

Inter-country Adoption process in Nepal¹

1. Background and Context

Adoption in Nepalese society was influenced by Hindu Religion and Philosophy. Hindu Religion believed in caste system and the value of son². If Hindu family does not have their biological son it is believed that they do not get access to Heaven. It is primarily therefore adoption of son in the family who do not have their biological children was promoted. Children were adopted from the same caste of adoptive parents and within their Kinship.

The first legal provisions on adoption were described in the first written legislation of Nepal, viz., National Code 1854 (Some documents have also used Civil Code). The major provisions of the act are continued through the National Code 1964. The provisions of the Code were gender biased as it did not permit nationals to adopt girls. Likewise unmarried woman, woman whose husband is alive and woman having step son were not permitted to adopt. The decision for adoption was taken primarily by men. The adoption was strictly controlled by lineage system and laws spelled out the prioritized kinship system in following order

- a. In the family lineage of male siblings
- b. In lineage of step brother and sisters
- c. In lineage of Grandparents
- d. Among sons of daughters
- e. In lineage of great grandparents
- f. Among sons of sisters
- g. Among sons of cousin of same kinship

The National Code 1964 has permitted adoption of sons of sisters and daughters, which is unique itself as some of the Hindu Scriptures do not allow Hindu family to adopt sons of their daughters and sisters.

However the National Code 1964 shifted the religious significance of adoption into welfare paradigm. It introduced adoption out of lineage also. It has permitted to adopt a male child below the age of 5 if found to be abandoned in the street or any other public place. The scope of adoption was further expanded through the fourth amendment in 1970. The amendment introduced following three additional group of children eligible for adoption.

- a. if a child does not have father or father is unknown the mother can consent child to be adopted
- b. if a child of the category (a) does not have mother and living with an individual, with the permission of such care taker or
- c. if the child of the category (a) does not have mother and living in orphanage recognized by government, with the permission of such orphanage.

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² The importance of son can be found in Manusmirti, Yagabalkya Smirit and Baudhayan GrihaSutra. These scriptures has suggested 'adoption of a son' to reach and remain in heavenly state. They have categorically stated elevation of the status in heaven if the family line through son gets expansion.

The National Code, for the first time, permitted adoption of girls in 1976 through its sixth amendment. The amendment permitted the adoption of daughters for those men and widows who don't have biological daughters. However there were practices among Hindu Families to adopt daughters.³

The 1976 amendment, for the first time, introduced inter country adoption. Clause 12 'ka' of the Adoption Section of the Code states:

'If any foreign nationals willing to adopt Nepali nationals eligible to be adopted under the code; the government of Nepal viewing the economic status and moral character of such foreign nationals may grant permission of adoption specifying appropriate conditions provided such foreign nationals have recommendation of the government or embassy of their Nation.'

The abovementioned paragraph is the main provision under which the adoption process is guided. Under this clause 'Terms and Conditions' (T&C)⁴ of Inter Country Adoption was enacted by the Council of Ministers.

Interestingly before the amendment of the National Code in 1976, we can find a case of inter country adoption. As to the record of Nepal Children's Organisation (NCO)⁵, a child was given to the European Family (most probably a Swiss family) on July 2, 1970 (Ashad 18, 2027) through the decision of the government of Nepal.

2. The process of Adoption

In the initial years of inter country adoption, the process started when NCO received any written application or request or visit from the prospective adoptive family. Usually in the application the adoptive parents used to specify the age group and sex of the child they want to adopt. In many instances the family visited one of the shelters of NCO and chose a child they want to adopt and thereafter only formal process of adoption begun. This informal process was continued until 1989 as per the record of Nepal Children's Organisation.

The prevailing T&C was enacted on June 26, 2000 (Ashad 12, 2057). The Terms and Condition has 15 sections. In brief, T&C has following provisions:

Section 1, 2, 4:	Eligibility of adoptive foreign national(s)
Section 3, 5, 6 and 8:	Eligibility of a child for adoption
Section 7:	Documentation for ensuring eligibility of prospective adoptive child.
Section 9, 10, 11:	Adoption process and required documents
Section 12:	Duty of adoptive parents to submit report
Section 13:	Monitoring Fund, Fee and Monitoring Committee
Section 14:	Provisions of monitoring of and reporting from adoptive parents

³ Cf Hindu Adoptions and Maintenance Act 1956. This act was enacted by Indian Parliament and attempted to amend and codify the law relating to adoptions among Hindus. This act has significance for Hindu Community even in Nepal because it challenges the argument that Hindu Religion do not allow girls to be adopted as children.

