

## Unofficial translation from Dutch

<http://www.justitie.nl/actueel/nieuwsberichten/archief-2008/80910versterking-samenwerking-met-china-inzake-adoptie.aspx?cp=34&cs=578>

Ministry of Justice  
The Hague  
Netherlands

20 September 2008

Subject: Intercountry adoptions from China

The Chairman of the Second Chamber

On 14 March 2008 I have informed you, with reference to a broadcasting of EO-Netwerk, about intercountry adoption from China. In this broadcasting worrying images were shown of the way in which the People's Republic of China would deal with intercountry adoption. In aforementioned letter I have warned for the drawing of far-reaching conclusions in anticipation of a reaction of the Chinese authorities. During the broadcasting such a reaction lacked. I announced to discuss the concerns with the authorities and for this to send a delegation to China.

A delegation of my ministry has visited beginning of May 2008 the China Centre of Adoption Affairs (CCAA) that falls under the responsibility of the Ministry of Civil Affairs. Also discussions were held with representatives of the National Population and Family Planning Commission, the Embassies of France and Spain in Beijing, Save the Children UK in China and some individuals working on the field of adoptions in China.

Also a children's home was visited. As a follow up to the discussions a number of additional questions was made up, on which the Dutch embassy had a follow-up meeting with the CCAA on 12 August 2008.

Goal of the discussions was to obtain clarity about the question if in practice the situations as shown by EO-Netwerk's broadcasting are structurally happening, and if intercountry adoptions from China are implemented in accordance with the Hague Convention on Adoption. The discussions were also used to reinforce the ties between the authorities and to discuss together the further improvement of the cooperation in intercountry adoptions. During these discussions a lot of background was obtained which makes it better possible to judge the developments in China.

Anticipating the visit a meeting was organised with some experts and with the adoption agencies who work in China. Also the reporting of EO-Netwerk was put to the Permanent Office of the Hague Conference for Private International Law and contacts were made with the Central authorities of from China receiving countries with the question if they were aware of facts and circumstances that could be of importance for the working visit.

Finally, a study of two American students about the practice of intercountry adoption in China and the US was used. This study points to a number of vulnerabilities in the system and gives recommendations that could also be of importance for The Netherlands.

It concerned a joint initiative of the Dutch and the Flemish authorities and took place between 5 and 9 May 2008. The Central Authority of Flanders, where the EO-Netwerk broadcast was also aired, participated to all meetings. The discussions with CCAA were done separately, which gave the Flemish Central authority the opportunity to raise additional questions during the second discussion, making use of the discussions held in the mean time with other organisations. The visits were actively supported by the mutual embassies. At the discussions with the Chinese authorities has been participated by the accredited minister from the Netherlands in China and by the consul of Belgium.

The discussions took place in an open ambiance. CCAA appeared to have studied the broadcasting of EO-Netwerk intensively and had reacted as well as in writing before the visit, also during the visit. During the visit also the aforementioned American study was brought to the attention of the CCAA.

### *Findings*

The Hague Adoption Convention has the following principles:

1. The mother who relinquishes the child for adoption must have done so voluntarily and after the birth of the child (according to an established procedure);
2. None of the concerned may have had the intention to make a profit; the payment of costs made is allowed;
3. First a solution needs to be found in the surroundings of the child, respectively in the country of origin, before intercountry adoption can get into the picture (the principle of subsidiarity)

These principles must guarantee that international adoption takes place in an integer manner in which the interest of the child constitutes the first consideration. The findings of the Delegation are explained according to these principles.

#### **Ad. 1: the manner of relinquishment**

It is in the interest of children that they, if possible are raised by their own parents. If parents nevertheless relinquish their child it must be clear that they do so voluntarily. There may not have been any improper pressure on them.

The children who are made available for adoption are according to the Chinese authorities almost all children relinquished by their parents by leaving the child as foundling. This is being said to be the result of the 'one-child-policy'. The Government has, with as objective to control the population growth, an active form of 'Family Planning'. Parents in cities are in principle only allowed to bring one child into the world on punishment of often severe sanctions. In the countryside there is a more lenient rule. A second child is allowed if the first child is a girl. Especially girls and children with a deficiency are placed as foundling. Tradition and the fact that boys support their parents work in the disadvantage of girls. The last years the rules concerning the one-child-policy have been somewhat eased.

