

សម្ព័ន្ធខ្មែរជំរឿន
និងការការពារសិទ្ធិមនុស្ស

លីកាដូ



LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF
HUMAN RIGHTS



CAMBODIA'S STOLEN CHILDREN: FRAUD AND CORRUPTION IN THE INTER-COUNTRY ADOPTION SYSTEM

A report issued in
March 2018



CAMBODIA'S STOLEN CHILDREN:

FRAUD AND CORRUPTION IN THE INTER-COUNTRY ADOPTION SYSTEM

A report issued in March 2018

សម្ព័ន្ធខ្មែរជំរឿន និងការពារសិទ្ធិមនុស្ស លីកាដូ

LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS (LICADHO)

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the Cambodian people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 13 provincial offices.

MONITORING & PROTECTION



PROMOTION & ADVOCACY

Monitoring of State Violations & Women's and Children's Rights:

Monitors investigate human rights violations perpetrated by the State and violations made against women and children. Victims are provided assistance through interventions with local authorities and court officials.

Medical Assistance & Social Work:

A medical team provides assistance to prisoners and prison officials in 14 prisons, victims of human rights violations and families in resettlement sites. Social workers conduct needs assessments of victims and their families and provide short-term material and food.

Prison Monitoring:

Researchers monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.

Paralegal & Legal Representation:

Victims are provided legal advice by a paralegal team and, in key cases, legal representation by human rights lawyers.

Supporting Unions & Grassroots Groups and Networks:

Assistance to unions, grassroots groups and affected communities to provide protection and legal services, and to enhance their capacity to campaign and advocate for human rights.

Public Advocacy & Outreach:

Human rights cases are compiled into a central electronic database, so that accurate information can be easily accessed and analyzed, and produced into periodic public reports (written, audio and visual) or used for other advocacy.

For more information contact:

Dr. Pung Chhiv Kek, President
LICADHO
#16, Street 99
Phnom Penh, Cambodia
Tel: (855) 23 72 71 02/216 602
Fax: (855) 23 727 102/217 626

E-mail: contact@licadho-cambodia.org

Web: www.licadho-cambodia.org Facebook: www.facebook.com/licadho Twitter: www.twitter.com/licadho

TABLE OF CONTENTS



Introduction P1

History of Inter-Country Adoption in Cambodia P2

Historic Cases Investigated in 2017 P7



Cover photo: Mother and children, four of whom were adopted to Italy in 2008-9, see case 3

Redress for Fraudulent Adoptions P13

Conclusion P14

Recommendations P14



From the late 1980s until 2009, Cambodia operated a system of inter-country adoption that saw thousands of children adopted by families overseas. During that time, mounting evidence of widespread fraud and corruption involving children being removed from their birth parents without their informed consent, caused the USA and several European countries to suspend adoptions from Cambodia. As a result, the Cambodian government itself suspended adoptions on several occasions to allow for improvements to be made. The most recent suspension began in 2009 and remains in place.

Whilst there have been some changes to the laws on adoption, few practical measures have been taken to ensure that the fraudulent and corrupt practices could not happen again; there have been no prosecutions and little evidence of any serious investigation by the Cambodian authorities into adoption-related abuses. As a result, some orphanage and government staff who operated under the old system remain in their jobs.

Despite this, the Cambodian government has indicated on a number of occasions its intention to re-open inter-country adoptions and LICADHO understands that a decision to do so may come soon.¹ LICADHO believes that if this happens, there is nothing to prevent the recurrence of extensive fraud and corruption and there is a high risk that the abuses of the past will be repeated in the future.

The impact of the failure by the Cambodian government to address the wrongs of the past became evident to LICADHO in 2017 when the organisation was approached by three Cambodian women whose children had been adopted overseas at different times over the last 15 years. In the first case one child was adopted to the US, in the second case two children were adopted to Austria, and in the third case four children were adopted to Italy. The seven children ranged in age from three years to nine years. The women had had no contact with their children in the intervening period and wanted

to find out what had happened to them. All three women were very poor when the adoptions took place and had left their children in the care of orphanages because of their poverty. In two

Given the history of inter-country adoption in Cambodia and the numbers of children who were adopted, it is probable that the three cases are not exceptional and that there may be hundreds if not thousands of families in Cambodia with similar stories.

cases, they did so in order that their children could go to school. In the third case, the child was very sick and needed constant care which the mother could not provide because of her job in a garment factory. In none of the cases did the women abandon their children nor did they give permission for their children to be adopted. LICADHO investigated the three cases and found that all the adoptions were conducted fraudulently and with a complete disdain for the rights and feelings of the families concerned.

