



**General Assembly**

Distr.  
GENERAL

A/37/146  
19 October 1982

ENGLISH

ORIGINAL: ARABIC/ENGLISH/  
FRENCH/SPANISH

Thirty-seventh session  
Agenda item 128

DRAFT DECLARATION ON SOCIAL AND LEGAL PRINCIPLES RELATING  
TO THE PROTECTION AND WELFARE OF CHILDREN, WITH SPECIAL  
REFERENCE TO FOSTER PLACEMENT AND ADOPTION NATIONALLY  
AND INTERNATIONALLY

Report of the Secretary-General

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I. INTRODUCTION

1. On 9 May 1979, the Economic and Social Council adopted resolution 1979/28 entitled "Adoption and foster placement of children", the text of which reads as follows:

"The Economic and Social Council,

"Taking note of the report of the Secretary-General on the draft declaration on social and legal principles relating to adoption and foster placement of children nationally and internationally, 1/

"Convinced that appropriate measures should be taken to educate the public in order to increase community awareness of the existence of children with special needs,

"Fully aware of the urgent need for more active involvement of Governments in matters of family and child welfare,

"Recognizing that it is the responsibility of Governments to determine the adequacy of their national services for children and to recognize those children whose needs are not being met by existing services,

"Recalling its resolution 1925 (LVIII) of 6 May 1975, in which it decided that the Expert Group which was to prepare a draft declaration should also draft guidelines for the use of Governments in the implementation of the principles,

"1. Takes note of paragraphs 150 to 154 of the report of the Commission for Social Development on its twenty-sixth session 2/ concerning the draft declaration on social and legal principles relating to adoption and foster placement of children nationally and internationally and submits the draft declaration 3/ to the General Assembly for preliminary consideration at its thirty-fourth session;

"2. Requests the Secretary-General to transmit the text of the draft declaration to all Member States with a view to obtaining their comments on the matter and submitting the results of the inquiry to the General Assembly at its thirty-fifth session;

"3. Draws the attention of the General Assembly to the fact that the Commission for Social Development, at its twenty-sixth session, expressed the wish that, in the event of the Assembly adopting the declaration on social and legal principles relating to adoption and foster placement of children nationally and internationally and subject to the availability of extrabudgetary funds for that purpose, the Secretary-General should be authorized to convene a group of experts, with relevant experience in family and child welfare, representative of all geographical regions, to draft guidelines for the use of Governments in the implementation of those principles."

2. Pursuant to paragraph 2 of that resolution, the Secretary-General, by a note verbale dated 4 December 1979, invited Member States to communicate their comments on the matter.

3. As of 30 May 1980, replies had been received from Argentina, Austria, Barbados, Canada, Chile, Cyprus, Denmark, Dominica, Ethiopia, Finland, Germany, Federal Republic of, Guyana, Indonesia, Jamaica, Japan, Kuwait, Netherlands, Norway, Peru, Poland, Romania, Singapore, Spain, Sweden, Tunisia, United Kingdom, Uruguay and Venezuela, which, however, were not made available to the General Assembly. An analytical report covering those replies and presented by the Secretary-General to the General Assembly at its thirty-fifth session was circulated as document A/35/336 but was not considered by the General Assembly at that session.

4. At its organizational session for 1981, the Economic and Social Council requested the General Assembly to consider at its thirty-sixth session the draft Declaration on Social and Legal Principles relating to Adoption and Foster Placement of Children Nationally and Internationally, that further action proposed in Council resolution 1979/28 might proceed.

5. On 16 December 1981 the General Assembly, on the recommendation of the Third Committee, adopted resolution 36/167 entitled "Draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally" the operative part of which reads as follows:

"The General Assembly,

...

"1. Decides to include in the provisional agenda of its thirty-seventh session an item entitled "Draft declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally" with a view to the possible allocation of the item to the Sixth Committee;

"2. Decides, in order that the further action proposed in Economic and Social Council resolution 1979/28 may proceed, that appropriate measures be taken at its thirty-seventh session to finalize the draft declaration."

6. The present report reproduces the replies referred to in paragraph 3 of the present report, as well as replies received after 30 May 1980 from Bahamas, Belgium, France, the German Democratic Republic, Malta, New Zealand, Qatar, Seychelles, Suriname, Trinidad and Tobago, Yugoslavia and Zambia.

## II. REPLIES RECEIVED FROM GOVERNMENTS

### ARGENTINA

[Original: Spanish]

[8 April 1980]

1. The delegation of Argentina deems it appropriate to restate the reservations it expressed when Council resolution 1979/28 was adopted and the comments it made when draft resolution IV, submitted by the Commission for Social Development, was considered during the first regular session of the Economic and Social Council in 1979. It will be recalled that the Argentine delegation indicated then that, bearing in mind General Assembly decision 33/406 and the serious differences on the question that had emerged during the consultations leading to that decision, preliminary steps should be taken at the regional and subregional levels to make possible a reconciliation of the various legal, cultural, religious and other positions relating to adoption. Therefore, it does not seem appropriate or necessary to adopt measures within the United Nations at the present time.

2. The Argentine Government takes an interest in this matter and is participating in the work of the Inter-American Children's Institute; in this forum it has spoken in favour of dealing with the problem of adoption on an exclusively American basis. The main reason for this preference is the fact that, at present the positions of Latin American Governments on adoption differ from those of the Governments of some European and developed countries. In addition, the danger of "exporting" children from developing countries must always be borne in mind.

3. The Declaration of the Rights of the Child, proclaimed by the General Assembly in 1959, is a sufficiently broad and comprehensive instrument for setting down the principles to ensure a happy childhood, including principle 9, which states that the child "shall not be the subject of traffic, in any form".

### AUSTRIA

[Original: English]

[14 April 1980]

1. Austria fully endorses the draft Declaration on Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. Its principles conform to the fundamental ideas of modern youth welfare work and will be applied to the intended reform of Austrian youth welfare law.

2. Already, the practice of foster placement and adoption in Austria is in accord with the principles laid down in the draft Declaration, either by virtue of

explicit statutory provisions or by the fact that the administrative authorities in charge follow certain principles even though they may not be prescribed by the letter of the law.

3. In this context, Austria has the honour to submit the following observations on individual paragraphs of the draft Declaration:

Paragraph 7

Austrian law does not embrace the child's right to a family. None the less, this principle governs the work of the authorities concerned with foster placement. Where a child for some reason cannot live with his/her parents or relatives, these authorities will try, if in any way possible, to place the child with a foster family rather than in an institution; where a child is living in an institution, they try to find foster parents or adoptive parents as quickly as possible. Placement in an institution is always regarded as the last resort.

Paragraph 10

Permission for a child to be placed in care outside his/her family is not granted for a limited time, because it is impossible to predict with certainty how long this time should be. But in practice, when a child is entrusted to a foster family, this is very often only a transitional solution while the child is waiting to be reunited with his/her biological parents or to be adopted.

Paragraph 12

One of the requirements before the court for adoption is that a relationship analogous to the relationship between biological parents and their children exists or will be established between the adoptive parents and the adoptive child.

Paragraph 13

Where there is a choice between several eligible adoptive parents, the competent authorities investigate carefully in order to ensure that the child is placed in the environment best suited for him/her. There is, of course, also an explicit statutory rule which states that adoption shall be approved only if it is conducive to the minor's welfare.

