Adoptieoudersoverleg

Belangenvereniging
Zelfdoeners in
Adoptie

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8 december 2003

Geachte leden van de Vaste Kamercommissie voor Justitie,

Als bijdrage aan de voorbereiding van het Algemeen Overleg over interlandelijke adoptie sturen wij u hierbij onze derde en laatste brief.

In deze brief vindt u een boodschap van dr. William L. Pierce, een toonaangevende autoriteit op het gebied van interlandelijke adoptie en vanaf het begin betrokken bij het tot stand komen van het Haags Adoptieverdrag. Eerder hebben wij dr. Pierce geciteerd in onze brief van 15 oktober jl. Wij hebben dr. Pierce de huidige adoptiesituatie in Nederland toegelicht en hem daartoe onder andere kopie gestuurd van een brief die dertien ouderorganisaties op 14 mei dit jaar ontvingen van het Ministerie van Justitie als antwoord op een aan Minister Donner aangeboden nationale petitie. Het Ministerie van Justitie heeft deze brief zelf in het Engels laten vertalen, zodat deze brief tegelijkertijd kon dienen als antwoord op de internationale petitie die op 5 juni van dit jaar aan Minister Donner is aangeboden. Bijgaand ontvangt u kopie van deze correspondentie.

Het uitgangspunt van het adoptiebeleid van de Minister van Justitie is dat er teveel aspirant-adoptieouders zijn in vergelijking met het beschikbare aantal adoptiekinderen en dat derhalve de instroom van adoptieouders gereguleerd moet worden.
In de afgelopen maanden hebben wij cijfermateriaal gepresenteerd dat aantoont dat in ieder zendend land van enige omvang er, triest genoeg, geen enkele sprake is van een tekort aan kinderen die voor internationale adoptie in aanmerking komen. We hebben duidelijk gemaakt dat de beperkte adoptiecapaciteit van ons land niet hetzelfde is als het vooronderstelde tekort aan adoptiekinderen. Er zijn veel kinderen die gebaat zijn bij interlandelijke adoptie, maar Nederland slaagt er niet in om deze kinderen te bereiken. Het capaciteitsprobleem ligt in ons land als ontvangend land en niet in de zendende landen.

Deze visie wordt gedeeld door de Amerikaanse afdeling van IAVAAN, de International Association of Voluntary Adoption Agencies and NGO's. IAVAAN werd in 1991 opgericht. We hebben het hoofd van de Amerikaanse afdeling van IAVAAN, dr. William L. Pierce, een internationaal erkende autoriteit op het gebied van interlandelijke adoptie, uitgenodigd om zich via een schrijven tot u te richten en zijn dankbaar dat hij bereid is gebleken zijn kennis met u te delen.

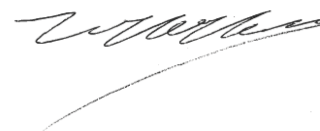
Dr. Pierce is inmiddels ruim veertig jaar actief op het gebied van adoptie en kinderbeschermende maatregelen. Hij is lid geweest van de Amerikaanse delegatie die van 1990 tot 1993 betrokken was bij de ontwerpzittingen en de diplomatieke sessies van de Haagse Conferentie voor Internationaal Privaatrecht die uiteindelijk resulteerden in het tot stand komen van het Haags Adoptieverdrag. IAVAAN heeft een waarnemersstatus bij de Haagse Conventie over Interlandelijke Adoptie en dr. Pierce heeft als delegatielid de bijeenkomsten van 1994 en 2000 bijgewoond.

Wij vertrouwen dat deze informatie bijdraagt aan het plaatsen van het huidige Nederlandse adoptiebeleid in internationaal perspectief. Wij hopen dat u een verdere wachtlijst voor adoptieouders niet zult accepteren, maar dat u wilt pleiten voor een inhoudelijk volwaardig adoptiebeleid, met respect voor adoptieouders en toegewijd aan de nu nog toekomstige adoptiekinderen die uw hulp hard nodig hebben.

