



FACT SHEET: OPENNESS IN ADOPTION 2015 SPECIAL COMMISSION

For discussion on Wednesday 10 June 2015

Discussions may focus on sharing/identifying various:

- Laws and policies that allow or prohibit open adoption
- Practices that allow open-adoption (e.g.: closed, semi-open and fully open)
- Potential benefits and risks of open adoption
- Promising practices to maximise likely benefits
- Promising practices to prevent probable risks

This factsheet is based on ISS' comprehensive publication on Open Adoption available on www.hcch.net (section 2015 Special Commission)

Background

Whilst in some countries, adoption was and continues to be cloaked in secrecy/closed procedures, in other countries, "open adoptions" have always been customarily practiced and becoming more popular in some countries. **Whilst the term "open adoption" has varied meanings, it generally covers situations of full adoptions where there is an exchange of information between the adopting and biological parents.** Consent for contact beforehand is required.

The method as well as regularity of contact is wide ranging covering modes such as physical meetings, phone calls and letters/emails. Social media including Facebook and

Instagram, of course has also provided multiple opportunities and risks.

Irrespective of the means used for and constancy of contact, there are direct advantages for the different stakeholders in the open adoption, such as the respect of the right to know one's origins and can solidify the varying relationships. Yet there are also risks involved especially when there is a lack of preparation and professional support for such contact. Likewise other questions can arise such as safeguarding the interests of various interested parties in cases where illicit practices exist or when there is an adoption breakdown.

Key principles in relation to open adoption set out in 1993 HC & other international standards

- Intercountry adoptions should take place in the best interests of the child (art 1)
- Participation of child according to age & maturity (art 4(d))
- No contact between the prospective adoptive parents and the child's parents prior to matching (art 29)
- Role of central authorities to promote co-operation (art 7)
- Encourage use of 1996-HC for open adoptions in ICA matters
- Right to know one's origins (art 7 CRC)
- To promote the child's sense of self-identity, a life story book should be maintained (para 100 Guidelines for the Alternative Care of Children)

! See also articles 3, 12 & 21 CRC

Wide panoply of approaches

Regional approaches

Based on "general" observations across the regions, in principle in:

- Anglo-Saxon and Pacific Islands: open adoptions to varying degrees are widely practiced
- Europe and Latin America: anonymity remains important, although there are trends towards more openness

- Asia and Africa: closed adoptions are largely encouraged

It is important to note that there are usually differences in how open adoptions are viewed and practiced between national and intercountry adoption contexts.

Open adoptions are growing in importance due to more:

- Adoption of children with special needs – especially those who are older
- Use of new technologies
- Acceptance of adoption
- Access to means for searching for origins etc.

! 1993 HC compliant « open adoptions » exclude private adoptions

Potential benefits

Benefits for the child

- Build a complete and stronger identity
- Be involved in adoption project
- Allow for some continuity in the life of the child and ties to origin
- Facilitates growing with a sense of belonging to families of origin allowing children to not abandon past

Benefits for the adoptive parents

- Communication about origins is more natural and transparent
- Assists with knowing medical history of the child

Benefits for the parents of origin

- Can alleviate some of the pain and culpability
- For those who are reticent about an adoption, the possibility of some contact can facilitate the decision making process



Wide panoply of approaches contd.

Legislation and policies

- Explicitly included in the law (e.g.: as part of adoption plan NSW and 30 States in USA etc.)
- Legal reforms in Spain and Switzerland aim to comprehensively cover open adoption procedures
- Not in the law but a contract or agreement can be approved by a judge (e.g.: Canada). In these cases, the instruments can be modified at any moment and are on a voluntary basis
- Contact is prohibited in law/policy as full adoption results in a complete rupture of filiation – anonymity remains the norm (e.g.: Philippines, Colombia, Chile, Croatia, Ecuador, Lithuania, Netherlands, Quebec and Flemish part of Belgium)
- Exceptions to this prohibition exist, e.g.: when accessing non-identifying information about family of origin

Practices

In practice varying degrees of contact:

- Closed or confidential adoption – no contact at all - exception of intra-familial adoptions (e.g.: Togo and Lithuania)
- Semi-open or mediated adoption – some form of contact between stakeholders without identifying information
- Fully open adoption
 - identities are known and based on goodwill of the parties
 - need the consent of the child if he/she is mature enough
 - used only for adoption of older children and in intra-familial adoptions

Promising practices to maximize benefits and prevent risks

1. Preparation of stakeholders

- inclusion in "general" preparation courses
- use of modern technology such as videos to introduce open adoption
- specific preparation of the child and methods to obtain informed consent
- assistance of social workers to work with families of origin
- training of professionals in drafting contracts/agreements

2. Support during the entire adoption

Supervision mechanisms

- Use of third parties such as mediators
- Use of specialised organisations
- Part of post-adoption services – workshops etc.

Role of professionals

- Facilitate exchange of information – e.g.: later life letters
- Promote respect of contracts/agreements
- Mediation and supervision of contacts
- Support in case of conflict

Potential risks

Risks for the child

- Can be a source of conflict, perhaps adding complexities to sense of belonging within adoptive families
- Need for openness changes over time – adoptive parents may not agree with this
- Non supervised contact via proliferation of new technologies

Risks for the adoptive parents

- Problematic if adoptive parents do not appreciate value of maintaining a tie – can lead to jealousy etc.
- Maybe delicate if the child is reticent about contact
- Challenging if there are multiple adopted children with varying degrees of contact possible
- Family of origin may exert financial pressure

Risks for the parents of origin

- Constant reminder may make the grieving process more difficult