**BAHAMAS**

[Original: English]

[11 November 1980]

1. The majority of the legal principles contained in the draft Declaration are already part of the laws of the Bahamas.

2. Provision is made in chapter 55 of The Children and Young Persons (Administration of Justice) Act, for the placement of children in foster homes.

3. The Bahamas Nationality Act of 1973 provides in its section 4 that, where an adoption order is made by a competent court in respect of a minor who is not a citizen of The Bahamas, then if the adoptive parent, or in the case of a joint adoption the adoptive father, is a citizen of The Bahamas, the minor shall become a citizen of The Bahamas from the date of the order.

4. The Matrimonial Causes (Summary Jurisdiction) Act of 1978 defines "child" as including, in relation to both of the parties to a marriage a child born out of wedlock to, or adopted child of that party or, as the case may be, of both parties.

#### BARBADOS

[Original: English]

[1 April 1980]

#### General family and child welfare

1. The principles as detailed in paragraphs 1-6, i.e., those of giving priority to family and child welfare, preferably within the biological family unit, have been long accepted in Barbados and have in fact been reflected in the social work practice over the years.

#### Foster placement

2. Generally these principles have been accepted in Barbados and emphasis placed on the development of alternatives to institutional care, as set out in the draft Declaration. Traditionally, however, foster care has been provided informally and on a limited scale, either on the initiative of persons in the community or social work agencies. Proposals for development of a more formalized foster care programme are now pending.

#### Adoption

3. There is general agreement on these principles relating to adoption, including those on intercountry adoptions. The legislation is currently being revised to improve the provisions relating to adoptions in Barbados. The following points must however be noted:

#### Paragraph 17

While there is no objection in principle to this provision, it is considered that the wishes of the biological parents should also be taken into account in deciding on such disclosure.

Other comments

4. It is considered that where the high cost of legal representation makes it difficult for persons suitable as adoptive parents to adopt children, legal aid should be provided by the State or legal fees controlled by legislation.

BELGIUM

[Original: French]

[19 August 1982]

General remarks

1. Nowhere in the draft Declaration is reference made to the wishes of the child, who is the person principally affected by the foster placement and adoption process. Article 348, paragraph 3, of the Belgian Civil Code stipulates that, in cases of adoption, the consent of a minor must be obtained if he has reached the age of 15 years. An international convention on adoption or foster placement ought at the very least to require that the opinion of any minor should be sought as soon as he is old enough to express a valid opinion.
2. The draft Declaration calls for the involvement of a great number of "services" but does not mention any safeguards these services should offer, particularly as regards the right to defence. It would nevertheless seem of major importance to specify that the disputes that may arise from foster placement and adoption as well as from the involvement of such "services" should be settled by an authority offering at least all those safeguards traditionally vested in the courts.
3. The actual wording of the draft Declaration is unsatisfactory and does not always convey the meaning of the text. Many ideas should be more clearly explained and better phrased.
4. In particular, the following articles of the draft Declaration require some comment.

Specific remarks

Title

It is proposed that, in the French text, the last word in the title "Bien-être de la famille et de l'enfance" should be replaced by the word "enfant".

Paragraph 4

The phrase "when biological family care is ... inappropriate" is dangerous, since it can be used to justify arbitrary decisions regarding the child's welfare. It would be preferable to make paragraph 4 the conclusion to paragraph 5.



No distinction has been made between foster placement and adoption, even though the latter provides the child with greater stability and a more complete legal integration in his new family.

#### Paragraph 6

Assuming that the provision of "service" is intended to mean the seeking of family and child welfare at all levels, particularly through the plans for resource use and development referred to in paragraph 1, through an assessment of family and individual situations and through the enactment of laws, then perhaps a multidisciplinary team ought to be established. The team would comprise, in addition to the social worker, a doctor, a legal expert, a psychologist, a teacher trainer and a family welfare educator. Such a team would also be able to provide the "counselling" mentioned in paragraph 18, unless foster or adoptive families are under the auspices of a family placement agency, as suggested in paragraph 11.

#### Paragraph 7

The term "foster family" is inadequate, since the primary objective of foster placement is not simply to provide the minor with board and lodging, but with a true replacement family that will take care not only of material needs but also of educational needs and offer a warm, nurturing environment. The expression "host family" is preferable.

The phrase "établissement mieux placé" in the French text is ambiguous in that it leads one to suppose that an institution geographically closer to the place where the minor temporarily resides must be preferable to a good host family. The following text for the passage in question is preferable: "... in preference to institutions, unless the child's physical or psychological health, security or specific needs necessitate his placement in a specialized facility".

#### Paragraph 10

The term "planned, temporary service" is difficult to understand. The concept of planned service would seem to be incompatible with the nature of family life. Perhaps the intended meaning is that "foster families" must come under the supervision of an organized agency; if this is so, the drafting of the paragraph should be reconsidered.

With regard to the substance, it seems indispensable that foster and adoptive families should be integrated in a family placement service which selects the families, informs them, advises them and monitors the living conditions which they offer.

#### Paragraph 12

This provision does not take into account the many biological families who have the material means of taking care of their children but specifically want them to be placed in foster homes or adopted. An addition should be made to the paragraph to indicate this.

Paragraph 13

Flexibility is surely not the only characteristic that should be expected of the adoption process; this process should also be speedy, accessible and simple, while protecting the rights of the parties involved.

Paragraph 14

The phrase "those responsible for the child" is too vague and makes it difficult to determine clearly who is required to "select the most appropriate environment for the particular child concerned".

Does the phrase "those responsible for the child" mean persons having parental authority who are legally responsible for the child's upbringing?

If the term is to be taken in a broader sense, reference should be made to the "responsible services" (cf. para. 16).

Paragraph 15

The notion of "sufficient time" must be replaced by the notion of "a sufficient and specified period of time" so that the determination of time will not be left to the discretion of the adoption authorities. The rights of the child and of the biological family will also be better protected by a standardization of the time period.

Paragraph 16

It is difficult to see why "legislation" and "services" are assigned identical responsibilities.

If "legislation" is intended to mean "civil law", the responsibility of the latter is to determine whether or not the adopted child has the same rights as a legitimate child. Moreover, legislation is not intended to "ensure" that the child becomes an "integral" member of the adoptive family.

However, the word "legislation" may also cover a whole series of laws and regulations relating to social law, such as family subsidies. This should be clarified.

It may also be asked whether "services" should continue to meddle in the problems of family integration experience by a child who has been legally adopted.

Legislation should provide for adequate periods of time (cf. para. 13) and services must become actively involved before the adoption becomes effective. Any actions taken by services subsequent to the adoption may in fact have the effect of preventing the child's complete integration within the adoptive family.

Paragraph 18

The role and authority of the "service d'orientation" mentioned in the French text are not clear.

Paragraph 23

The phrase "child ... legally free for adoption" may constitute a problem in States which, like Belgium, do not acknowledge the concept of adoptability.

5. In view of the preceding observations, the draft Declaration gives rise to definite reservations and its usefulness is debatable both from the viewpoint of domestic law and the standardization of procedures.

CANADA

[Original: English]

[16 May 1980]

Paragraphs 13 and 14 in the section on adoption currently refer to the child's need. One or both of these paragraphs should be strengthened to reflect the principle that, in adoption planning, the needs of the child are the paramount consideration.

CHILE

[Original: Spanish]

[25 March 1980]

General family and child welfare

1. "In planning for the use and further development of national resources, every nation should give a high priority to family and child welfare".

The purpose of this amendment is to make the text of paragraph 1 clearer and more precise.