U wijsheid wensend voor het debat van komende donderdag.

Met vriendelijke groet,

AdoptieOudersOverleg



G. W. Willemsen
voorzitter LAVA

L.J.C Schelhaas
voorzitter Rode Draad

W.J.A. Halm
voorzitter BZA

Dear members of the Standing Committee for Judiciary of the Dutch Lower House,

I am writing to you because I have been contacted by the Dutch Adoptive Parents Conference and asked to comment on the current policy of the Dutch Ministry of Justice in regard to intercountry adoption by Dutch citizens. The Dutch APC contacted me because I head a nongovernmental organization (NGO) called the International Association of Voluntary Adoption Agencies and NGOs (IAVAAN) and IAVAAN's agenda includes providing objective data and analysis to countries discussing or implementing the 1993 Hague Convention on Intercountry Adoption. I also had the privilege of serving as a member of the U.S. Department of State Delegation tasked with drafting the 1993 Convention. I was a member of the Delegation for 1990, 1991, 1992 and 1993. I returned to The Hague as a representative of IAVAAN in 1994 and 2000. It should be emphasized that none of my comments here reflect in any way the official policy of the U.S. Department of State.

The first issue I would like to address is mentioned in a May 14, 2003, letter, wherein the Dutch Minister of Justice responds to the charge by the Dutch Association for Independent Adoption that "...the attitude of the Ministry of Justice is too passive with respect to increasing the capacity for adoption."

He then states that "The starting point of my policy is that children should be able to grow up in their country of origin. Intercountry adoption can only be considered where *every other form of help to the child* in its country of origin is lacking and cannot be found [emphasis added]."

With all due respect, this policy is at variance with the Convention itself. Paragraph three of the Chapeau states: "Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of Origin." Paragraphs 40 through 47 of the Parra-Aranguren Report, the legislative history of the Rapporteur for the Convention,

make clear that the meaning of the paragraph is that intercountry adoption, since it provides for a suitable family, is to be preferred over non-family options, including institutionalization. I respectfully suggest that the Department of Justice revisits the text of the Convention and the pertinent paragraphs of the Parra-Aranguren Report as such an exercise should clarify the basis on which all Central Authorities approach the question of intercountry adoptions.

Next, the Minister makes reference to Article 21 (b) of the 1993 Convention, presumably as being supportive of his policy stance. With all due respect, I believe that Article 21 (b) is not particularly relevant to the issue at hand since it deals with procedures the Central Authority are to consider it if "...appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests...." Specifically 21 (b) calls for "...a new placement of the child with a view to adoption or, ***if this is not appropriate***, to arrange long-term care...[emphasis added]." Even here, the Convention clearly calls for an adoption. I do not see how his citation of 21 (b) in any way supports his current policy position.

I am puzzled by the Minister's statement that "...I do not feel a 'pro-active and promotional government policy" is desirable for the Ministry of Justice." The Central Authority in each country has the responsibility to carry out the intent of the 1993 Hague Convention, which was developed specifically to provide extensive, detailed and expert guidance on intercountry adoption which was not possible in the Convention on the Rights of the Child. As a signatory to the 1989 Convention on the Rights of the Child and as the country that hosted the years-long effort to draft an Intercountry Adoption Convention that would reflect the views of the 1989 Convention, supplemented by the views of the countries and NGOs that participated in the discussions hosted by the Hague Conference on Private International Law (HCPIL), I would expect the Dutch Central Authority to be at the forefront in being pro-active and promoting government policy that supports the 1989 and 1993 Conventions. After all, the heart of the 1993 Convention is to protect children, and the scientific literature is

