities and industrialisation in Ghana. People migrated to the cities in search of jobs in the construction sites and industries (Fiawoo, 1959; Little, 1960). The rural-urban drift according to Schildkrout (1973) weakened the extended family system. Men who migrated to the urban centers often did so without their wives and children, contributing to a breakdown of families (Manful and Badu-Nyarko, 2011). The migrants also had little in common, resulting in limited social cohesion, neighbourliness and sense of responsibility towards dependent children. The economic depression before World War II, also led to several fostered children being cast from their homes and forced to fend for themselves (Agyeman-Duah, 2008).

The traditional foster care system seemed to have lost its capacity to respond to these new social relations. The first officially recognized Children’s Home was started by an NGO called The Children’s Society, based at Kaneshie, in Accra in 1949. They received professional guidance from the department of social welfare. It was then moved to the present day Osu Children’s Home, located near Labone junction. Since then, many Children’s Homes, both private and government owned have sprung up in various regions of Ghana. Children’s Homes are designed by the Minister in-charge of Social Welfare (ministry of Manpower, Youth and Employment) and gazetted as such (see section 105 (45) of Act 560/98). This gives the Homes the statutory authority to keep children in need of care and protection. The failure to regulate private NGOs has resulted in a proliferation of Residential Care Facilities (RCFs) (Laird, 2002). Galama (2010) and Voelkl (2012) have argued that whilst some residential care facilities (RCFs) are established with good intentions, the majority are used as means to acquire funds from donors and orphanage tourism. Also, according to J.K Rowling, who co-founded the charity Lumos in 2005, has been working tirelessly to draw attention to the perils of child institutionalization and helped shed light on a gloomy reality: orphanages are turning into booming businesses that invite crowds of (often times) un-skilled and un-informed individuals to volunteer their time, and more specifically donate their money, to orphanages worldwide.

Ghana is an interesting case study in ICA for many reasons. It has followed the trend of other developed countries, but, while other developed countries like the United States have been arranging ICA through licensed private organizations since the post-WWII period, the Ghanaian government handled all adoptions itself and no official means to foreign adoption existed. Having in mind the existence of a de-facto system of adoption in Ghana, many Ghanaians had little or no knowledge of adoption and by extension inter-country adoption. Ghana also finds itself

in a unique position regarding ICA and domestic adoptions because of the existing exploitation and sale and trafficking of children by unlicensed residential care facilities. Looking at Ghana as a bit of an atypical example of a “sending” country hopefully will shed some light on the question of inter-country adoption in general.

Past Policies

Over the years the Government of Ghana did not authorize foreign adoption service providers. Only the Department of Social Welfare, under the Ministry of Employment and Social Welfare, was authorized to provide adoption services in Ghana. The Department of Social Welfare has recently begun to approve adoption agencies to assist in preparing adoptive families for adoption. Currently, prospective adoptive parents are not required to adopt through an adoption agency. A prospective adoptive parent or the designated agency was to contact the Department of Social Welfare to be advised on the processes of adoption. The Department of Social Welfare is charged with investigating the financial and social status of the prospective adoptive parents before the court can grant an adoption order.

The Children’s Act of 1998 was passed to reform and consolidate the law relating to children, to provide for the rights of the child, maintenance and adoption, regulate child labor and apprenticeship, for ancillary matters concerning children generally and to provide for related matters. Inter-country adoption and procedures are clearly defined in Section 85 of the Act. This states that - “(1) Subject to the provisions of this Part, the Department may investigate an application for inter-country adoption as an alternative means of child care, if a child cannot be placed in a foster or an adoptive family in Ghana or cannot in any suitable manner be cared for in Ghana”. “(2) A court may grant an inter-country adoption order if it is in the best interest of the child.”

Even though the Act clearly states the procedures and defines inter-country adoption, the regulatory framework for inter-country adoption was lacking. However, the procedure whereby children can be taken out of the country under exceptional circumstances is liable to abuse.