Children with a deficiency (so-called special needs children) are furthermore placed as foundling as parents cannot carry the costs of care. As far as adequate medical treatment is offered, the costs are not or not fully covered by the government or an insurance system.

The relinquishment is mostly the result of need. According to the Chinese authorities there is, however, no pressure to relinquish children, also not in the framework of the one-child-policy.

The relinquishment of children is punishable by law. The authorities do not take children away from

parents in view of the one-child-policy, this was ensured to the Delegation [Dutch sic.] This has also been confirmed by other speaking partners.

In order to exclude that parents did not voluntarily relinquish and are possibly still looking for their children there is always an investigation into the place of origin of the child and data considering the finder and the circumstances in which the child was found are registered. Also an advert is placed during in a provincial newspaper during which parents have 60 days to react. In practice parents do not react to that.

### **Ad. 2. No intention of profit**

The making of profit is generally considered unethical. In Western countries, and by now also in China itself, there is a large demand for adoptable children while the offer worldwide, also in China, is declining. There is therefore a risk that despite the prohibition money or other favours are offered to get children for adoption. The Hague Adoption Convention explicitly prohibits the making of profit by anyone involved in adoptions. Reimburse costs and donations to children's homes are allowed. Donations are usually for the benefit of children in the children's homes that do not qualify for intercountry adoption.

In China the payment for children is in principle prohibited. The government has set up rules for the height of donations and the use of these. The provincial authorities are monitoring this use.

### **Ad. 3 Preference for care in own environment**

The Hague Adoption Treaty stipulates that a child is in principle better off with care in the own environment, than abroad. Before a foreign adoption is considered, therefore first a solution needs to be sought in the country itself.

During recent years the number of international adoptions from China increased substantially. The amount was mostly dedicated to the one-child-policy. Nevertheless the impression arose that the Chinese authorities gave insufficient priority to the promotion of national adoptions. In the recent period the number of national adoptions has however strongly increased. The rules to adopt a child have become more flexible and in China more people can afford to adopt a child. Also policy is and will be developed to allow children more and more to be placed in Chinese foster families. The number of children that is offered for intercountry adoption has because of that strongly decreased. Only the number of 'special needs' foundlings that become available for intercountry adoption is still high. The Chinese authorities started some years ago with a major project, the 'Tomorrow Plan'. The goal of this project is to collect money for correctional surgery for 30.000 children in the whole of China. CCAA now gives priority to the intercountry placement of these children with adoptive families. The impression exists that with this the offering of healthy children is consciously hampered. The expectation is that in the coming years the offer of healthy children from China will further decrease. With increasing prosperity this will possibly also count for 'special needs' children. For the moment for this group of children there is however still a large need for intercountry adoption.

### **Vulnerable**

The legislation and the policy of the Central Authority in China is, as far as could be established during the meetings, in accordance with the Hague Adoption Treaty.

The 'one-child-policy' puts a heavy price on the Chinese population, but enforcement to relinquish a child is according to the Central authority not the case. The payment for children is in principle prohibited. There is more and more space for national adoption and placement in foster care in China. That is a positive development. Further improvement seems possible by better aligning the systems of national and intercountry adoptions. Still also then the system shows to be vulnerable.