replete with data confirming the fact that, as the 1993 Convention says, being raised in a "family" is critically important for children. I need not remind Minister Donner that there are many millions of children across the face of the planet who are today living on the streets, trying to eke out an existence in rural areas or living in institutions. All countries who have committed themselves to the humanitarian goals of the 1989 and 1993 Conventions have, in my opinion, a responsibility to be pro-active about and to promote government policy to address the needs to these children. Of course, domestic programs should come first, either through supporting children in their families of origin so long as those families are adequate, and then through domestic adoption. But if those options do not meet the needs of all the children, then intercountry adoption is the universally agreed-upon course of action. Were it not assumed that Central Authorities would not be pro-active about and promote the very institution of intercountry adoption, properly done, the situation would strain credulity. Why else spend all the time and money to set up Central Authorities to make sure intercountry adoption is as "clean" as possible and to "expedite" such clean adoptions, if not to assume that Central Authorities would do this task. Of course, I realize that certain tasks assigned to Central Authorities may be delegated to others, including accredited agencies. Perhaps this is what the Minister intended to convey by his comment.

The Minister states that "there is no question of restrictive regulation," but as I understand it the kind of waiting list he wishes to put in place, ostensibly because he believes that there are too few children in need of intercountry adoptive homes and too many Dutch citizens seeking such adoptions, would have the practical impact of being restrictive regulation. Quite apart from the fallacy of the "supply-demand" construct he has put forth -- wrong on its face if one only takes into account the 14 million children who are HIV/AIDS orphans in Africa alone -- I do not see how any reasonable person could conclude that requiring citizens to wait, perhaps in excess of a year, to simply have their paperwork begin to be processed, is appropriate. The 1993 Convention was not drafted to give power to Central Authorities to create "bottlenecks" to reduce the numbers of families who could adopt

internationally in order to meet the humanitarian needs of children. Were that the case the U.S. Congress would have never voted to approve the Intercountry Adoption treaty and the U.S. adoption community would have been in an uproar. One only hopes that the policy positions Minister Donner currently takes do not reflect the views of others in the Dutch government that have the task of helping coordinate and implement the 1993 Convention. Were that to be the case, it would be a cruel hoax on all of us who have spent so much time and invested so much hope in the 1993 Convention as a framework through which countries could improve intercountry adoptions.

As for capacity-building, when I visited the HCPIL web site, I noted that six agencies had been accredited by the Dutch Central Authority. I am told that a seventh has since been added. With all due respect, if the Minister of Justice is delegating the task of increasing adoptive capacity to these agencies, or "permit-holders," then it seems important to ensure that sufficient numbers of agencies are accredited so as to ensure that adoptive capacity is indeed increased. In the U.S., we too rely on the private sector, mostly non-profit agencies but also those who may be "approved" once our implementing legislation takes effect, to increase adoptive capacity. These agencies, imbued with a passion for extending the humanitarian service of intercountry adoption to children in need, are quite active in seeking out children at risk in every country. I respectfully suggest that the Central Authority either increase the number of agencies it accredits or replaces some of the agencies that have shown little success in increasing capacity -- whatever is needed to reach the goal.

Finally, I note that the Minister of Justice mentions religious faith as an aspect that needs to be considered because, as he says, "Islam does not recognise adoption." I would point out that the United Kingdom has been pro-active in addressing this issue and provided a way for Muslims to provide family settings for Muslim children by allowing for children to enter the U.K. to be cared for through permanent legal guardianship. Providing for ***kefala*** is an example of a positive, pro-active policy.

I respectfully urge members of the Dutch parliament to invite Minister Donner to reconsider his policies and the extent to which they conform to the spirit of the 1989 Convention as defined further by the 1993 Convention. If you do so, I believe that one of Minister Donner's first moves might quite properly be the abandonment of the "waiting-list" proposal which will have but one practical effect: many children who would otherwise be adopted by Dutch citizens will languish in institutions, or die unnecessarily.

Respectfully submitted,

William L. Pierce, Ph.D.

Executive Director, IAVAAN
Founding President, National Council For Adoption (1980-2000)
Former Asst. Ex. Dir., Child Welfare League of America (1970-1980)