⁴ The Terms and Condition is basically a procedure laid down for adoption. It has a legal validity equal to a regulation.

⁵ Nepal Children's Organisation was founded on 1954 by the royal family. The founder chairperson of the Organisation was Queen Ratna (present Queen Mother). The organization was established on the charity of the royal family as well as on the grant of government of Nepal. Now it is operating in NGO status.

Section 15: Composition and mandate of the adoption recommendation committee

Following 7 questions and their responses can provide anyone with better understanding of Adoption Process in Nepal.

1. Do one needs to identify children before submitting application?

The T&C has not made explicit provisions for identification of children. Clause 9(1) indicates that interested parents may file an application through NCO if child resides there and through District Administration Office (DAO) if child resides in other Child Care Institutions or elsewhere. It meant that prospective parents need to identify the child before they lodge an application.

2. Where the application should be filed?

The application should be addressed to the government of Nepal and should be first given to Nepal Children's Organization, if child resides there. If child is in other orphanage or elsewhere the application should be registered in District Administration Office.

However in practice, application is given to Child Care Institutions/agencies⁶ or individuals who are working for adoption in both the situation. The individuals and Agencies establish linkages with prospective parents or vice versa and writes application for them, prepares necessary supplementary documents ready and lodge the application.

Presence of individuals may not be anywhere in the files as their role is not recognized under the adoption law. Only Child Care Institutions' names are mentioned but not the name of individuals who are working for adoptive parents as agents. In many instances, Individuals can not be traced through the legal file.

3. How applications are scrutinized or verified?

First Investigation/assessment

If any information arrives at police station that a child is found on the street, Police carries primary investigation regarding whereabouts of his/her parents. Only in the situation where police cannot find the parents they recommend the child to be found abandoned.

For the children who are orphan, local bodies, i.e. municipality and VDC has to certify that the child is orphan and s/he does not have any property and care taker to

⁶ Nepalese legal system allows freedom of association, organization and trade as fundamental right of its citizen. The authors believe that legislation which regulates registration of profit making agencies and non profit making agencies does not restrict opening up of specific agency to practice adoption. However it is advisable that legislation which regulates adoption should acknowledge such adoption agencies and regulate their affairs.

In Nepal, no agency has been registered with specific objective of facilitating adoption so far. Individuals who are facilitating (or broking as stated by Nepal Times on 9th March 2007) either are working on their individual/professional capacity or as an official from child care institution.

For this paper, wherever child care agencies are mentioned they could be individuals working for or on behalf of families or facilitating process of adoption irrespective of their professional ties.

look after him/her. For doing this local bodies are supposed to carry inquiries. In case of child who has ancestral property or any other person is interested to take care of the child, District Child Welfare Board appoints such person as a legal guardian.

First Scrutiny or Verification

Nepal Children's Organisation and District Administration Office evaluate the application. If NCO or DAO finds that the application has come along with the required documents and documents are trustworthy, it forwards the application to MoWCSW with positive recommendation.

If NCO or DAO find the application is not trustworthy it does not recommend for the adoption and the process ends. If they require further documents it sends the application back. Within NCO there is a adoption recommendation committee which consists of representatives from Ministries of Women, Children, Social Welfare; of Law, Justice and Parliamentary Affairs; from Home; from Foreign Affairs; from Women and Children Service Center of Crime Investigation Department of Nepal Police.

In practice, before any application is lodged in DAO, Child Care Institutions and Agencies prepare all the required documents. They take advice of lawyers and even consult the government officers in DAO beforehand and submit the application. It has been argued that the papers (legal documents) submitted by Child Care Institutions/agencies are not genuine but prepared only for adoption purpose. For instance, a police patrol finds 3 children of different race, sex and age at the same time. Likewise VDC recommends without proper basis of evaluation that the family is extremely poor and children can be given in inter country adoption. It is even claimed that there is nexus between Child Care Institutions, some individuals who are facilitating or broking the adoption at village level and government officials to prepare the document and get the file through. However there is no single decision made by the Government without proper supporting documents.

Second Scrutiny and Verification

After proper scrutiny, when DAO or NCO satisfied that the file has all legal documents in it and child can be given in adoption, it forwards the file to MoWCSW for further consideration. MoWCSW refers the file to The Adoption Recommendation Committee. The Adoption Recommendation Committee⁷ evaluates the file. After evaluation, if the committee is satisfied it recommends the child to be given in adoption.