Many homes are in poor regions, where according to our standards small payments can be of big meaning. In aforementioned American study it is noted that children's homes have great interest in the donations of foreign adoptive parents. It could lead them to tempt Chinese parents to place their children in their home, in stead of foster care placement or to promote national adoption or – even worse – instead of raising the child themselves. Also, children could become more often the victims of kidnapers who take children for profit from their parents to offer them to children's homes. It is of importance that the Chinese authorities are aware of this and where necessary react strongly against such practices. The scandal in the province Hunan where the programme of EO-Netwerk dealt with extensively, shows that the authorities do so. Still, on a regular basis possible new irregularities show up. Also a delegation of the Association Wereldkinderen who beginning of July visited China, pointed this out to me. So it is important that CCAA remains alert on possible irregularities and acts convincingly when rules are overstepped. CCAA has shown during the meetings in May to be aware of this importance. CCAA acknowledges that in practice the giving of a certain amount to the finder of a child as reward for the fact that he or she brought the child to the Children's Home, does happen. It concerns, according to the Chinese authorities, mainly symbolic amounts. Also it happens, like in other countries, that the finder is reimbursed for travel, care or medical costs. About the admissibility of such payments there are in China different interpretations. CCAA is of the opinion that in no case many may be paid to finders. For this reason CCAA has started recently a campaign to create awareness that anyone who brings in a foundling will need to involve the local police, instead of bringing the child to a children's home. CCAA indicated in this meeting also that it could agree to many of the recommendations of the American study. According to CCAA on many points actions have already been taken, for example on the issue of the improvement of control mechanisms, the promotion of national adoption and the substantial increase of government financing of children's homes.

CCAA also showed awareness to the importance to document as good as possible the origin of children. The files that were shown gave a professional impression. Also the Chinese side showed to be prepared to accompany children in their request to see their adoption file when in the interest of their personal development.

In the framework of increased transparency the possibility was also raised to promote the legal relinquishment of children. In this case the data on the parents are known and it can be established with great certainty that the relinquishment was done in total freedom. CCAA was not unwilling to this idea, announced that discussions on this are going on in China also and that they are looking at the situation in other countries. CCAA, however, indicated that China for the moment is not ready to legalise relinquishment.

### **Reaction to the EO-Netwerk programme**

With letter of 7 April 2008 the CCAA announced to have taken note of the content of the EO-Netwerk documentary about adoption from the province Hunan, which was broadcast on Dutch television on 11 March 2008. The authorities reacted as follows on the situation as shown during the broadcasting.

1. In case of adoption via the Shaoyang Social Welfare Institute in all cases the legal procedures for adoption were followed as in force in China, whereby the Public Security Bureau traced the natural parents and public announcements were made, and in case the natural parents could not be found, according to procedures agreement at all levels was gotten before adoptions were started.
2. Concerning the news in the Dutch media that the too many born babies (reference to one-child-policy) were taken by local officials and subsequently offered to foreigner for adoption: according to research it was found that this news is not in accordance with the

facts. Fact is that the citizens of Gaoping Village, Longhu county of the commune Shaoyang had illegally adopted twelve foundlings and one child from a non married couple. According to the Chinese adoption law these families did not fulfil the conditions for adoption. In order to protect the interest of the children, the families concerned have, according to the law and after agreement with the families involved, transferred the guardianship of the by them illegally adopted foundlings voluntarily to the state. In the case of the child of the non-married couple, it appeared that the biological mother left for unknown destination, and the family of the biological father appeared not to be (financially) able to care for the child and he agreed voluntarily that he child will be cared for by the State. The child still lives in the Shaoyang Social Welfare Institute.

It is not so that the local officials with force take so-called too many born baby's from their parents to offer them subsequently to foreigners for adoption. Of the above mentioned children none has been adopted by Dutch families. The news that from twins one child would have been taken by force and transferred to the orphanage, is not based on the truth. In China it is not against the one-child-policy to have twins or multiple children, and poor families who get multiple births can request financial support form the State.

From the before it may be clear that the reading of Netwerk on important points differs from that of the Chinese authorities.

## **Conclusion**

In case of adoptions from Treaty countries, the responsibility for the control of the question if the prerequisites of the Hague Adoption Convention are fulfilled, rests with the competent authorities in the country of origin. That means that the cooperating countries in intercountry adoption are highly dependent on mutual trust. In my reaction to the report of Mr. Oosting about adoptions from India of 7 November 2007 (Second Chamber 2007-2008, 31265, nr. 1) I discussed this extensively. Also for China counts that I have to be able to trust on the integer manner the Chinese authorities implement the principles of the Hague Convention. The Netherlands can let themselves be informed by the Chinese authorities and if irregularities appear they can ask for clarification and if necessary insist on measures to be taken.