2. "It is recognized in every nation that the best child welfare is good family welfare".

The purpose of this suggestion is similar to that of the suggestion in the preceding paragraph.

3. "Every minor has the inalienable right to tutelage, in other words, the right to be cared for and protected. This obligation shall be incumbent firstly on the biological parents. If they cannot care for the child, this responsibility shall devolve on other family members. If biological family care is unavailable or inappropriate, steps should be taken to provide substitute family care".

It is suggested that this text should be amended as indicated above, since the minor's right to tutelage would thus be strengthened.

Furthermore, it is suggested that paragraphs 3 and 4 should be reworded, since their content is similar.

4. (New) "Specialized State agencies of an administrative or judicial nature shall be responsible for seeing that the right of minors to tutelage is respected".

It is suggested that the above paragraph should be included in this general section, since the draft Declaration does not stipulate anywhere else that the State is responsible for safeguarding the legal right whose protection is being sought.

5. "Governments shall determine the adequacy of their national child care services in the light of the requirements for normal child development".

It is proposed that paragraph 5 of the Declaration should be deleted and that the beginning of paragraph 19 should be inserted in its place, since the concept in question constitutes a general principle and it would appear more appropriate to place it in the general section.

6. "Efforts should be made to ensure that providers of service in the field of family and child welfare have professional training in that area".

We consider this wording more appropriate, since in practice in developing countries the problem that arises relates to professional specialization and not to a particular type of profession.

#### Foster placement

7. "Every child has a right to a family. It is preferable that minors who cannot remain in their biological family should be placed in a foster family or adopted; placement in institutions should be avoided, except in very exceptional cases where the child's particular needs call for such placement".

This suggestion is aimed at improving the wording, while retaining the idea expressed in the draft Declaration.

8. "Efforts should be made to ensure that minors who are in institutions are placed in foster families or adopted, unless it is essential for their welfare that they should remain in such institutions".

This paragraph has been reworded in the light of the preceding principle, which should also be applied to minors who are currently in childrens' homes with a view to placing them in foster or adoptive families.

9. "Legal provisions should be adopted to regulate the placement of children outside of their biological family, and specialized bodies should supervise and monitor implementation of such legal provisions".

It was felt that the word "legal" should be added in order to bring out more clearly that the basis for solving the problem is essentially juridical. At the same time, it was considered important to stress the need for monitoring and supervision by a specialized body.

10. "Foster family care should be temporary, and a more stable situation should be sought for children, either by reintegrating them into their biological families, if they have such families, by placing them in adoptive families, or by applying to them other systems of protection of greater benefit to minors".

The purpose of this suggestion is to make the wording of the text clearer.

11. "Programmes sponsored by specialized bodies concerning children in foster family care should take into consideration the child, the biological family and the foster family".

This suggestion is aimed at improving the wording of the Declaration while upholding its basic purpose.

#### Adoption

12. (a) "The primary purpose of adoption is to provide the child with a permanent family, if he/she cannot be cared for by his/her biological family".

(b) This wording was considered more appropriate than that set forth in the Declaration, since it places emphasis on the child as the subject of adoption.

13. (a) "Adoption procedures should be flexible enough to meet the child's needs pending completion of such procedures".

(b) Once again, this wording interprets the principle laid down in the Declaration.

14. (a) "Al considerar distintas posibilidades de adopción, los responsables del niño deben elegir el medio más adecuado para cada niño".

(b) In this paragraph, in the Spanish text, a comma has simply been inserted after the word "adopción".

15. (a) "Sufficient time and adequate counselling should be given to the biological parents to enable them to reach a decision on their child's future, but they should be urged to reach this decision as early as possible".

(b) The above wording, which does not affect the substance of paragraph 15, would appear to be more appropriate in Spanish.

16. (a) "Legislation should ensure that the child becomes a member of the adoptive family".

(b) The words "and services" have been deleted, since services are provided merely in implementation of the legal provisions, which means that the words in question would be superfluous in the text of the Declaration. Furthermore, the word "member" has been chosen in preference to "integral part", as the former would appear to be more complete than the latter.

17. (a) "It is desirable that adoptees should know about their status as such".

(b) This wording is proposed in view of the psychological aspects of child development.

18. (a) "Las leyes deben reconocer el concepto tradicional de adopción en la familia para asegurar la protección de los niños y ayudar a la familia, prestándole asesoramiento".

(b) In this paragraph the translation into Spanish would appear to give rise to problems.

19. (a) "If a child cannot be placed in an adoptive family in his/her country of origin, intercountry adoption may be considered as a suitable means of providing him/her with a family".

(b) As indicated in paragraph 5, the beginning of paragraph 19 has been transferred and integrated into paragraph 5, leaving only the part concerning intercountry adoption, with minor drafting changes.

20. (a) "Cuando se considere la posibilidad de adopción en otros países, deberán establecerse la política y las medidas legislativas necesarias para proteger a los niños".

(b) Both the principle and the drafting are acceptable, and a comma has simply been inserted after the word "países".

21. (a) "Intercountry adoption should be carried out through the competent authorized agencies. There should be specialized services in every country permitting application of the same safeguards and standards as those existing in respect of national adoptions".

(b) This suggestion is aimed at improving the drafting of paragraph 21 of the Declaration.

22. (a) "Proxy adoptions should not be accepted, in consideration of the child's legal and social safety".

(b) The principle set forth in paragraph 22 is satisfactory, but it is suggested that the words "are not acceptable" should be replaced by the words "should not be accepted". In the Spanish text, the word "de" should be replaced by the word "a", so that the beginning of the sentence reads "En consideración a la seguridad jurídica y social del niño".

23. (a) "No intercountry adoption should be considered before it has been established that the child is legally free for adoption and the pertinent documents for completing the procedures in question are available. All the documents must be in a form that is legally valid in both countries. It must be established that the child will be able to immigrate into the country of the adopters and can choose their nationality once he/she has attained the required age".

(b) This amendment seeks to improve the wording, although the spirit of the proposed text is the same as that of the draft Declaration.

24. (a) "In intercountry adoption, legal validation of the adoption by the countries involved should be assured".

(b) The aim is to improve the wording, although the spirit of the proposed text is the same as that of the draft Declaration.

25. (a) "In all adoption procedures and pending their completion, the child should have a name, nationality and legal guardian".

(b) This suggestion seeks to indicate the comprehensive nature of the draft Declaration.

#### CYPRUS

[Original: English]

[15 April 1980]

#### Adoption

1. Adoptions in Cyprus are regulated by the Adoption Law, Cap. 274 and regulations issued under this law. This law provides for the civil adoption of children after a religious adoption is completed. A guiding and all-important principle is that adoption provides children deprived of normal biological family with a permanent substitute normal family. The responsibility for adoption devolves on the Department of Social Welfare Services, whose social workers perform various functions in respect of adoption either as "guardians ad litem" appointed for this purpose by a court of law or as supervising officers. Most of these officers are professionally qualified social workers or have received intensive

and prolonged in-service training in family and child welfare. They are required to serve the best interests of the child and of all other parties concerned including adoptive and natural parents.

2. All adoption orders are processed through the Law Courts of the Republic, which give the final sanction to the making of the Adoption Order.

3. We agree with and fully support the draft Declaration, which we find a useful instrument in promoting child welfare and happy family life.