Given the history of inter-country adoption in Cambodia and the numbers of children who were adopted, it is probable that the three cases are not exceptional and that there may be hundreds if not thousands of families in Cambodia with similar stories. It is likely that the reason they have not sought help is that they do not know where to turn or they believe nothing can be done.

The three women who approached LICADHO never stopped thinking about their children. Their loss has been a heavy burden on them and the lack of information about what happened to their children causes them daily distress. They now understand that their children will not return to live in Cambodia but they have a strong desire to

¹ Staff at the Ministry of Social Affairs told LICADHO staff this on several occasions between March and October 2017.



Orphanage in Phnom Penh from which four children were adopted to Italy (see case 3)

re-establish contact and at the very least receive news of them. LICADHO is attempting to help the women achieve this by contacting relevant authorities and other parties both inside and outside Cambodia. This has been a slow and difficult process and it is ongoing. Fraudulent adoptions are a problem wherever international adoptions take place.² Despite this and despite the existence of international law covering inter-country adoptions, there is no clear and agreed procedure for addressing historic cases of fraud either in Cambodia or internationally. This makes it extremely difficult for the victims of fraud to obtain any kind of redress.

This report concludes with recommendations to the Cambodian government and to the governments of countries which have received Cambodian children that they should put in place procedures to help families to come forward and tell their stories, facilitate contact between birth-parents and children if all parties wish it, hold to account culpable parties, acknowledge the wrongdoing done to birth parents, adoptees and adoptive parents, and provide appropriate redress.

Finally, they must ensure that no new inter-country adoptions take place until such a redress system is implemented and fail-safe measures

...despite the existence of international law covering inter-country adoptions, there is no clear and agreed procedure for addressing historic cases of fraud either in Cambodia or internationally. This makes it extremely difficult for the victims of fraud to obtain any kind of redress.

are put in place to ensure that the abuses and suffering of the past cannot be inflicted on a new generation of families.

² See for example the work of David Smolin, https://works.bepress.com/david_smolin/.

History of Inter-Country Adoptions in Cambodia



Inter-country adoption of Cambodian children began in the late 1980s and over the following decade the numbers of children adopted abroad increased rapidly. According to the Ministry of Social Affairs (MoSAVY), between 1987 and 2009, 3,696 children left Cambodia for adoption³ but numbers are likely to be higher as record-keeping was not systematic and some adoptions did not go through MoSAVY. Concerns about illicit practices such as the selling of non-orphan babies and official corruption arose almost immediately and adoptions were suspended several times during the 1990s as a result of those concerns.⁴

Cases investigated by LICADHO in the late 1990s and early 2000s uncovered evidence of baby-buying and falsification of the documentation

necessary for international adoptions to take place.⁵ Typical cases involved poor women who were often widowed or divorced and struggling to look after babies or young children being approached by recruiters who suggested that the children could live in an orphanage where they would be cared for. The mothers were told they could visit their children and that when they were financially better off they could take their children back. The children were then taken to orphanages connected to adoption facilitators who were often working for overseas adoption agencies. The orphanages obtained the paperwork necessary for adoption to take place from local authorities, such as village chiefs, often in return for bribes. Typically this paperwork stated that the children had



The Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSAVY) in Phnom Penh

³ Cambodia Central Authority for Inter-Country Adoption website: <http://www.icaa-cambodia.com.kh/2017/03/28/our-history/>

⁴ Adoptions: Saving Lives or Selling Young Souls, Jason Barber, Phnom Penh Post, 28th June 1996, <http://www.phnompenhpost.com/national/adoptions-saving-lives-or-selling-young-souls>.

⁵ Abuses Related to the International Adoption Process in Cambodia, LICADHO, January 2002, <https://www.licadho-cambodia.org/reports/files/31AdoptBPaper.pdf>.

been abandoned and that their parents were unknown. False birth certificates containing new names and family information were created, making tracing the origins of the children at a later date almost impossible.

In 2001, LICADHO was contacted by two poor, divorced Cambodian women who had given their children to a recruiter. They were promised that the children would be taken to live in an orphanage in Phnom Penh where they could visit them regularly. When the women later tried to visit the children they were refused. On investigation, the two children were found to be in the custody of a private orphanage run by an adoption facilitator who catered to the US market. The children were eventually returned to their mothers. LICADHO informed the US Embassy about the case and the Embassy confirmed that one of the children had been the subject of a pending application for adoption to the US. The child's paperwork stated that it had been abandoned and that its parents were unknown.

Based on interviews with adoptive parents, it ... found that informal payments were required throughout the process, with reports of payments of US\$2,000-4,000 to the Ministry of Foreign Affairs, US\$500 to the MoSAVY and of several hundred dollars to the Council of Ministers.