If the committee is not satisfied with the documents and has doubt of their genuineness or believes that the documents are wrongfully made, the committee decides not to confer child for adoption and recommends accordingly.

Third Scrutiny and Verification

MoWCSW approves the adoption only if the Adoption Recommendation Committee has recommended in favour of adoption.

⁷ The committee consists of following 5 members: Joint Secretary from MoWCSW, under secretary from legal section of MoWCSW, chairperson of CNFN, Joint Secretary from Law Ministry, Joint Secretary from Ministry of Home.

However the MoWCSW is empowered to hold an inquiry before hand. It may inquire with the adoptive parents, child care institution and Nepali citizens willing to give child in adoption or may require more documents/legal statements.

The second and third evaluation is primarily paper based. The committee and MoWCSW do not take decision if there are complaints associated with file.

4. Who is final authority to decide on adoption?

Ministry of Women, Children and Social Welfare⁸ decides and sign the final decision of the adoption. It only positively decides if the Adoption Recommendation Committee has positively recommended.

However MoWCSW may not take decision on the file if it has reasonable doubt or there are any complaints against such adoption.

5. When and Where do parents need to be present physically?

The MoWCSW asks the parents to be present in person, signs the documents stating that the child will be taken good care of and take the child.

Before the decisions are made, it is not required by the law that prospective parents be present in the country. According to Clause 11 (2) of T&C, MoWCSW may require the parents to be present in person, may inquire and cross examine their statements and demand further documents. Law does not require the prospective parents to come to Nepal more than twice. At first, selecting the child or Child Care Institution and secondly if MoWCSW requires an inquiry with the prospective parents or after taking positive decision of conferring the child for adoption.

Unfortunately adoptive parents either are not well informed about the adoption process or they do not trust the system so would like to be here in person or they are asked to be in Nepal by Child Care Institution/agency. The Ministry is aware and has even got visits from prospective parents that they are in the country for quite a long time. They bang the doors of different govt. officials and even individuals to influence the process. Often the adoptive parents are misguided and misinformed by Child Care Institution/agencies and so called 'experts'.

6. Do adoptive parents need to pay for adoption?

The adoptive Family has to contribute the amount⁹ specified by NCO to the fund created under National Children's Organization. The fund is to be used for Monitoring of Adopted Child's Situation in the country where s/he is taken.

Beside this, the process fee should be given to the NCO or Child Care Institutions where children are living. The process fee is decided by Child Care Institutions who keeps the children being adopted.¹⁰

The T&C does not require the adoptive parents to pay except above mentioned process and monitoring fee. However there are news widespread that lofty amounts need to be paid for agencies and individuals for adoption.¹¹

⁸ The Minister for Women, Children and Social Welfare has a authority to decide about the case. S/he can delegate the authority to the Secretary of the Minister. Usually the authority is delegated to the Secretary of Women, Children and Social Welfare.

⁹ At the moment it is US\$ 300.

¹⁰ The process fee varies. Child Care Institutions claims that the fee is needed for maintaing of their Institutions where many more children are living.

¹¹ See Nepali Times of 9th March, 2007 and news from National Daily through 9 to 11 March, 2007.

7. Is there any follow up/monitoring mechanisms for children who are living with adoptive parents?

The T&C has made a provision of monitoring the situation of the child until s/he attains the age of majority. T&C has specified following steps:

- MoWCSW provides Bio Data(s) of adoptive individual/parents to the concerned embassy or diplomatic mission of Nepal through Foreign Ministry.
- Adoptive Parents should inform the concerned embassy or diplomatic mission of Nepal that they have adopted the child(ren) from Nepal.
- The concerned embassy or diplomatic mission of Nepal will monitor rearing and caring as well as educational and health status of such adopted children until they attain the age of majority.
- The T&C has created a monitoring committee under Nepal Children's Organisation and which carries monitoring trip to the countries where such adoptive parents live and reports to MoWCSW.

In practice except monitoring visits that takes place, no follow up or monitoring process through embassies or diplomatic missions (with some exception). At times the MoWCSW requires certain diplomatic mission or embassy to provide certain information on certain child. Beyond that the interest of Embassies and Diplomatic missions are very limited.