4. Here below are the most important provisions of the Adoption Law now in force.

(a) Any child under the age of 18 can be adopted who:

Resides in the country;

Was already adopted under the law of the religious community of the adopter;

Has been continuously in the care and possession of the adopter for at least three consecutive months immediately preceding the date of the order;

Is at least 18 years younger than the adopter;

Consents to the adoption if of an age to be able to do so;

Is not a female to be adopted by a sole applicant who is a male (except in special circumstances).

(b) Any person may adopt who:

Is domiciled in Cyprus or has been residing in the country for at least two years immediately preceding the date of the application;

Is the mother or father of the infant;

Has attained the age of 25 and is at least 18 years older than the infant;

Has attained the age of 21 and is relative of the infant;

Notifies the welfare officer of his area, not less than 7 days before possession is taken of an infant, of the arrangements made to this effect.

(c) The interests of the child are safeguarded through:

The restrictions imposed by the law on who can adopt and who can be adopted as per paragraphs 1 and 2 above;

The power of a welfare officer to intervene for the prevention or placement of the removal of a child in appropriate circumstances;



The supervision of the placement by a welfare officer for at least three months before the adoption order;

The function of the welfare officer as a guardian ad litem, whereby he reports to the Court on the desirability or otherwise of adoption before the adoption order is made;

The requirement where appropriate for the infant's consent to the adoption;

The prohibition of payments by any person in consideration for the adoption. The requirement imposed by law on the Court not to make an adoption order unless it is for the welfare of the infant, consideration being given to his wishes;

The prohibition of advertisements in relation to the adoption;

The restriction on sending infants abroad for adoption;

The provisions as to intestacies, wills and dispositions whereby the adopted child assumes all the rights of a natural child in relation to the adopters.

(d) The interests of natural parents are safeguarded through:

The requirement for their consent before an adoption is made;

The prohibition of advertisements in relation to adoption.

(e) The interests of the adoptive parents are safeguarded through:

The provision that upon an adoption order being made, all rights of the natural parents are vested in the adoptive parents;

The prohibition of advertisements in relation to the adoption;

The power of the Court to dispense with the consent of the natural parents if the consent is unreasonably withheld;

The adoption, if made, is irrevocable;

Adoption proceedings are held in camera;

The identity of the adoptive parents is kept confidential if they so desire.

(f) Subject to the requirements and restrictions, as described in paragraphs (a), (b) and (c) above, the adoption proceedings start with the notification by the adoptive parents to the welfare officer of their intention to adopt. If no intervention by the welfare officer is warranted, then the adoptive parents apply to the Court (singly or jointly) on a prescribed form for

authorization to adopt the child in their possession. The application should be accompanied by a document signifying the consent of parents or guardians to the adoption. On receipt of the application the Court appoints a welfare officer to act as a guardian ad litem for the child with prescribed duties about inquiries in respect of all parties to the adoption. The guardian ad litem submits a report to the Court on the hearing of the adoption case. The adoption order may be made in three months from the date that the child was in the care and possession of the adoptive parents. Before the adoption order is made, a religious adoption should be made and a certificate to this effect should be produced to the Court. When the guardian ad litem makes his report to the Court, a hearing of the application is fixed and notice for the attendance of all parties is given, i.e., the applicant, every person whose consent to the order is required, the guardian ad litem and any other person, not being the infant, who in the opinion of the Court, ought to be served with a notice. The Court does not make an order except after the personal attendance of the applicant(s), the infant and the guardian ad litem. Every application is heard and determined in camera. Having regard to the guardian ad litem's report and the circumstances of the case, the Court makes an adoption order which is notified to the Chief Registrar, who can issue copies of the order to the adoptive parents.

(g) Adoptions are arranged either directly between the adoptive parents and the child's parents or guardians or by private persons as a third party. In some cases, where the Department is seeking ways of permanent social rehabilitation of children in its legal care, such arrangements are made by the Department. The arrangements for adoption made by a third party are supervised and controlled through the legal notification to the Department of intention to make such arrangements, at least seven days before this takes place. This gives an opportunity for the Department to inquire into the suitability of the arrangements and to intervene, where necessary, in the child's interest. Moreover, in view of the limited supply of children for adoption, in practice most adoptive parents seek advice and assistance from the Department about adoption, in which case a sort of vetting of the adoptive parents takes place. By administrative arrangement, a detailed social investigation report on all adoptive parents wishing to adopt a child residing outside the country is prepared by the Department and submitted on request to appropriate authorities abroad.

(h) Payments or rewards in consideration of adoption are prohibited, except with the sanction of the Court. Such payments or rewards are not only an impediment to the making of the order, but the guilty party is liable to imprisonment and/or a fine.

(i) According to the Adoption Law, upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the infant in relation to the future custody, maintenance and education of the infant, including all rights to appoint a guardian and to consent, or give notice of dissent, to marriage are vested in the adoptive parents, as if the infant were born to them in lawful wedlock. For the purpose of the law relating to marriage, an adoptive parent and the person whom he has been authorized to adopt shall be deemed to be within the prohibited degree of consanguinity. Where at any time after the making of an adoption order, the adoptive parent or the adopted person or any other person dies intestate in respect of any movable or immovable property, that

property shall devolve in all respects as if the adopted person were the child of the adoptive parent born in lawful wedlock and were not the child of any other person. The same applies for the purpose of the application of the Wills and Succession Law. If the infant's birth is not proved to the satisfaction of the Court, the Court determines the probable date of his birth. Where the name or surname which the infant is to bear after the adoption differs from the original name or surname, the new name is specified in the order. The adopted infant also assumes the nationality of his adoptive parents.

(j) It is not possible for an adoption order to be revoked. The Court by which an adoption order was made may only amend the order, by the correction of any error in the particulars contained therein on the application of the adoptive parent or the adopted person.

(k) In accordance with the Adoption Regulations, it is the duty of the guardian ad litem to satisfy himself whether the infant is or is not of an age to understand the effect of the adoption order and, if he is satisfied he should notify the Court accordingly; it is the guardian ad litem's duty also to find out whether the infant has been informed of the application and of its effect and if he has not already been informed to inform him accordingly. It is, also, the policy of the Department that the welfare officers acting as guardians ad litem or as supervisors, should advise the adoptive parents to inform the adopted child, when of an age or circumstances to understand, about the fact of adoption and to give information about their natural parents and their origin.

(l) It is a criminal offence for any person to permit or to cause or procure the care and possession of an infant to be transferred to a person who is resident abroad, who is not his guardian or relative, in connection with arrangements made for adoption. However, the Court, as a licensing authority, may grant a license for the transfer of a child abroad for the purpose of adoption if the Court is satisfied that the application for such transfer is made with the consent of every person who is a parent or guardian or has the actual custody of the infant or is liable to contribute for the support of the infant, and that the transfer will be in the interest of the child's welfare. The provision made for the protection of children entering the country for purposes of adoption is an administrative one, made between the Department and public and voluntary welfare organizations in other countries. Under these arrangements, applications for the adoption of children residing abroad by Cypriots are referred to the Department of Social Welfare Services for social investigation and report as to the suitability of applicants and their eligibility for adoption in Cyprus. As a matter of course, unless such reports are satisfactory, no children are given into the possession of such applicants. Even when such applicants are given possession of children and adoption proceedings in other countries did take place, these adoptive parents are not absolved from the obligation to go through adoption proceeding in Cyprus as well.

(m) The only authorities providing adoption services are the Department of Social Welfare Services and the Courts. There are no adoption agencies or adoption societies in Cyprus. The standards of the adoption services are defined and maintained by the legal requirements embodied in the Adoption Law and the Adoption Regulations, the policy instructions and the training given to the social workers engaged in adoption work.