As a result of this case, the USA suspended adoptions from Cambodia on 21st December 2001. The decision to suspend adoptions also followed a review by the US Immigration and Naturalisation Service which found a lack of consistent and proper record-keeping by Cambodian orphanages and questionable documentation status of the children being

made available for foreign adoptions.⁶ In 2002, following the suspension, US Immigration and Customs Enforcement carried out an investigation in Cambodia into the possible involvement of US citizens in fraudulent adoption of children to the US. That investigation led to the conviction and imprisonment in the US of adoption facilitators Lauryn Galindo and Lynn Devin on charges of visa fraud and money laundering.⁷ Galindo and Devin were found to have misled immigration authorities in order to obtain visas for children being adopted by American parents, falsely claiming that the children were abandoned with no known living parents. During the prosecution, evidence emerged of thousands of dollars being paid by Galindo to Cambodian government officials for each adoption she facilitated. Galindo and Devin pleaded guilty to crimes in relation to 17 adoptions but they are known to have facilitated around 700 adoptions from Cambodia to the US between 1997 and 2001.⁸

In April 2003, the Dutch Embassy in Thailand conducted a review of international adoption in Cambodia. The subsequent report⁹ compared official procedure for inter-country adoption with the reality of what happened in most cases. It found that the weakest link in the process was the reception of children at orphanages, when, in return for payment of a small amount of money, local officials provided false birth certificates and false documentation certifying that the children had been abandoned. Based on interviews with adoptive parents, it outlined the different costs associated with Cambodian adoption and found that informal payments were required throughout the process, with reports of payments of US\$2,000-4,000 to the Ministry of Foreign Affairs, US\$500 to the MoSAVY and of several hundred dollars to the Council of Ministers. Donations to orphanages of between US\$800 and US\$3,000 were also reported.¹⁰ The report concluded that international adoption in Cambodia "is still deeply tainted with unlawful and corrupt practices and that it suffers from a general lack of transparency". It went on to state that the adoption process involved large amounts of money and that therefore the risk of baby selling and human trafficking was

⁶ Adoption Processing in Cambodia, US Department of Justice, 7th February 2002, https://www.uscis.gov/sites/default/files/files/pressrelease/AdopProcCambodia_020702.pdf.

⁷ There is no criminal offence in the US of trafficking for the purposes of adoption.

⁸ Lecture given by Richard Cross, US Federal Special Agent ICE, <http://fleasbiting.blogspot.com/2015/07/us-ice-agent-what-really-happened-in.html>.

⁹ International Child Adoption in Cambodia, A Situation Report, The Royal Netherlands Embassy in Bangkok, May 2003 (Dutch Report).

¹⁰ Pages 10-11 Dutch Report.



Children at an orphanage investigated by US officials in 2003, (photo supplied by US Immigration and Customs Enforcement)

very high. In relation to the legal framework, it stated that the official procedure and the law enforcement situation did not provide “the safeguards necessary to carry out international adoptions in manners that would protect the interests of the children, the biological parents, or the prospective adoptive parents”.¹¹ As a result of the findings of the review, the Netherlands suspended adoption from Cambodia in May 2003. Other countries followed, including the UK, France and Germany. However, despite the findings of fraud and corruption in the adoption process, many countries continued throughout

the 2000s. During that period, the highest number of children by far were adopted to Italy.¹²

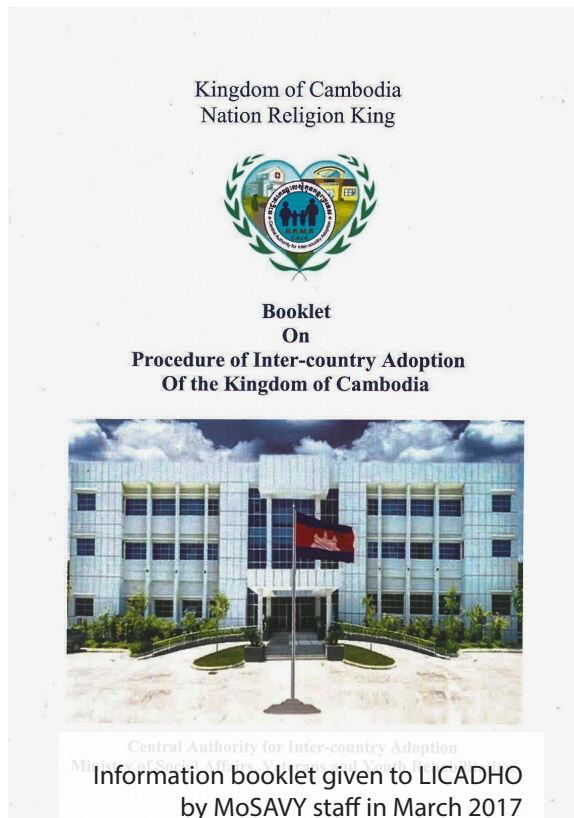
As a result of the suspensions by the US and others, in 2007, Cambodia adopted the Hague Convention on the Protection of Children and Co-Operation in Respect of Inter-country Adoption (The Hague Convention).¹³ The Hague Convention elaborates on the United Nations Convention on the Rights of the Child which states that inter-country adoption should be used only after attempts to place a child in the home country have failed and requires that

¹¹ Pages 13-14 Dutch Report.

