

May 23, 2008

Responses of the United States of America to additional questions from Ms. Rosa María Ortiz, Vice Chair, Committee on the Rights of the Child

Taking into account that the Hague Convention has entered into force for the United States, is the U.S. going to accredit “for profit” organizations and persons? If so, how will the U.S. ensure that there is no sale of children in the context of this Protocol?

In its instrument of ratification of the Convention, the United States declared that, pursuant to Article 22(2) of the Convention, in the United States, Central Authority functions under Convention Articles 15-21 may also be performed by bodies or persons meeting the requirements of Articles 22(2)(a) and (b). At this time, approximately five for-profit persons have been approved. These approved persons, as well as accredited agencies (non-profit agencies), must comply with the U.S. federal accreditation and approval standard prohibiting child buying as well as the standard governing compensation of those involved in adoptions in order to maintain their accreditation or approval. See 22 CFR 96.36, 96.34.

With respect to agencies or persons not accredited or authorized that intermediate in international adoptions, are they subject to any civil, administrative, or penal sanctions?

Pursuant to Section 404 of the Intercountry Adoption Act of 2000 -- the U.S. domestic legislation implementing U.S. obligations under the Hague Convention -- adoption service providers that provide adoption services in the United States in connection with an adoption covered by the Convention that are not accredited, approved or otherwise authorized under the Act are subject to both civil and criminal penalties. Attached please find a copy of the Intercountry Adoption Act of 2000, Public Law 106-279.

Considering that the U.S. implementing legislation and regulations for the Hague Convention seem to permit pre-natal and other payments to biological mothers in the countries of origin of adoption, how is this consistent with the Optional Protocol’s definition of “sale of children” (Article 2) and with Article 3(1)(a)(ii)?

U.S. implementing regulations are fully consistent with these articles of the Optional Protocol. These regulations specifically prohibit improper inducement, including improper inducement of the consent of a parent, a legal custodian, individual, or agency to the adoption of a child. See 8 CFR 204.304(a)(2) (“[n]either the applicant/petitioner, nor any individual or entity acting on behalf of the applicant/petitioner may, directly or indirectly, pay, give, offer to pay, or offer to give any individual or entity or request, receive, or accept from any individual or entity, any money (in any amount) or anything of value (whether the value is great or small), directly or indirectly, to induce or influence any decision concerning [consent]”).

Certain other payments are permitted, however, including reasonable “medical, hospital nursing, pharmaceutical, travel, or similar expenses incurred by a mother or her child in connection with the birth or any illness of the child.” See 8 CFR 204.304(b)(3). Note however that “a payment is not reasonable if it is prohibited under the law of the country in which the payment is made or if the amount of the payment is not commensurate with the costs for professional and other services in the country in which any particular service is provided.” See 8 CFR 204.304(b). Prospective adoptive parents seeking approval to proceed with an adoption covered by the Convention are required to disclose all fees and other expenses paid in relation to the adoption.

Taking into account that the U.S. is also a country of origin for international adoptions, can you tell us how many children have been adopted by individuals from other countries? The Committee is concerned that individuals from outside of the U.S. are buying children from within the U.S. for adoption purposes (e.g., offers of babies for adoption for payment by their own mothers over the internet).

Before the Hague Convention entered into force with respect to the United States on April 1, 2008, the United States did not keep statistics on children adopted from the United States by individuals from other countries. Anecdotal evidence suggests the number is between 500 – 800 children per year. Pursuant to the Intercountry Adoption Act, the United States will begin tracking these adoptions.

Section 303(b)(1)(A) of the Act requires that, before entering an order declaring an adoption to be final or granting custody for the purpose of adoption, a U.S. state court receive and verify satisfactory evidence that the requirements of, among other things, Article 4 of the Convention have been met. Article 4(b)(3) states that “the consents [to the adoption] have not been induced by payment or compensation.”

In addition, the United States has incorporated the principle of subsidiarity into its implementing legislation. Section 303(a)(1)(B) of the Intercountry Adoption Act requires that reasonable efforts be made in Convention cases to find a timely adoptive placement for the child within the United States.

With respect to the sale of a child via the internet, the United States encourages the Committee or members of civil society to bring such cases to the attention of U.S. law enforcement. Whether a particular act can be prosecuted by federal or state law would depend on a wide range of circumstances. We can assure the Committee, however, that prohibition and criminal punishment of the sale of children as provided for in the Optional Protocol would be fully covered by U.S. law, including a sale via the internet.

More specifically, federal law prohibits the sale of a child on the internet for adoption where the seller knows that the child will be caused to engage in a commercial sex act (18 U.S.C. § 1591) or will be portrayed in child pornography (18 U.S.C. § 2251A), or where the seller transports the child to be prostituted or for involvement in sexual activity (18 U.S.C. §§ 2423(a) or 2423(b)).

In addition, the federal government may prosecute a mother who sells (or, in the case of 18 U.S.C. § 2251A, attempts to sell) her child over the internet where:

- The mother knows that the child will be caused to engage in a commercial sex act (see 18 U.S.C. § 1591. If the child is under the age of 14, the mandatory minimum sentence for this crime is 15 years; otherwise it is 10 years); or
- The mother knows that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in or assisting another person to engage in, sexually explicit conduct; or the mother intends to promote the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct (see 18 U.S.C. § 2251A. There is a 30 year mandatory minimum sentence for this crime).

Is the United States planning to apply the same level of guaranties in adoptions under the Hague Convention with countries not Party to this treaty?

U.S. implementing legislation and regulations generally apply only to adoptions between the United States and another Convention country. The United States would like all countries to join the Convention, and is working together with some countries toward that goal, so that all intercountry adoptions to and from the United States meet Hague Convention standards. With respect to the Optional Protocol, we would note that it refers to “the adoption of a child in violation of *applicable international legal instruments on adoption*.” (Art. 3(1)(a)(ii), emphasis added) The United States and other countries understand the term “applicable international legal instruments” to be the Hague Convention.