#### Foster placements

5. All articles of the draft Declaration which form the guidelines in the field of child welfare are in line with the policy and practice followed by the child welfare services of the Department. Therefore we have no comments or observations to make.

#### DENMARK

[Original: English]

[19 February 1980]

#### Paragraph 3

If a child cannot remain with the biological parents and consequently must be placed in substitute family care, other biological family members should only be chosen as the first alternative if they are found to be well qualified.

#### Paragraph 6

In general, the Danish authorities do not establish educational requirements for foster families - if the term "providers of service" is to be interpreted as the foster families.

#### Paragraphs 7 and 8

When a child is placed outside the home, whether in foster care or in an institution, the primary objective, in the opinion of the Danish authorities, should always be the return of the child to the biological parents. If this proves impossible, however, a child should only as a rare exception be placed in foster care with a view to adoption. Naturally, this does not apply in Denmark to foreign children who are brought to the country with a view to adoption by parents who have already been approved as adoptive parents.

DOMINICA

[Original: English]

[31 March 1980]

In the view of the Commonwealth of Dominica, the draft Declaration of Social and Legal Principles relating to the Protection and Welfare of Children is quite comprehensive and takes into consideration the needs of homeless children. If the draft Declaration is seriously adhered to, the condition of children all over the world will be improved immensely.

ETHIOPIA

[Original: English]

[30 April 1980]

1. The Ministry of Labour and Social Affairs of Socialist Ethiopia reports on the draft Declaration of Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally.

2. General family and child welfare and adoption

We would like to express that the paragraphs under the titles A. General family and child welfare, B. Foster placement are in agreement with the law of socialist Ethiopia. However, under section C. Adoption, paragraphs 19 and 20, we would like to make the following observation. The Provisional Military Government of Socialist Ethiopia considers that intercountry adoption and placement of children in foster families do not relate, as a matter of principle, to the social and legal conditions of Socialist Ethiopia. However, children legally adopted on an intercountry basis prior to August 1976 shall be considered as legal, the adoption therefore being binding on both the adoptive parents and the adoptive child.

3. We suggest that the following be included in the draft Declaration:

"The prospective family shall take the child on foster care for a trial period of six months, after which the legal formalities should be completed by both sides."

FINLAND

[Original: English]

[8 April 1980]

1. While the number of children available for adoption has decreased, for instance, in almost all European countries in recent years, intercountry adoptions have simultaneously become more common. In intercountry adoptions the best interest of the child may not always be sufficiently taken into account. The Government of Finland is of the view that the adoption by the General Assembly of the draft Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally would promote the legal protection of the child. It is of the utmost importance that both those States that give children for adoption abroad and those States that receive them jointly approve the social and legal principles that are applied in the process.
2. Legislation concerning adoption was recently revised in Finland. The revised Act (32/79) and Decree (818/79) on Adoption entered into force as of 1 January 1980. According to the Act, adopted children have the same legal position in the family as biological children. Thus the relationship of the adopted child with its adoptive parents and their family members is the same as that of a biological child with its family members, including inheritance rights. On the other hand the relationship between the child and its biological parents is completely discontinued once adoption has been granted. Dissolution of adoption is no more possible. The text of the Adoption Act is contained in annex 1.
3. In Finland intercountry adoptions are covered by the act on certain international family relationships (379/29). In cases where both the child and the adoptive parent are citizens of the Nordic countries and the latter has permanent residence in one of the Nordic countries, a Nordic Convention concerning marriage, adoption and guardianship is applied instead of the above law. This Convention was concluded in 1931 between Denmark, Finland, Iceland, Norway and Sweden.

COMMENTS ON THE DRAFT DECLARATION

General family and child welfare

4. According to paragraph 3, other family members should be the first alternative if the biological parents cannot care for the child. According to the principles of Finnish child welfare, however, the best interest of the child is the only criterion when care has to be provided for the child. Consequently, other family members are the first alternative only when it is in the best interest of the child to come into their care. The same idea is expressed in paragraph 5, which emphasizes the child's rights to security, affection and continuing care.

5. It is considered essential that those who in practice provide services for families and children should have an appropriate training for this kind of social work.

#### Foster placement

6. It is emphasized that in foster placements the type of care should be chosen according to the needs of the child without excluding any possible form of care. The child's care should be competently supervised. Planning for the child's care is also considered important. This includes the estimation of the duration of foster care. All the parties concerned, the biological family, the adopting family, the persons who actually take care of the child and the child himself/herself should participate in the planning.

7. It is recognized that the State should take the responsibility for the standard of the care and for the upbringing of children cared for outside their biological families. For this reason, the agencies providing services should be authorized by legislation or by a decision of a competent authority unless they are part of the public administration whose task it is to arrange foster care.

8. Foster family care is not only a temporary service, but in some cases a secure form of care continuing until adult life. It does not necessarily lead to restoration to the biological family or adoption. (see para. 5 about the right to security etc.) This type of care can also be in the best interest of the child.

#### Adoption

9. The purpose of adoption is defined in a very narrow way in paragraph 12, which limits adoption to those cases where the biological parents are not able to care for the child. Adoption may, however, also legalize changes in family relationships. This happens, for instance, when foster parents adopt their foster child or when a parent-child relationship is created between a child and the spouse of one of the child's biological parents.

10. The Finnish Adoption Act states that the purpose of adoption is the promotion of the welfare of the child by creating a relationship of child and parent between the adoptive child and the adoptive parent. Thus, the Act does not deal with the reasons for adoption.

11. However, taking into consideration the application of the principles in different States, paragraph 12 can be considered acceptable. In such a case it is assumed that the words "who cannot be cared for by his/her biological family" also include the fact that the parents feel that they are unable to give their child the security, affection and continuing care the child needs. This principle would be clearer if it could be changed to read as follows: "The primary purpose of adoption is to provide a permanent family for a child when he/she cannot be cared for by his/her biological family or when the biological family feels that it is unable to care for the child."

12. In connection with paragraph 15 it can be stated that according to the Finnish Adoption Act an adoption cannot be confirmed by a court if the parties involved in the adoption - the biological parents and the adoptive parents - have not received adoption counselling. Only municipal social welfare authorities and adoption agencies authorized by the National Board of Social Welfare in Finland are allowed to give adoption counselling. Besides regulations concerning the consent of the child's biological parents, Finnish legislation specifically requires that the consent of the biological mother of the child available for adoption may be accepted no earlier than 12 weeks after the birth of the child in question.

13. In relation to paragraph 16 it is to be stated that the Finnish Adoption Act places an adoptive child legally in the same position as a biological child in the family. The task of an adoption agency is to observe the development of the relationship between the child and the adoptive parents into a child-parent relationship in the psychological sense before an adoption is taken into a court for confirmation. After the confirmation the child is to be regarded as the child of the adoptive parents.

14. Paragraph 17 on the need of adult adoptees to know about their background has been taken into consideration in the Finnish Adoption Act, which states that adoption counselling will be given both before and after the confirmation of the adoption. It should also be stated that in Finland the names of the biological parents are mentioned in the book of minutes of the court which confirms the adoption and they can also be traced through the population register. The service of adoption counselling is essential, as it is not enough to receive the names of the parents. On the basis of experience in the services provided since the beginning of 1960, the most important questions that adopted children and young adults ask relate to the reasons why they were given for adoption and what had happened at that time.