¹² Cambodia, Annual Adoption Statistics for 2005-2009, Hague Conference on Private International Law, https://assets.hcch.net/upload/wop/adop2010pd05_kh.pdf.

¹³ Convention of 29 May 1993 on the Protection of Children and Co-Operation in Respect of Inter-country Adoption, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69> (Hague Convention on International Adoption).

states ensure that inter-country adoption does not result in any improper financial gain.¹⁴ The Hague Convention contains a number of measures intended to safeguard against abduction, sale and trafficking of children and requires that signatories to the Convention designate a central authority to discharge the duties placed on them by the Convention.¹⁵ In 2009 Cambodia passed a



new Law on Inter-country Adoption¹⁶ to align Cambodian law with requirements of the Hague Convention. Previously, inter-country adoption

had been regulated by very brief provisions in the Law on Marriage and the Family¹⁷ and a short and far from comprehensive sub-decree.¹⁸ The 2009 Inter-country Adoption Law names MoSAVY as the central authority responsible for inter-country adoption.¹⁹ It requires that the provincial offices of MoSAVY “exert all efforts” to return children to their birth families and if that is not possible, to place them for domestic adoption within Cambodia before considering their eligibility for inter-country adoption.²⁰

In the same year that the new law was passed, the Cambodian government decided to suspend all adoptions from Cambodia. According to MoSAVY, this decision was taken in order to give time to implement the necessary procedures, required by the Hague Convention, in particular those relating to domestic adoption and the family reintegration of children currently living in residential care.²¹ The suspension remains in place.

Since 2009, MoSAVY has stated its intention to bring the ban to an end on a number of occasions. In a public announcement dated 2nd March 2015, MoSAVY²² stated that Cambodia will start international adoptions with a small number of children with special needs, following a process to ensure that all options for domestic adoption have been exhausted. The announcement also invited adoption agencies in partner countries to apply for authorisation to operate in Cambodia. In 2016, the media reported²³ that representatives of the Cambodian government visited Spain and Malta to discuss the re-opening of adoptions with those countries. To date, however, the ban remains in force.

¹⁴ Article 21, Convention on the Rights of the Child, 20 November 1989, United Nations, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx> (Child Rights Convention). Cambodia ratified the Convention on the Rights of the Child in 1992.

¹⁵ Article 6, Hague Convention on International Adoption.

¹⁶ Law on Inter-Country Adoption, 8th December 2009, Royal Government of Cambodia (Inter-Country Adoption Law).

¹⁷ Articles 108-114, Law on Marriage and the Family, 20th July 1989, Royal Government of Cambodia.

¹⁸ Sub-decree No. 29 on Adoption of Orphan Babies or Children to be Brought Up in Foreign Countries, Royal Government of Cambodia, 2nd March 2001.

¹⁹ Article 6, Inter-Country Adoption Law.

²⁰ As above, Article 13.

²¹ See note 19 above.

²² Announcement on the Status of Inter-Country Adoption in Cambodia, Ministry of Social Affairs, Veterans and Youth Rehabilitation, 2nd March 2015.

²³ Gov't to talk adoptions on visits to Spain, Malta, Sen David, Phnom Penh Post, 7th June 2016, <http://www.phnompenhpost.com/national/govt-talk-adoptions-visits-spain-malta>.

Historic Cases Investigated in 2017



The three cases investigated by LICADHO in 2017 are described below. In each case, there is a short analysis of the fraud LICADHO believes was perpetrated and of some of the domestic and

international laws which were broken. In order to protect the identities of the parties, some details have been left out.

CASE 1

The earliest case began in 2001 when a young and recently separated mother decided to leave her very sick nine month old baby in the care of an orphanage near Phnom Penh. The child needed constant care which the mother was unable to provide because she worked six days a week in a garment factory. The mother had been told by Cambodian doctors that without medical treatment abroad her son would probably die. The orphanage was run by an American charity and cared for a number of sick children. The orphanage director told the mother that they would try to send her son abroad for medical treatment in the hope that he would be cured.

...the director told the mother that her son would go to the US for medical treatment. She was not told when he would leave and only found out that he had left when she went to visit him as usual one Sunday.

