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EDITORIAL

At the crossroads of abandonment and international surrogacy – Protecting children’s rights at their origins

This Monthly Review briefly addresses – at first glance – two very different topics: baby boxes and international surrogacy. Yet, both in one way or another touch upon the rights of the child to know his origins, sometimes at the expense of those biologically connected to them.

Whether it is nature – such as DNA – or nurture – such as the child’s environment – that makes a child who he is has been the centre of debate for centuries. Maybe it is both. Whilst the debate is unresolved, one thing is certain, one’s history, affects to some degree, the evolving identity of a person.

Given the importance, specifically of the history of one’s background (*i.e.* the why, where and by whom did a person come into being), international instruments¹ elucidate the important right of children to know their origins. Yet, the full implementation of this right is not without its costs as the examples of baby boxes and international surrogacy show.

Baby boxes and international surrogacy – a complicated paradox

The phenomenon of baby boxes and international surrogacy* – in many ways two very different subjects – present in practice a true paradox. With the first, we have parent(s) able to conceive abandoning their child and with the second, we have parent(s) unable to conceive having a child through a third party. The paradox becomes more complex in how either the lack of

or possession of money can affect the destiny of a child.

Within this paradox, there are also similarities. In both situations, there is often a degree of anonymity, which can provide protection against issues such as discrimination and reprisals. Baby boxes offer a means of abandonment for parents wanting to remain inconspicuous. With international surrogacy, especially where there is a commercial transaction, the donor or surrogate mother’s identity is frequently not revealed to the child.

Protecting the child’s right to know his origins

The question then arises as to what extent the anonymity of these actors should be preserved. Such secrecy and concealment can be at a cost for the child, who has no way of accessing information about his past.

This price can be too high, as highlighted by some of our readers in response to the editorial on baby boxes covered in Monthly Review 5/2012 (see Readers’ Forum, pp. 6-9).

In the case of international surrogacy arrangements, there is often no legal obligation or even a willingness to inform the child of his origins, which is a hindrance, in general, for donor conceived people (see p. 3).

Lessons from the adoption world

By concealing information about the child's genetic origins, family and cultural background, this can have damaging effects on them. Many lessons can be learnt from the adoption world, historically cloaked in secrecy. 'Knowing who you really are is very difficult when you do not know where you come from' and with initiatives such as TRIOBLA's *Building Bridges Project*, adopted persons are able to reconstruct their identity by discovering their origins (see p. 5).

The lessons from adoption are not limited to the search of origins and moving towards more openness. Specially in the field of intercountry adoption, the international instrument of THC-93 has helped tackle problems such as the legal status of the child as well as providing protection against illegal transactions – although work remains to be done.

The ISS/IRC uses its wealth of experience in adoption matters to advocate for the rights of children in international surrogacy

The newer field of international surrogacy does not yet benefit from a global text. Therefore, the ISS/IRC plans to undertake research covering some of the complicated issues arising from

international surrogacy. These also include questions concerning the legal status of the child as well as 'cases (that) have come to light which demonstrate starkly the possibilities for exploitation and abuse'². This international surrogacy research will focus on the rights of the child, at his very origins, as perhaps should be covered in an international instrument. We look forward to working with the international community, to advocate for a better protection of these children.

* International surrogacy is defined as an arrangement entered into by intending parent(s) resident in one State and a surrogate resident (or sometimes merely present) in a different State. See *A preliminary report on the issues arising from international surrogacy*, Preliminary Document 10, Hague Conference on Private International Law
<http://www.hcch.net/upload/wop/gap2012pd10en.pdf>.

¹ U.N. Convention on the Rights of the Child (art. 7) and U.N. Guidelines on the Alternative Care of Children (para. 42)

² See Preliminary Report above, at p.5.

The ISS/IRC Team
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