Unofficial ICA in Ghana and Its Negative impact on Children and Prospective Parents

Due to the combination of a lengthy waiting period and restrictive screening procedures in adoption, many prospective parents desperate for children started looking elsewhere. Unlicensed Residential Care Facilities began to take advantage of the system and spearheaded in the sale of children to foreign prospective parents in connive with some corrupt officials. Without an official avenue to foreign adoptions, Ghanaian couples went through any avenue they could find. This led to many horror stories. Often, they were scammed: their money was stolen and they remained childless. Or, if they did receive a child, they could not confirm where it came from. Adoptions often occurred without authorization from the Courts and the Department of Social Welfare. The undefined system of adoption indeed encouraged the operation of unscrupulous agents in the country, increasing the possibility of child trafficking and other abuses. Foreign prospective adoptive parents illegally adopted children in Ghana without recourse to the Act and the department of social welfare: charged with the responsibility of streamlining the process of inter-country adoption.

Existing Legislation, Amendments and Proposed Adoption of The Hague Convention

Ghana was the first country in the world to ratify the 1989 United Nations Convention on the Rights of the Child (UNCRC), in February 1990. In that same vain Ghana has ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in armed conflicts, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, African Charter on the Rights and Welfare of the Child etc. Domestic laws such as the Children’s Act 1998 became the main law governing child welfare in Ghana. The passage of the Children’s Act brought about several significant changes to child welfare and protection in Ghana. Firstly, it brought into existence laws to regulate childcare facilities that hitherto was absent and paved the way for the passage of other child welfare legislation such as the Child Rights Regulations 2002 (LI 1705) the Juvenile Justice Act 2003 (Act 653), and Human Trafficking Act 2005 (Act 694), Adoption Act of 1962 (Act 104). Secondly,

district assemblies were given the responsibility to liaise with other government to ensure the protection and welfare of children within their jurisdiction. This profess that the interest of the child in any activity is supreme to the Government of Ghana. Therefore, the worrying question is why is government failing to provide the necessary procedures and legislative instruments/procedures to check and streamline adoptions in Ghana?

Amendments and Proposed Adoption of The Hague Adoption Convention:

In the advent of the existing struggle and turmoil in adoption and rights of children and women, the vulnerable and the aged; a change in government structure brought about the new Ministry of Gender, Children and Social Protection (MoGCSP), which was established by Executive Instrument (E.I.) 1 in 2013. The new MoGCSP assumed a new and expanded mandate to ensure gender equality, promote the welfare and protection of children, and to empower the vulnerable, excluded, the aged and persons with disabilities, for sustainable national development. The new MoGCSP, having studied and assessed the system of adoptions and the various procedures propounded for the promotion of the interest of children especially vulnerable and orphaned children, brought new policies and programmes. The goal of the Care Reform Initiative (CRI), which is to establish a more consistent and stable approach to caring for vulnerable children in Ghana so that each child will be, assured a permanent home in a supportive and loving family was keenly studied. The Ministry having noticed the rot in the processes of adoption in the various departments, and the frequent sale of children by unscrupulous RCFs in connive with the officials placed a moratorium on child adoption in Ghana, to address the current challenges and protect adopted children and their foster parents. The directive is still pending until proper review of the adoption process is done. Adoption measures have since been restricted to limited circumstances. Clearance letter for adoption is now subjected to the approval of the Minister in charge of the MoGCSP.

Over the past four years, institutions such as USAID, UNICEF have called for the country to ascend to The Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (HCIA). This, they believed would protect Ghanaian children and reduce the various forms of abuse in the country and within the various machineries mandated to promote the welfare of children. As the purpose of adoption has changed over time, so have adoption laws. New issues and concerns are likely; therefore, to lead to further changes in adoption practices, especially in areas concerning permanency planning, inter-country adoption, adoption by step-parents and other relatives, inter-racial adoption and the right to have access to information on the birth family. Having glaring challenges such as child sale and trafficking, exploitation and child labour, abduction etc. Obviously, creating an open and legal means to ICA would benefit all involved parties. For Ghana to ascend to the convention it has to amend parts of its laws on children and also take bold decision to pass regulations and procedures to guide its implementation. Amendments and adoption of the following have therefore been considered; The Children Act, The human trafficking Act, Regulations on Adoption and Foster Care. (These will include regulations on licensing and an increase in licensing fees, The Child Welfare Policy and the Ratification of UN Protocol on child prostitution. All these are being done to enable Ghana to adopt effective and efficient official adoption authority.