15. As to paragraph 18, in Finnish legislation adoption within the family is comparable to adoption in general. Adoption of a minor within a family requires the consent of both parents, as well as that of the child if the child is over 12 years of age. According to the Finnish Adoption Act, adoption counselling is also necessary in adoptions within the family.

16. Paragraph 19 is very important. The inadequacy of the national child welfare services in some countries has led to the illegal transfer of thousands of children from their native countries to countries where there are fewer children. To an increasing extent this takes the form of trafficking in children, where considerable amounts of money are involved. These activities have seriously jeopardized the security of the children.

17. Since intercountry adoptions take place partly without the co-operation or supervision of the Governments concerned, there are very few, if any, States where the security and the legal position of children transferred from one country to another have been fully covered in the policy and legislation as well as in the practical procedure. Paragraph 20 is therefore particularly important.



18. The security of children in intercountry adoptions should also be ensured in accordance with paragraph 21 so that only competent and duly authorized agencies are allowed to take care of these adoptions and that they should apply the same standards of service as they do in national adoptions. Many representatives of the children's countries of origin have also expressed a wish that, if possible, there should be only one agency in each receiving country with which the sending country could be in contact.

19. Referring to paragraph 22 proxy adoptions have led to cases where the receiving family has not accepted the child when he/she has arrived. The child may then have been put into another form of care, e.g., into a children's home. In cases where the reconfirmation of the adoption is necessary in the receiving country this has been neglected if the child failed to meet the expectations of the adoptive parents. Thus, the child has been put both socially and legally in an insecure position.

20. If intercountry adoptions become more and more common in the future and every family cannot be expected to travel to a distant country to get a child, new policies and regulations should be agreed on so that the child's security is ensured when he/she is moving from one country to another before the adoption is confirmed by a court. This could for instance be carried out through the co-operation of the States concerned and their authorized agencies. The receiving State could assume responsibility when the child leaves his/her native country and could take care of the child's placement, the follow-up of the placement and the confirmation of the adoption in court through its authorized agency.

21. When choosing a suitable home for a child the responsibility should be shared also. The authorized agency of the receiving country should be able to propose several families it considers most suitable for a particular child. The final choice could be made by the authorized agency responsible for the child in his/her native country. Nowadays the agencies in the receiving countries often send documents of hundreds of families to countries from which children can be obtained. Choosing the best possible family for a particular child may be very difficult for the agency in the child's native country. Despite the fact that the families in question have been approved as adoptive families, there are great differences between them.

22. The application of paragraphs 23 to 25 in the countries involved is essential for the children's legal security.

ANNEX

I. ADOPTION ACT

(Finland)

promulgated on 19 January 1979 and published in the Series of Statutes of Finland under the number 32/1979 a/

Chapter 1

CONDITIONS OF ADOPTION

Section 1

1. The purpose of adoption is the promotion of the welfare of the child by creating a relationship of child and parent between the adoptive child and the adopter.
2. An adoption is granted by a judicial decree.

Section 2

1. An adoption of a child under age may be granted if it is considered to be in the interest of the child and it has been established that the child will receive good care and upbringing. An application concerning the granting of an adoption shall be accompanied with evidence that the child is under the care of the adopter or that the latter otherwise is in charge of the care and upbringing of the child.
2. A person who has come of age may be adopted only where it has been established that he, while under age, has been fostered by the adopter and it has not been possible to grant the adoption while the child was under age, or that there are other comparable exceptional grounds for the adoption.

Section 3

1. An adoption may not be granted if any remuneration has been given or promised for the adoption or if someone other than the adopter has, with a view to the adoption being granted, made or undertaken to make remunerative payments for the maintenance of the child.
2. Any contract or commitment concerning a payment of remuneration or maintenance as referred to in paragraph 1 of this section is null and void.

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a/ The English translation of the Act was prepared in the Ministry of Justice of Finland in January 1980.

Section 4

No person may adopt his own child. However, a person may adopt his own child who has previously been adopted by someone else.

Section 5

1. The adopter must have attained the age of 25 years.
2. An adoption may, however, be granted, if the adopter has attained the age of 18 years and the adoptive child is either a child of his spouse or his own child who has previously been adopted by someone else, or if there are other exceptional grounds for the adoption.

Section 6

1. Spouses may, while married, only jointly adopt a child unless otherwise prescribed under paragraphs 2 or 3 of this section.
2. A spouse may only adopt a child of his spouse or his own child who has previously been adopted by someone else.
3. A spouse may only adopt a child if the whereabouts of the other spouse are unknown or if the other spouse, owing to an illness or a handicap, cannot validly express his will.

Section 7

Persons other than spouses may not jointly adopt a child.

Section 8

1. An adoption may not be granted without the consent of the child if the child has attained the age of 12 years. The child's consent is, however, not necessary if he, owing to an illness or a handicap, cannot express his will.
2. Nor may an adoption be granted against the will of a child who has not attained the age of 12 years if the child is so mature that his will can be taken into consideration.

Section 9

1. An adoption of a child under age may not be granted unless the parents have given their consent to it.

2. If there are exceptional grounds, an adoption may be granted, although the parents or one of them have not given their consent to the adoption or have withdrawn their previous consent, if it is deemed that the adoption obviously and definitely serves the interest of the child and that the denial or withdrawal of consent by the parent is without sufficient ground taking into account the interest of the child as well as the contacts between the child and the parent, their mutual relationship and its quality.

3. In accordance with the conditions laid down in paragraph 2 of this section, an adoption may also be granted, where the parent, owing to an illness or a handicap, cannot validly express his will or the whereabouts of the parent are unknown.

#### Section 10

1. The parents consent to an adoption shall be given to the municipal Social Welfare Board or to an adoption agency referred to in chapter 3 of this Act. Abroad the consent shall be given to an official who, according to section 16 of the Administration of Foreign Affairs Act (1129/77), is empowered to perform the duties of Notary Public. Supplementary regulations concerning the reception of consent will be issued in a presidential decree.

2. Before the consent is given, a consultation must be arranged with the parent whereby the purpose, conditions and legal consequences of adoption are to be explained. Furthermore, all the social services and economic support benefits which are available to the parent and the child must be brought to his knowledge.

3. The consent of the child's mother may not be accepted before she has sufficiently recovered from the delivery and no earlier than 12 weeks after the birth of the child.

#### Section 11

The consent concerning an adoption must be recorded in a document which is to be dated and signed by the person who has given the consent.

### Chapter 2

#### LEGAL EFFECTS OF ADOPTION

#### Section 12

1. Where an adoption has been granted, the adoptive child shall be regarded as the child of the adoptive parent instead of his former parents in the application of the law on any legal consequences of blood- or in-law-relationship, unless special provision has been made or the nature of the adoptive relationship necessitates an exception.

2. If a spouse has, during the marriage or after its dissolution through death, alone adopted a child of the other spouse, the child shall, however, be regarded as a child of both spouses.

#### Section 13

An adoptive child receives the family name of the adopter, unless the court allows the child to use his own name or both names together. A married person who is adopted shall, however, retain his previous name.

#### Section 14

1. After an adoptive relationship has been created, the child's former parents are relieved of their obligations to maintain the child.

2. If, prior to the adoption, the child's former parent has bound himself in a contract confirmed by the municipal Social Welfare Board or has been ordered by a judicial decree to pay maintenance for the child, he is relieved of the duty to make payments that are due subsequent to the adoption. If the maintenance payment has been fixed to be paid in a lump-sum, the parent is relieved of the duty to pay, unless the payment has been made prior to the adoption.