After knowing the process, it is pertinent to learn about who are the children living in NCO and other Child Care Institutions and how they are eligible for adoption and the process specified thereto:

The T&C has clearly specified only following two categories of children who are eligible for adoption:

Category A: Orphan child living in Child Care Institution

Category B: Children who are consented to be given as adopted child from parents, single parent or guardian (they are not in child care institution)

Category A: Who is the orphan child

The term 'orphan' for the purpose of T&C includes following category of children:

- a. Whose both parents died
- b. Father died and mother remarried
- c. Father is unknown and mother is incapable of taking care of child
- d. Abandoned and found in the street by the police and admitted to the child care institution
- e. Child was abandoned by the mother in the hospital

Category B: Who are the children consented by parents, single parent or guardian

- a. whose both parents died
- b. father died and mother remarried
- c. born out of unmarried girl or whose father is unknown and mother is incapable of taking care of child

- d. more than one child of widow or married woman, who has not been maintained by the family and has been expelled from her home either by her husband after marrying another woman or by her in laws or all of them.
- e. More than two sons or daughters from the parents who are extremely poor and cannot maintain/ take care of their children and either of wife and husband has applied permanent method of birth control (e.g. vasectomy or laparoscopy).

Process and Documentation for ensuring that child from the abovementioned category qualifies the selection

In the case of children of Category A, following documents required to arrive to the conclusion that Children falls in either category:

- a. if a person has brought the child to the child care institution, that person along with his/her paper of identification and has to produce documents from VDC or Municipality stating that such child falls within area of a, b and c.
- b. In the case of child abandoned in government hospital, a letter stating such facts.
- c. In the case of children found abandoned in the street of public places, letter from District Administration Office Stating such facts.
- d. Child Care Institution publishes a Public notice of 21 days in National Daily Newspaper
- e. Medical report and case study of the child
- f. Letter to Police Head Quarters for further inquiries 35 days
- g. If no complaints or information arrives or if such complaints or information are found to be untrue, the file is forwarded by Child Care Institution to DAO office or by NCO to the Ministry.

In the case of children of category B, if children's parents, one of the parents or guardian give consent for the adoption, the government of Nepal can approve such child for inter country adoption.

There are widespread information in broadsheet and other media as follows:

- Children under category A are admitted and sent for adoption by falsifying legal documents.
- Child Care Institutions/Agencies buy children from poor families under category B.
- Child Care Institutions/Agencies receives hefty amount from adoptive parents.
- Process is complicated, time taking.

These information may be true because in few cases biological parents have been claiming the child after making the decision to be given in adoption and even during the process stating that they are extremely poor and wants their child back.

3. Focus Evaluation of the Challenges / weakness/ difficulties/ areas of improvement while implementation

Looking at the issues raised by NGOs, Analysts and media and also after thoroughly analyzing the provisions, we do need to realize that there are certain areas that State needs to improve in inter country adoption process.

a. Weakness/ difficulties/ challenges

- There is no specific national legislation addressing issues of adoption both – intra and inter.
- There are many loopholes in the current T&C and legislation.
 - T&C has not been able to check/stop falsification of documents for finding children and sending them for adoption.
 - T&C has talked less about the child needing family and more about the family needing child. It is more oriented from welfare perspective.
 - The T&C is discriminatory on the ground of sex. It does not permit family to adopt second child of same sex.
 - T&C says extremely poor family can give their more than two children in adoption. However the parameter of extreme poverty has not been specified.
 - T&C states that prospect adoptive parents should submit statement stating their economic status but it has not specified what should be the minimum admissible criteria.
 - T&C should be clearly spell out the process fee and should specify that none require to pay more than the specification.
- Provisions of Monitoring Mechanism are complicated in confusing. The monitoring role is given to Embassy as well as specialized committee. In past experience it has not been more than familiarization visit. We need to review the expenses against its output vis-à-vis best use of resources.
- State lacks comprehensive and systematic information on adoption process, its implication and rights of children in the receiving countries. This is very much needed before making decision about particular child.
- The number of adoption increased dramatically last year. It has been around 500 per year now. We need to review whether we are being too fast and less sensitive.
- There are around 550 child care institutions in the country. Most of the child care institutions are below standards and some of them are pathetic and inhumane for human survival.¹² State should have stringent policy to regulate Child Care Institutions. State should only allow those Child Care Institution who have demonstrable capacity for ensuring best interest as well as longer term development plan for children.
- The whole process is paper oriented. When required and possible also there is no relation and communication between prospective adoptive child and

¹² Study of children's Homes in Nepal, June 2005. New Era, Kathmandu. Central Child Welfare Board has constituted a task force for monitoring Child Care Institutions. Unpublished data from CCWB substantiate the statement.

members of committee and any other professionals. No statement and wishes and preferences of children is ever recorded.