Analysis

This paper stands in agreement with the Hague Convention that inter-country adoption is fundamentally a practice that serves the best interests of the child because of its goal of providing that child a home – wherever that home may be. The Ghanaian case particularly demonstrates the need for legal, regulated ICA. While there exist so many needy children and ready parents, the absence of a strong functioning, curtailed with poor advocacy of the existence of ICA simply encourages illegal adoptions by parents desperate for children, parents who otherwise would have gone through legal avenues. Certainly, there are problems with the way informal ICA and domestic adoptions are practiced. For ICA to achieve its intended purpose then there is the need for advocacy to educate the populace on the existence of the new ICA and also an improvement in the functions of the various divisions under the ICA. On the grounds of adoption (domestic and inter-country adoptions), Ghana has failed to protect its children. Although number of policies, regulations and amendments have been suggested as discussed above to help promote the interest of the Ghanaian child, few or none of such “decisions” have been passed by parliament since the realization of such dream in 2013.

Further research into statistics on inter-country adoptions in Ghana paints a glaring picture. Statistics from the International Social Service (ISS), 2013 provides that there is no precise data about domestic adoption or children in foster care. It also provides that inter-country adoption in Ghana increased from 107 in 2011 to 172 in 2012. Inter-country adoptions to the United States reduced drastically and one may deduce the result from the excellent working relationship the MoGCSP had with the United States, and the moratorium placed on adoptions. Inter-country adoptions reduced from 124 to 85 and to 29 in the years 2014, 2015 and 2016 respectively. See Figure 1, 2 and 3 below.