The mother visited her son every Sunday on her day off. The orphanage never discussed guardianship of the child with her or asked her to sign any documents. After a few weeks the orphanage director told the mother that they would take her son to Bangkok for medical treatment. He went for about a week and after his return his condition was improved but not cured. Some time after that, the director told the mother that her son would go to the US for medical treatment. She was not told when he would leave and only found out that he had left

when she went to visit him as usual one Sunday. She was not asked to sign any documents in relation to his trip to the US.

After he left, the mother continued to visit the orphanage about once a month to ask for news of her son. The director used to tell her that he was fine and not to worry. Years passed and



Mother and son together at the orphanage, 2002-3

she continued to call the orphanage but was given no news. In 2005, a staff member from the orphanage visited the mother at home and asked her to sign two documents, which she did. The mother can read but only slowly and she saw that one of the documents gave permission for her son to be sent abroad for medical treatment. She thought the other document was probably the same. The staff member also gave her a birth certificate for her son. The date of birth

was wrong by one month and the surname was incorrect. The surname given was “Rath”, which is Khmer for state or government. This surname is given to children when their parents are not known and it has commonly been used on false birth certificates and other documents to enable adoptions of children with living parents to go ahead. The birth certificate was signed by the chief of the commune in which the orphanage was located.

In the following years, the mother remained in contact with the orphanage but they never gave her any news. She also made attempts to find her son by other means but without success.

LICADHO’s investigations revealed that when the child went to the US, he was placed in the temporary care of a family while he was having medical treatment. Without full documentation it is hard to piece together exactly what happened but it appears that this family later went on to adopt him.

Given that the mother signed no documents

in relation to her son or his trips abroad, it is possible that someone at the orphanage misrepresented themselves as the child’s legal guardian in the visa applications or during the subsequent adoption process in the US. The 2005 visit by the staff member and the creation of the birth certificate seem to have been part of a post-hoc attempt to create documentation to legitimise the trip to the US and to certify that the child had been abandoned by his parents and was therefore adoptable.

The adoption contravened the 2001 US ban but as the child travelled for medical purposes, the case evaded the ban. Documents reviewed during the investigation suggest that it was always the orphanage’s intention that the child should be adopted in the US. Other children may also have been adopted to the US from the same orphanage by similar means. The orphanage was in part staffed and managed by former associates of Lauryn Galindo, the adoption facilitator who was imprisoned in the US for offences related to fraudulent adoptions of Cambodian children.

CASE 2

In 2005, a mother of five children whose husband had become seriously ill, placed four of her children in an orphanage in Phnom Penh so that they could go to school. Before her husband became ill, the family all lived together in a southern province of Cambodia. They were poor but were able to survive as her husband worked as a motorbike taxi driver and she raised animals and grew vegetables. When her husband became too ill to work she travelled to Phnom Penh and found work in a garment factory. She rented a room for her and her children and because she was unable to afford to send them to school, the children stayed at home alone in the daytime. Her landlord complained about this so she had to move to another rented room. Her children also told her that they wanted to go to school so she decided to find a shelter for them which would also provide schooling.²⁴

A neighbour told her about an orphanage where she had sent her own daughter. The mother took the children there and met the director who agreed to accept the children and to send them

to school. He prepared two copies of a document confirming this and gave one copy to the mother. The document said nothing about adoption.

A couple of months after the children first moved to the orphanage, the mother heard from one of her children that a foreign couple had come to the orphanage and taken his younger sister away.

At first the mother visited the children every Sunday on her day off but the director’s wife told her she was visiting too often so she reduced her visits to once a fortnight. Her elderly father visited the children also. A couple of months after the children first moved to the orphanage, the mother heard from one of her children that a foreign couple had come to the orphanage

²⁴ Under the law, tuition in government-run schools is free in Cambodia but most students are required to pay a bribe to the teachers if they want to attend.

and taken his younger sister away. The mother confronted the director about this and asked him why he had done it. He replied that if she had known about it and seen the foreigners taking her daughter away she would have fainted with the shock so it was better not to tell her. He also said that because she was so poor, sending her daughter away was a good opportunity for her to have a better life. He told her that they would be able to keep in touch and that the new family would send information and photos back regularly. The mother asked him for her daughter's new address and he said he would give it to her when the new family sent it. The mother told the director that she wanted to take her remaining children back home. He replied that she couldn't just take them whenever she wanted because they were all registered at MoSAVY. The mother did not understand what this meant.

A couple of weeks later, the mother heard from her son that a foreign woman had come to the orphanage to take his younger brother away. As she was at work, her father went to the orphanage and spoke to the director, asking him to stop the child leaving. The director told him that it was too late because all the paper work from MoSAVY was already completed. The boy left the same day without seeing his mother again.