The meetings with the Chinese authorities and other named institutions, organisations and person in China enable me to create a reasonable image of the policy followed on intercountry adoption in China. According to the report of the delegation and on the bass of what was discussed on 12 August, the legislation in China is in accordance with the principles of the Hague Convention and the authorities in Beijing are making the necessary efforts to have adoptions from China done in accordance with the Hague Convention. This is also the view of the other speaking partners and colleague Central Authorities. The authorities, moreover, show to be open to possible shortcomings. In the discussions that the delegation had with organisations outside the government in China and in contacts with other foreign Central Authorities that image has been confirmed. They point to the fact that Chinese authorities are making much progress and are open to advise of foreign organisations and authorities. The discussion the delegation had does not allow, however, to express opinions on the way the policy is implemented at provincial level. The situation differs from province to province. With a certain regularity cases come up that indicate an insufficient implementations of the rules in certain provinces of the People's Republic. These are worrying sounds. According to the authorities the rules are implemented as they should be by the provinces. They acknowledge however that in practice irregularities took place and my continue to take place when persons (criminals) consciously bypass the regulations. When such behaviour comes to light strong actions are taken. The way authorities acted at the time as a result of irregularities in Hunan confirms this.

UNICEF staff with whom the delegation spoke in China points out that in their view it concerns

exceptions and it would regret if because of these one would not see the structural improvements. The reporting about the way in which CCAA is dealing with the children who lost their parents due to the recent earthquake is in this matter a reason for trust.

Also where it concerns the addressing of trade in children – which happens in China, but according to UNICEF relatively not on big scale – there is progress. China has a population of 1.3 billion people. Compared with this the number of incidents, however serious these each as such may be, is extremely modest. Also the Permanent Bureau of the Hague Conference for International Private Law points to that. News from the Chinese media about the active persecution of baby-traders in the Province Yunnan makes clear that it hereby does not stay with just words.

The worrying sounds about the practice of payment by homes, especially the news of the ABC-news of May this years, I have brought to the attention of the CCAA.

CCAA has taken the incident in Hunan at the time as occasion to convince all Child Welfare Institutes and Social Welfare institutes from where children are adopted that payments for children are prohibited. The news reporting of ABC-news calls for the question if that approach was sufficient. That is from the Netherlands of course difficult to conclude. Save the Children UK has told the delegation that if payments would be something that happened often, this should have been known to this organisation. That appeared not the case. Save the Children and UNICEF have committed to the delegation that they would inform the Dutch Embassy in case they are confronted with signals of payment. The fact that CCAA in the conversation acknowledges that the interpretation of certain rules in practice differ, has shown conciousness that payment incidentally happens and sets up a countrywide campaign to make clear that payments are not authorised, makes clear the the Chinese authorities acknowledge these problems and are not getting away from their responsibility.

Overseeing the whole I conclude that there is no reason to reconsider the currently existing adoption relation between the Netherlands and the People's Republic of China. It is, however, important to continue to follow development in China and improvements made by the authorities. For this I consider a reinforcing of the cooperation between the Netherlands and China the way to go. The importance of more frequent contact was also subscribed to by CCAA and again confirmed in the meeting hat took place on 12 August 2008. This fits into my intention to intensify international contacts surrounding intercountry adoption. For this goal, as of 1 September 2008, a special advisor for international cooperation in intercountry adoption has been appointed at the Central authority who will take care of improvement of the information position in ensuring the rules of the Hague Adoption Treaty.

It speaks for itself, that the risk of incidental irregularities at provincial level, as lined out before, require continuous alertness and the critical following of adoption, as well from the side of the Central authority and the Dutch diplomatic representation in China, as well as from the side of the adoption agencies who mediate the placement of children from China.

As indicated before, it is in the interest of the children that irregularities in procedures are prevented as much as possible, and fought. I am of the opinion that there is also a responsibility at the Dutch side and consider it important that, if there are indications of ongoing irregularities, in all cases immediately these will be brought to the attention of the Chinese authorities. In case there would be new developments in the relation with the Chinese authorities that would require a change of my in position as outlined in this letter, then I will inform the Chamber about this immediately. In this way I mean to do justice to the joint interest to have adoptions done in an integer manner, in the interest of the children.

The Minister of Justice