Figure 1. Source: US fiscal year 2016 Annual Report on Inter-Country Adoptions

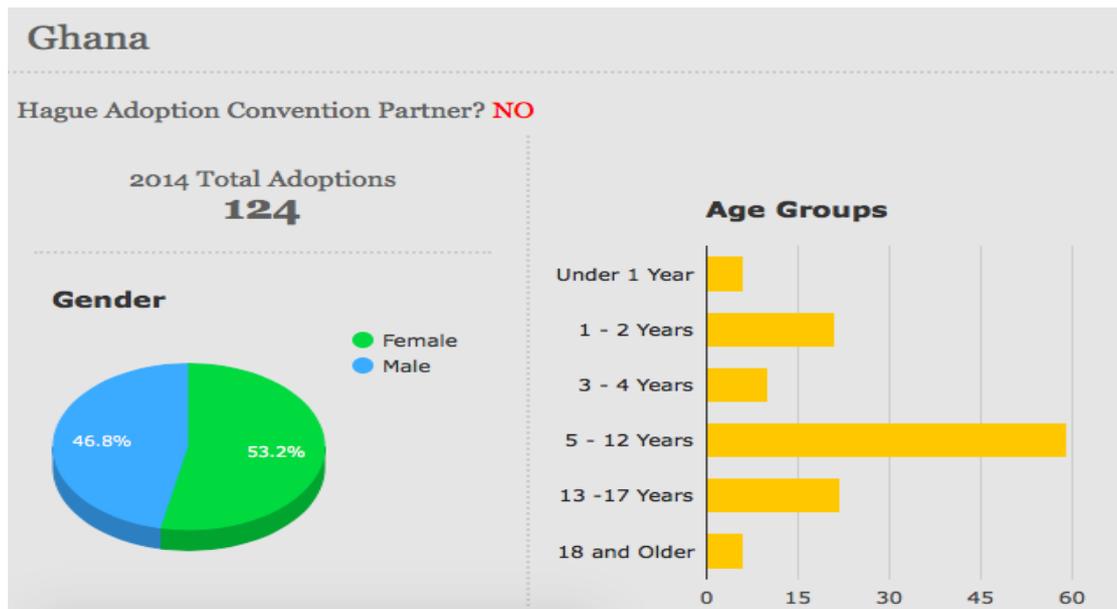


Figure 2 Source: US fiscal year 2016 Annual Report on Inter-Country Adoptions

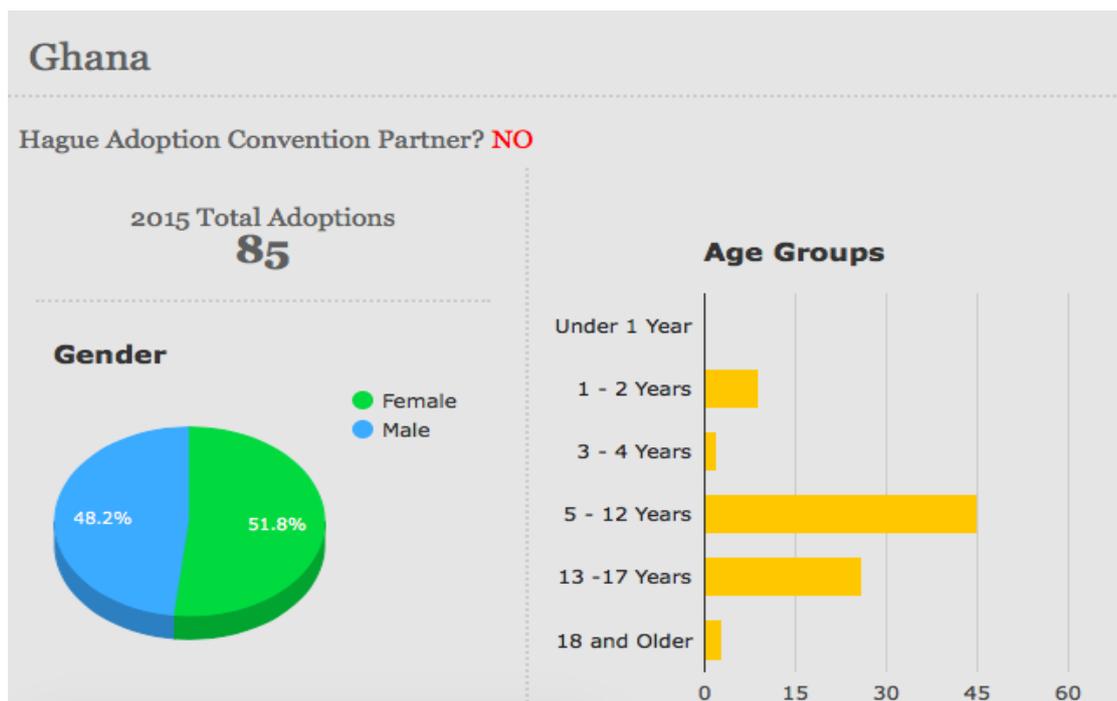
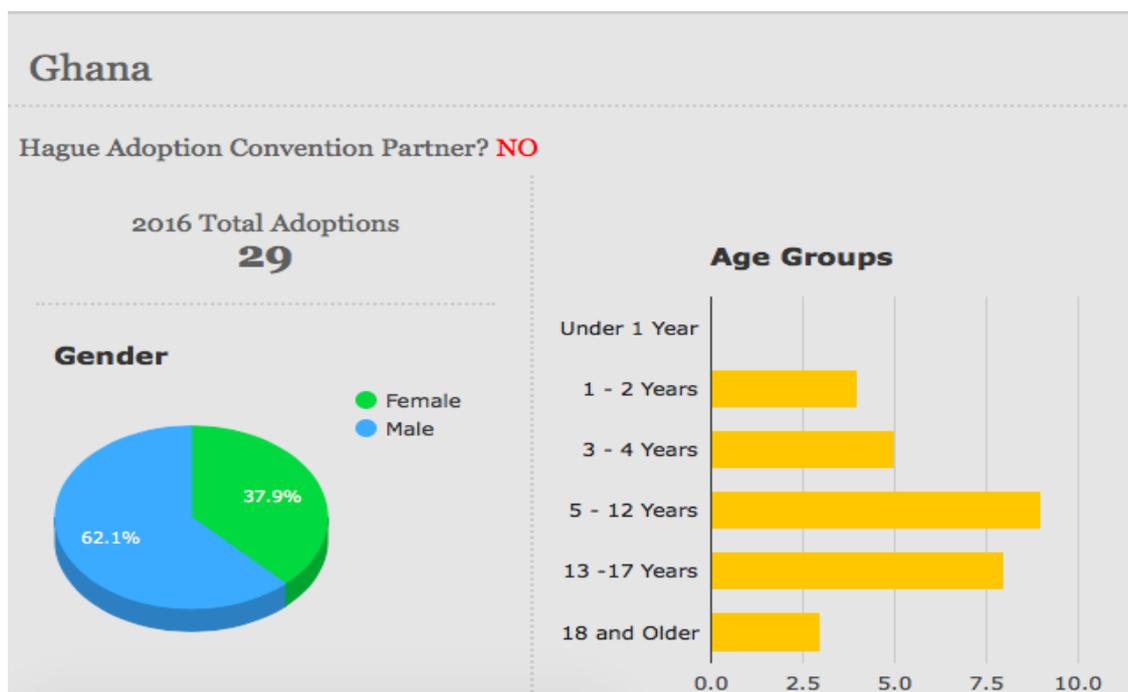