In the following week, the children's grandfather went to MoSAVY and spoke to a staff member, asking where the children were and saying that he wanted to get the children back. The staff member told him that the children had gone to Austria and that it was too late to get them back. Shortly after that, the director told the mother that there had been a plan to send her other children to France but that because her father had complained to MoSAVY they would not go and could stay at the orphanage until they finished school.

The children's mother continued to visit her remaining children at the orphanage and regularly asked the director for information about the two who had left. After a while he gave her some photos of the children with their new families but other than that she received nothing.

After her two remaining children left the orphanage in 2014, the mother wrote to the Cambodian National Assembly asking for information about her children. She received a response from MoSAVY stating that both children were in Austria but that they could not give her their addresses because according to the Inter-Country Adoption Law the adoptions were full adoptions meaning that there was to be no more relationship between



Mother and grandfather of two children adopted to Austria look at old family photos, January 2018

her and her children. In the letter, MoSAVY gave her children's surname as "Rath" and the dates of birth were wrong, making the children about two and a half years younger than they actually were. This suggests that false birth certificates and certificates of abandonment were created for the two children in order that they could be adopted.

In 2006, when the adoptions took place, domestic and inter-country adoptions in Cambodia were covered by the Law on Marriage and the Family which required that in order for an adoption to go ahead, a child must be abandoned or the parents must consent to the adoption. Not only the orphanage director, but in this case, MoSAVY staff clearly knew that the children were not abandoned and that consent was refused and yet the adoptions went ahead anyway.

At some point in this case, false birth certificates were created, with incorrect dates of birth and without the names of the children's parents. This is a serious breach of the children's right to identity.

Cambodia ratified the Convention on the Rights of the Child in 1992. This Convention requires that adoptions take place in accordance with applicable law, that adoptions be permissible in view of the children's relationship to the parents, and that the persons concerned give

their informed consent.²⁵ As stated above, the Cambodian law in force was not adhered to, an ongoing relationship existed with the mother at the time of adoption, and the mother did not give her consent. The Convention on the Rights of the Child also requires states to protect a child's right to preserve their identity, including name and nationality, without unlawful interference.²⁶ At some point in this case, false birth certificates were created, with incorrect dates of birth and without the names of the children's parents. This is a serious breach of the children's right to identity. It means not only that the children believe they are younger than they actually are, it makes it extremely difficult for the children to trace their parentage should they ever want to do so.

MoSAVY's reliance on the 2009 Inter-country Adoption Law to claim that the adoptions were full adoptions and that they therefore could provide no information to the mother is not justified. That law does state that all inter-country adoptions shall be full adoptions and that any relationship between the child and the birth parents is terminated at adoption,²⁷ however it was not in force in 2006 when the adoptions took place. The law in force at the time gave no detail about the nature of the adoptions.²⁸ Moreover, given the clear breach of the legal requirement in this case that a parent must consent to an adoption, for MoSAVY to claim strict adherence to the provision in the 2009 law that all inter-country adoptions are full adoptions, would appear to be the application of a double standard, with the rights of foreign adoptive parents being given priority over any others.

CASE 3

The most recent case dates from 2008. A husband and wife were living and working on a rubber plantation a few hours from Phnom Penh. They had six children who they were unable to send to school because of their poverty. A neighbour told them that she had sent her four children to an orphanage in Phnom Penh where they were able to go to school. One of the couple's children heard this and told her

mother that she wanted to go to the orphanage too because she wanted to go to school and did not want to grow up to do the work her parents did.

The mother asked her neighbour to contact the orphanage director and about a week later the director travelled from Phnom Penh to visit the family. He explained that the children could

²⁵ Article 21(a), Child Rights Convention.

²⁶ As above, Article 8.

²⁷ Article 41, Inter-Country Adoption Law.

²⁸ In Cambodia, there is no tradition of full adoption. While children may move temporarily to live with other family members or friends if a parent dies or if there are opportunities for education, the legal termination of the relationship between parents and children is extremely rare.

live in the orphanage for free and would have the chance to study and get good jobs. He did not say anything about adoption. The parents decided to keep their oldest and youngest children with them but to send the other four to the orphanage. The mother travelled to the orphanage with the director and her children and stayed there for a couple of nights. She saw that the conditions were good and the children seemed well cared for so was happy to allow her children to stay.



One of the children adopted to Italy

When the mother left the orphanage, the director gave her \$100 and a mobile phone so that they could stay in contact. He also gave her two blank forms for each child and told her to take them to her local authorities to fill them in as he needed their permission for the children to live at the orphanage. He said they would know what to do. The mother took the documents to her village chief who completed them and told the parents to sign them. She then took the documents to the commune chief so that he could also sign them. The mother cannot read or write but neither the village chief nor the commune chief explained what the documents said.