#### Section 15

1. The legal effects of adoption shall cease to exist, if the adopter and the adoptive child marry each other. The termination of the adoptive relationship does not constitute a legal relationship between the adoptive child and his former parents or their relatives.

2. The granting of a dispensation to a marriage referred to in paragraph 1 of this section is regulated in the Marriage Act.

### Chapter 3

#### ADOPTION COUNSELLING

#### Section 16

The purpose of adoption counselling is to attend to the interest of the child in matters concerning adoption as well as to assist, through consultations and other appropriate measures, the child, the child's parents and the adopters before the adoption is granted by a court and, where necessary, even thereafter.

Section 17

1. Adoption counselling is directed, guided and supervised by the National Board of Social Welfare.
2. Adoption counselling is given by municipal Social Welfare Boards and by such adoption agencies as the National Board of Social Welfare has granted a licence to for engaging in adoption counselling.

Section 18

1. Adoption counselling shall consist of:
  - (a) Ascertaining whether the conditions of adoption laid down in chapter 1 are fulfilled;
  - (b) Taking care of the placement of the child;
  - (c) Observing whether the placement of the child proves to be successful with a view to the interest of the child.
2. When giving adoption counselling, the adoption agency must acquire from the appropriate municipal Social Welfare Board its opinion concerning the circumstances of the child and the adopter.

Chapter 4

GRANTING OF ADOPTION

Section 19

A child's parent who intends to give a child under age up for adoption or a person who intends to adopt a child under age must make a request for adoption counselling at the Social Welfare Board of his place of residence or at an adoption agency licensed by the National Board of Social Welfare.

Section 20

1. The competent court in a case concerning the granting of an adoption is the court within the jurisdiction of which the adopter has his residence. If spouses intend to adopt together, the competent court is the court in the jurisdiction of which either of the spouses has his residence.
2. A case concerning the granting of an adoption is to be brought up in a written application made by the adopter or the adopters together.

3. Before a case concerning the adoption of a child under age is taken up for consideration by the court, the applicant must establish that adoption counselling has been given as prescribed in sections 16 to 19 above.

#### Section 21

1. The court shall take the initiative to order all evidence which is necessary for deciding a case concerning the granting of an adoption to be produced.

2. The court must, where necessary, hear all the persons who can provide information concerning an adoption case.

#### Section 22

1. The parent of a child under age as well as a person who is in charge of the custody of the child must be given an opportunity to be heard in a case concerning the granting of an adoption, if the summons can be served to him. If the child's parent or the person who has made an application for adoption is under age, his guardian must also be given an opportunity to be heard, if the summons can be served to him.

2. A hearing in accordance with paragraph 1 above is, however, not necessary if the opinion of the person who should be heard has already been reliably ascertained earlier, or if such a hearing is otherwise deemed unnecessary for deciding the case.

#### Section 23

The applicant, the child and persons who according to section 22 must be heard are entitled to appeal against the court's decision in a case concerning the granting of an adoption.

#### Section 24

Cases concerning the granting of an adoption must be heard and decided expeditiously at all instances.

#### Chapter 5

#### MISCELLANEOUS PROVISIONS

#### Section 25

Adoption of an adoptive child is governed by what has been prescribed in this Act concerning a child.

#### Section 26

1. The National Board of Social Welfare may, upon application, grant a licence for operating an adoption agency to a league or other association of municipalities or to a society registered in Finland.
2. A licence for operating an adoption agency may be granted to an applicant who is considered to be capable of providing adoption counselling with necessary professional expertise. A further qualification for the granting of a licence is that the initiation of the operation is deemed to be appropriate with a view to the organization of adoption counselling.

#### Section 27

1. The licence for operating an adoption agency is to be granted for a fixed period not exceeding five years at a time.
2. When granting the licence, the National Board of Social Welfare may at the same time give supplementary directives concerning the administration of adoption counselling.
3. An adoption agency is under obligation to provide the National Board of Social Welfare, on request, with information and reports that are needed for supervision purposes.

#### Section 28

Anyone who, by announcing in a newspaper or otherwise in public without a licence, offers a child for adoption or an opportunity to give a child up for adoption, or anyone, other than the parent or legal custodian of a child, who without a licence and with the purpose of adoption places a child to be brought up in a private home is to be fined for unlawful intermediation of an adoptive child.

#### Section 29

The recognition in Finland of an adoption decree which has been made in a foreign State as well as the right of a citizen of a foreign State to adopt a child in Finland are governed by separate legislation.

#### Section 30

Supplementary regulations regarding the implementation of this Act will be issued in a presidential decree.



Chapter 6

ENTRY INTO FORCE AND TRANSITORY PROVISIONS

Section 31

1. This Act will enter into force on 1 January 1980.
2. This Act repeals the Adoptive Children Act (208/25) of 5 October 1925 and its subsequent amendments, as well as chapter 4, paragraph 2 of section 2 of chapter 7 and section 8 of chapter 8 of the Inheritance Code of 5 February 1965, section 8 in chapter 8 as it reads in the amendment (710/75) of 5 September 1975.

Section 32

1. If a court has, prior to the entry into force of this Act, given its consent to an adoption, the adoptive relationship is governed by the former law, unless otherwise prescribed in the provisions below.
2. An adoptive relationship which has been established prior to the entry into force of this Act cannot be revoked by a court decree.
3. If a court has, prior to the entry into force of this Act, given its consent to an adoption, the court shall, upon an application of the adoptive parent, establish that the adoptive relationship is to be governed by the provisions of this Act.

Section 33

1. If a court has, prior to the entry into force of this Act, given its consent to an adoption, the adoptive child's right to inherit and the right to inherit an adoptive child are governed by the former law.
2. What is prescribed in paragraph 1 of this section shall however, not be applied, if a court has established under paragraph 3 of section 32 that the adoptive relationship shall be governed by the provisions of this Act. If the inheritance has been left by a person who has died prior to the decision of the court, the right to such inheritance is, however, governed by the former law.

Section 34

1. If, at the time of the entry into force of this Act, an application for a court's consent to an adoption is pending, the application shall be governed by the provisions of this Act.
2. With regard to an application referred to in paragraph 3 of section 32, only the provisions in sections 8 and 11 as well as in paragraph 1 of section 20 concerning the consent of the child and the competent court shall be applicable.

Section 35

Necessary measures for the implementation of this Act may be taken before its entry into force.

II. ACT AMENDING THE MARRIAGE ACT

Section 10

An adoptive parent and his adoptive child may not marry each other, unless a court on very good grounds grants a dispensation for this.

This Act will enter into force on 1 January 1980.

FRANCE

[Original: French]

1. As a general comment, it should be said that in the draft Declaration there is a lack of precision in the elaboration of the principles governing this particularly sensitive question, concerning as it does protection of children and their relations with their parents.

2. In the section on "General family and child welfare", the different types of child placement are ranked in a fixed order of preference (placement with other family members, followed by placement in a host family and lastly institutional placement). In fact the type of placement must be chosen after a thorough analysis of the situation of the child and his/her family, taking into account various factors such as the preference of those involved, the child's background, the prognosis for his future, and so on.

3. Paragraphs 3 and 4 are likewise too categorical. In the last sentence of paragraph 3, it would be well to avoid the word "cannot" and use a wording such as "If the biological parents are not in a position, temporarily or permanently, for whatever reason, to assume their responsibilities towards the child ...".