- There is no provision which says that until the naturalization of the child in the adopted country the child remains Nepali. Some countries law requires certain months/years for child to be an equal citizen. Until then, the child should be considered Nepali and if process failed the child should be given equal protection under Nepalese law.
- Home Study Reports/ Reports of psychosocial status/ social inquiry reports are important documents needed for parents and matching service to have smooth relation. T&C should make a provision of involving professional social workers in doing such reports.

b. Areas of improvement

Following ways can be proposed for improving current situation:

- Clear and Specific Law and Policy
 - There should be National legislation in line with the Hague convention Protection of Children and Cooperation on Inter Country Adoption 1995. The law should very clearly lay down how application for inter country adoption progress and should also be made specific. It should give specific power to the independent authority which is competent to deal with and the body should be made accountable to state machinery.
 - Nepal has not seen adoption from a comprehensive perspective of care and protection of children. State has not oriented the policy, system and perhaps NGOs, Agencies and Individuals that parents and birth family is the best place for overall development of a child.
 - State should make stringent laws and policy against institutionalization of children and control opening of child care institution. It will rather provide kinship base and community based livelihood and development support.
 - Adoption should strictly be made available for children who have not their parents and functional families. Poverty should not be the reason for the adoption and separation of family. First effort should be keeping family together, second rearing of children in their own community through local adoption and foster care and than only through inter country adoption.
 - Children's best interest should be maintained at their search of family. Looking at the age and maturity of children, their informed choice should be given top most priority. Matching should be from children's perspective rather than parents' perspective.
 - State should clearly communicate to the prospect family not to give more money than specified. There should be complaint registration system before any adoptive parents leave the country. In the time of receiving application and also in handover of the child, the family should be given the copies of the process and laws and explained that they can lodge

complaint against individuals and that investigation will be carried out (may be without disclosing names). Adoptive parents who discourages system and encourages speedy process through undue influence should not be granted adoption.

- Separating Child Care Institution from agency facilitating adoption is needed. Adoption agency should be clearly defined as agencies working for or on behalf of those individuals and parents willing to adopt. They should be working on behalf of the adoptive parents or national authority of their countries. Child Care Providers and Institutional Care are specialized service and needs much more sensitivity which may not perhaps required by adoption agencies. Similarly Child Care Institutions may not require knowledge/time for maintaining lots of international contact ignoring their regular work of child care. When adoption agencies are permitted to represent prospective family, the family will not be required to come over Nepal until the decision is taken or likely to be taken. It reduces the misunderstanding and administrative hassles and unnecessary traveling as well.
- Mechanisms
 - There should be independent authority to deal with adoption matter. This is the primary reason for adoption not being transparent and sensitive. If it is independent authority equipped by full time human resource, it might get better perspective and scrutiny. The technological development should benefit the adoption process as well. Application or sets of documents should be forwarded to adoption authority through internet. Likewise the children's profile who are needing family could be uploaded in the website maintaining confidentiality.
 - The authority should be made primarily responsible for managing inter country adoption. They either do themselves or accredited highly professional agencies to work for inter country adoptions.
- The process fee will be fixed and match only to the realistic price Any additional money for child care if parents want to contribute could be put under a basket funding (!!!) which will be equally divided between all the 'a' grade child care institutions.

4. Conclusion

Children living in difficult circumstances and who need family care and protection should be allowed to give in Adoption. While deciding about adoption, best interest of children should be of prime consideration. Family based community care, Intra Country Adoption should be an option before any children to be sent for inter country adoption. If and when possible child should be given a proper opportunities to decide about their choices.

Present adoption rules and regulation has not addressed certain policy as well as pragmatic issues. The absence and in clarity have given enough scope for certain individuals and organization to promote malpractices in favour of their personal interest. It is therefore most important to enact new legislation addressing specific issues of independent authority, transparency, an effective complaint handling process, regular monitoring and evaluation mechanisms.

The legislation should also address the care and protection pattern of Nepalese children growing in difficult circumstances, have a provision of adoption agencies and individuals, set up a system of communication with other government authorities both national and international to take concrete measures to check irregularities. The law should be tougher for those who take undue benefit.