The mother took the documents back to the director in Phnom Penh. After that, she used the \$100 to visit her children three or four more times over the next couple of months. Two months after the children moved to the orphanage, the director called the mother and told her that there were some foreigners who wanted to adopt the children. He said that if they were lucky all the children could go abroad. The mother didn't know what this meant and asked the director to explain. He said that it meant the children would go abroad to live with a foreign family and go to school. He said they would be able to remain in contact and that the families would send information about the children every six months. He also said that when the children were 15 they could return to Cambodia with their adoptive parents and when they were 18 they could come by themselves. The mother discussed it with her husband and they agreed that the children could go.

The mother told him that she did not want to give the children back or for them to go abroad. The director said it was too late to change their minds as the paperwork was already prepared and he would get into trouble if he had no children to give for adoption.

Shortly after that, the children went home to visit for the Cambodian holiday of Pchum Ben. The parents promised to return them to the orphanage after the holiday. During the visit, the parents changed their minds about sending the children abroad. They were worried they would never come back so they decided not to take the children back to the orphanage. They sent three of the children to stay with relatives and kept the youngest with them. After the holiday, when the children did not return, the director came to collect them. The mother took her youngest child and hid inside the rubber plantation but her neighbour told the director where she was. Her child was playing a little distance away from

her and when the director arrived he picked him up in his arms. The mother told him that she did not want to give the children back or for them to go abroad. The director said it was too late to change their minds as the paperwork was already prepared and he would get into trouble if he had no children to give for adoption. So the mother agreed he could take the youngest child. The director told her to collect the other children and take them to Phnom Penh. The parents decided to do as he asked as they were worried about their youngest child being sent abroad alone. They thought they would all be sent abroad together and could look after each other.

After that the mother visited her children a couple more times. The director didn't tell her when they would go abroad but over the next few weeks the children left one by one. The mother only found out when she phoned to speak to them or went to visit. When they had all gone, the mother stayed in contact with the director and he gave her some photos of her children taken before they left. Shortly after that he gave her some photos of one of the children sent from abroad. About a year later she got another photo of the same child and two photos of one of her other children. She didn't receive any photos or news of the other two children.

In the following years, the mother stayed in contact with the orphanage director by phone and he always told her that her children were fine and she shouldn't worry. In 2016, the director's phone number stopped working and the mother became very worried. She didn't know who to contact for help but eventually spoke to a LICADHO staff member after which LICADHO took on her case.

LICADHO staff discovered that the children had been adopted to Italy. During the investigation, LICADHO obtained copies of letters sent in 2008 and 2009 by MoSAVY and the Council of Ministers, relating to the adoptions of three of the children. Those letters state that according to research carried out by MoSAVY the children were orphans who had been abandoned. Given that the orphanage director

knew they were not abandoned it is unlikely that any genuine research into the children's backgrounds was carried out. The letters also contain incorrect dates of birth for the three children, with the ages being reduced by four years, three years and one year. It therefore seems that false birth certificates were created for the children in order for the final adoptions to take place. As in the case above, this is a breach of the Convention on the Rights of the Child. In the case of the child whose age was reduced by four years, the reduction was particularly significant as it reduced the age from nine years to five years. Under the law in force at the time, no child over eight years old could be adopted.²⁹

The Hague Convention entered into force in Cambodia in 2007, the year before these adoptions took place. The Convention requires that parents should be counselled on the effects of adoption, in particular whether or not an adoption will result in the termination of the legal relationship with their children. It also requires that consent by the parents to an adoption be freely given and not withdrawn. Children are also required to receive counselling and their wishes and opinions are to be considered. These requirements are particularly important in Cambodia where children may be sent to live with relatives or friends who can support their education but which has no tradition of full adoption. However, in this case, counselling requirements were clearly not met and the parents were in fact misled into believing that the relationship with their children would continue.

In May 2017, LICADHO wrote to MoSAVY requesting that they share any information they have about the adoptions of the four children. LICADHO staff have followed up with visits and phone calls and at one point were told that a response had been drafted, however, to date, none has been received.

During the writing of this report, LICADHO became aware of three more cases associated with the same orphanage but staff have not yet had the opportunity to investigate them fully.

²⁹ Article 110, Law on Marriage and the Family.

Redress for Fraudulent Adoptions



There is international recognition of the need to ensure that inter-country adoptions are in the best interests of the children concerned and that states need to take measures to prevent the abduction, sale and trafficking of children. These are the main purposes of the Hague Convention. In spite of this and despite numerous examples of fraudulent adoptions taking place all over the world, there is no internationally agreed process for dealing with historic cases of fraud which come to light at a later date. The Hague Convention itself contains no provisions other than a requirement that states “take appropriate measures”.³⁰ There is no clear path to take when such cases arise and there is no burden on states to respond.