Figure 3 Source: US fiscal year 2016 Annual Report on Inter-Country Adoptions



Although the existing moratorium has been able to reduce inter-country adoptions to countries particularly the US, there abound potential questions to be answered such as:

- In the current situation of transition, Inter-country adoptions are only permitted for exceptional reasons. How many cases have been falling under this situation since the suspension began?
- What information is collected about the situation of children deprived of family, including those benefitting from alternative care measures (residential care, formal and informal foster care, national adoption and inter-country adoption)?
- Are there disaggregated statistics as well as any form of monitoring of any inter-country adoption done under the moratorium?

Recommendations

The trend of adoption has changed significantly over the years. It therefore, behoves countries both convention and non-convention countries to recognise and uphold as paramount the interest of their children in cases relating to adoption. It has been established throughout this work and various studies that adoption both domestic adoption and inter-country adoption has fuelled many cases such as child trafficking; sale of children; abduction and exploitation, in most countries in Africa. On the hand, most developed countries have been able to develop measures and amendments to their domestic legislations and in so doing, have been able to tackle various exploitations in the adoption system.

Ghana as a new partner to the convention may face several challenges. It is therefore important to adopt best practices and pass regulations streamlining adoptions in Ghana. It is worthy of note to Ghana, that systematic study of adoption trends and characteristics worldwide is severely hampered by both the scarcity of data and their lack of comparability, which is in turn exacerbated by the paucity of information on the concepts and definitions that underlie the statistics available. Although perfect comparability might not be possible because of differences in the

legal principles and national regulations governing adoption, Ghana should work more to improve and collect comprehensive national statistics/data on adoption and transparency of existing data by providing better documentation on their meaning and scope. In addition, as this work has suggested, a concerted effort to collect systematically, for every person being adopted, the same information regarding the event and the characteristics of the persons involved in it, would go a long way to provide the evidence required to understand better the social and demographic dimensions of adoption.

With regard to inter-country adoption, timely and detailed statistics are necessary to monitor the implementation of relevant multilateral, regional and bilateral instruments. The evidence suggests that countries that are parties to such instruments are making an effort to produce the relevant statistics. However, much remains to be done to improve dissemination of the available data and to provide the detail necessary for assessing important aspects of the adoption process. Furthermore, the authorities in charge of monitoring adoptions, both nationally and internationally, need to consider the adoption regulations and be willing to embark on a process of change. Aside from these, stakeholders should take immediate action to rectify the major implementation challenges facing Ghana, such as the enactment of a Legislative instruments and Regulations on adoption. The capacity of staff at the central Authority should be enhanced to meet the changing trend of adoption.

Finally, adoption is a topic of crucial importance both to those directly involved and to society. Thus, as we approach the coming years of different phases and procedures in adoption, Ghana should have a comprehensive national database for all legalized adoptions as well as standardization of reporting.

Conclusion

This paper has presented an overview of adoption (domestic and inter-country) and has laid much emphasis on inter-country adoption and the challenges it brings. Through analysis of the history, domestic laws and international conventions regulating adoptions and the case study of Ghana, it has been concluded that countries that have been able to rectify the Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (the Convention), and are practicing it in conjunction with their domestic laws are better placed in tackling issues relating to child exploitation, sale and trafficking.

Failure on the part of Ghana has largely been as a result of low or absence of information, expertise on inter-country adoption and also the long practice of de-facto adoption. That notwithstanding, the examination also concludes that the continuous unhealthy relationships between staff of the Department of Social Welfare and unscrupulous agents in the sale of children has weakened the trust of Ghanaians and prospective parents in the adoption system. It is therefore imperative for Ghana in the short-term to put in place measures to check and prosecute state officials engaged in such nefarious activities; they should be prosecuted and not transferred to serve in different regions.

Also, Ghana should in practice treat adoption as a human security issue, that is security which privileges the individual as the referent of security analysis and seek to directly influence policy that recognises and promotes the welfare and security of the individual (Child). In addition, the Central Authority of Ghana should always work to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law; to establish a system of co-operation amongst contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children. This is to secure the recognition in contracting States of adoptions made in accordance with the Convention on protection of children and co-operation in respect of inter-country adoption.

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