In recent years, there has been some recognition of the need for states to do more to identify, prevent and respond to illicit practices in inter-country adoption. In 2010, the body responsible for the Hague Convention set up the Working Group on Preventing and Addressing Illicit Practices in recognition of the need. In 2016, the group published recommendations stressing the importance of bringing illicit practices to light and recognised the value of developing reporting and complaint mechanisms in states sending and receiving children. It recommended the development of a model procedure to

respond to specific cases of illicit practices which should consider counselling, remedies and sanctions. The group also recognised the importance of addressing the needs of victims through the provision of counselling, recognition of mistakes, and re-establishing of contact between adoptees and birth parents.³¹ These recommendations are welcome but so far, it does not appear that any concrete measures have been taken towards their implementation.

The lack of a clear and agreed procedure has made it very difficult for LICADHO to make progress on the three cases described above. MoSAVY has not responded to LICADHO’s letter of May 2017 requesting information in relation to the third case. Moreover, in October 2017, LICADHO sent the details of the case together with supporting evidence that the adoptions had been conducted fraudulently to the Italian Commission for Inter-country Adoption, the body responsible under the Hague Convention for regulating all inter-country adoptions. The Commission has so far not replied to that letter. In November, LICADHO wrote to the Austrian Ministry of Justice in relation to the second case. The Ministry acknowledged receipt, and in March 2018, it responded suggesting that it may be able to help. LICADHO continues to pursue this avenue on behalf of the mother.

³⁰ Article 33, Hague Convention on International Adoption.

³¹ Conclusions and Recommendations of the Working Group on Preventing and Addressing Illicit Practices in Inter-Country Adoption (Meeting of 13-15 October 2016), Hague Conference on Private International Law, October 2016, <https://assets.hcch.net/docs/536b1d4d-6ed1-4d42-8511-e1676d17464a.pdf>.

Conclusion



The cases described above provide evidence that fraudulent and corrupt practices continued in the Cambodian inter-country adoption system throughout the 2,000s. The number of cases reported to LICADHO so far is low therefore the extent of the fraud and corruption is difficult to gauge. However, given the existing body of evidence uncovered by the US and Dutch governments, it is likely that the three cases described here are not unusual. It may be that the number of reported cases is low because the victims of fraudulent adoptions believe that nothing can be done and do not know where to take their cases. Given that several thousand children were adopted over the years, it is likely that if birth parents knew who to approach for help, many more would come forward.

LICADHO supports the recommendations of the Working Group on Preventing and Addressing Illicit Practices but the lack of implementation is disappointing. The three cases described here demonstrate the need for concrete measures

to be put in place as a matter of urgency. The families left behind have suffered for many years without knowing what happened to their children, and any attempts they have made to find out have been denied or not treated with the seriousness they deserve.

The cases also illustrate the total disregard shown for the rights of parents and children caught up in the inter-country adoption system and how their poverty and low levels of education were exploited by those with a duty to protect them. The Cambodian government and the governments of receiving countries must acknowledge these failures and ensure that they can never happen again. The parents and children torn apart by the process deserve to receive an apology from the relevant governments and recognition of the pain they have suffered. And whilst there is no way to undo the wrongs of the past, the relevant governments must, as a priority, provide remedies that will alleviate the distress inflicted over so many years.

RECOMMENDATIONS

- ▶▶ MoSAVY and the Italian government to respond immediately to the requests for their assistance, setting out the actions they are going to take to provide redress to the victims and sanction those responsible.
- ▶▶ The Cambodian government to issue a public acknowledgment of the wrongdoings of the past in relation to inter-country adoptions, an apology to all those affected, and an invitation to all affected families to come forward, tell their stories and seek redress.
- ▶▶ The Cambodian government, with the support of receiving countries to set up a special investigation committee to help the Cambodian families of fraudulently adopted children to locate their children and, where appropriate, to re-establish contact with them.
- ▶▶ Receiving countries to raise awareness domestically of the fraudulent history of Cambodian adoptions and set up mechanisms for adopted Cambodian children to research their backgrounds and re-establish contact with their birth parents if they so wish.
- ▶▶ Governments of receiving countries to set up independent investigations into possible wrongdoing by their own citizens or adoption agencies in the field of inter-country adoption in Cambodia followed by the application of appropriate criminal or administrative sanctions.
- ▶▶ The Cambodian government and the governments of receiving countries to ensure that no new inter-country adoptions take place until an investigation and redress system is put in place and fail-safe measures are implemented to ensure there can be no recurrence of past abuses.
- ▶▶ The Hague Conference on Private International Law, the body responsible for the Hague Convention, to expedite the development of the model procedure to address illicit practices in inter-country adoption and make its implementation a requirement for all signatories of the Hague Convention.