4. It is, furthermore, regrettable that the text contains no statement of the importance and advantage of preventive action for the protection of the family and no provision for specific steps that can and must be taken to avoid taking the child away from his/her family, since any separation is by definition harmful to his/her development.

5. Lastly, it should be made clear in the section on adoption that adoption cannot be considered as one type of placement among others, since it has infinitely more far-reaching and radical consequences.

6. Certain paragraphs call for specific comments:

Paragraph 15

The consent of the biological parents to adoption should be preceded not only by "adequate counselling" but by specific information that will enable the biological family to make a free choice.

Paragraph 17

Since the subject dealt with here is controversial, it would seem preferable not to include it in the text.

Paragraph 21

Placement and adoption should not be dealt with in a single paragraph but rather in two separate paragraphs.

Paragraph 23

This paragraph provides that "all necessary consents must be in a form which is legally valid in both countries", but such a requirement would in all likelihood be difficult to enforce and would in any event not facilitate the adoption.

GERMAN DEMOCRATIC REPUBLIC

[Original: English]

[19 June 1980]

In the German Democratic Republic, the requirements of the draft Declaration of Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally are being met by legal regulations in the fields of family law, foster placement, adoption as well as protection and welfare of children and youth; being valid they have been practised for many years.

GERMANY, FEDERAL REPUBLIC OF

[Original: English]

[7 May 1980]

1. Paragraph 1 of the draft declaration should be rephrased as follows so as to emphasize the interest of children and not that of nations: "Every nation should give a high priority to family and child welfare". The rest of the sentence from "as it plans ..." onwards should be deleted.
2. Paragraph 3 should be couched in less general terms; for example, no distinction is made between relationships established by marriage and those not. In the first sentence the words "as a rule" should therefore be inserted. In the second sentence the term "family" requires closer definition so as to clarify, for example, whether step-parents are included.
3. Paragraph 5 lists a number of rights that are of the greatest importance for all children and not just for those mentioned in paragraph 5. The wording should take account of this.
4. Paragraph 6 contains the term "providers of service", which needs to be more closely defined.
5. Paragraph 8 should contain the same proviso as paragraph 7, i.e., the clause "unless ... facility" should be added at the end.

6. Paragraph 10 should include the words "as a rule" because care of unlimited duration is also feasible.
7. Paragraph 11 should not require that the biological family be involved in all instances, for example if the biological parents have been relieved of custody or if they neglect their child. Here, too, the words "as a rule" should be inserted.
8. Paragraph 18 does not make it clear what "traditional adoption" means. Protection of children and family counselling are important for all forms of adoption.
9. Paragraph 22 requires closer definition. Undue complication of adoptions must be avoided. Greater justice can be done to a proscription of proxy adoptions by a regulation requiring the adopter, as a rule, to take the child into his or her care for an adequate period of time prior to adoption.
10. Paragraph 23
  - (a) In the first sentence the words "should be considered" are not clear. It should be made clear that the conditions stipulated must be met when adoption (or foster placement) occurs and not when the adoption is first envisaged. Otherwise delays are likely.
  - (b) In the second sentence it should be made clear whether only the external form matters or whether all material conditions for the consent to be valid must be met in both countries. The second alternative would go beyond German law and could delay or prevent adoptions.
  - (c) In the third sentence it should also be made clear what is meant by the term "country of the prospective adopters". This could be either the native country or the country of habitual residence. Only the second alternative makes sense. Moreover, acquisition of the adopter's nationality must not be a prerequisite for adoption. Otherwise a person living in a country in which there is no automatic acquisition of nationality by an adopted child would not be able to adopt at all. Instead it is conceivable that countries could undertake to ensure that an adopted child may (up to a certain age) obtain the adopter's nationality.
11. Paragraph 24: If the laws of both countries must be observed for an adoption to be valid, adoption may become very difficult. The wording should therefore be modified considerably so that adoption is not contingent on observance of the two countries' laws. It is also unclear what is meant by "the countries involved". These could be either the native countries or possibly the countries of habitual residence.
12. Examination of the draft Declaration shows that most of its provisions require closer definition and more precise wording. It would be recommendable to append a note to the text of the Declaration explaining its development and provisions.

GUYANA

[Original: English]

[30 April 1980]

General family and child welfare

Paragraph 1

It is suggested that the words "as its plans" be changed to read "in its plans."

Paragraph 2

It is felt that this paragraph should be reworded "It is recognised that the best method of providing for the welfare of the child is by providing for the welfare of the family."

Paragraph 5

It is suggested that the word "where" be changed to read "when."

Paragraph 6

The meaning of the words "providers of service" is not clear. Do they refer to persons working in agencies which provide services of placing children in homes, or do they refer to the persons who are willing to undertake the care of children?

If the former interpretation is intended, we support this paragraph. If the latter, we feel that the provision would operate to hamper the placement of children since we feel that one of the criteria is simply the ability to provide love and a feeling of security.

Adoption

Paragraph 17

We have reservations about the wisdom of including this statement in the Declaration. We feel that circumstances may arise in which the knowledge of their background might operate to destroy relationships in the family which have been built up with the adopted child during his years of minority.

Paragraph 18

We are not sure what is meant by "recognition, in the law, of traditional adoption within the family." In our law there is only one way of obtaining adoption and that is by following the legal provision of the Adoption of Children Act.

We wonder whether this refers to countries where there is adoption by customary laws in addition to specific legal provisions. If this is the case we would suggest that the following words be inserted after "law", "in those countries where it exists."

Paragraphs 3 and 4, 7 to 11, 12 to 16 and 19 to 25 have our support.

#### INDONESIA

[Original: English]

[21 April 1980]

#### Introductory remarks

1. The legal principles relating to general family and child welfare and foster placement are stipulated in the national law in general and in law no. 4/1979 on child welfare (L.N. 1979 no. 32 TLN no. 3143) in particular. In principle, the contents of the draft Declaration are not contradictory to the regulations contained in the national law.
2. With reference to adoption, the existing legal practices in Indonesia should be noted. Up to the present time no written procedures on adoption have been established by Indonesian law, except in the case of Indonesian citizens of Chinese origin wishing to adopt a child also of Indonesian citizens of Chinese origin (S/1917 no. 129).
3. In the draft Declaration adoption means that the adopted child may lose legal ties with its biological parents.
4. In principle, adoption in the Indonesian community is a very sensitive matter except with reference to the institution of child care, which has already been recognized in traditional law.
5. Therefore, in view of the present situation in Indonesian law it is rather difficult to give positive comments on the draft Declaration and in particular with reference to adoption. It would be tenuous, at this time, to predict future legislation and procedures as the Government of Indonesia has not yet adopted a policy in this area. The present legal practices are based on jurisprudence.

#### Adoption

6. Up to the present time no special legislation or procedures on adoption have been established except in the case of Indonesian citizens of Chinese origin wishing to adopt a child of Indonesian citizens of Chinese origin as contained in S. 1917 no. 129, and also in the case of several regulations on other matters but indirectly related to adoption, such as the Indonesian Citizenship Law and

the Government Regulations on Child allowance. For instance, legislation and procedures containing regulations on adoption are stipulated in Article 2 of Law No. 62/1958 on Citizenship of the Republic of Indonesia which reads as follows:

Article 2

- (a) A child of a foreign citizen under 5 years of age who is adopted by an Indonesian citizen shall acquire Indonesian citizenship if this adoption is declared legal by virtue of the decision of the court of law at the place of residence of the person adopting the child;
- (b) The legitimation by the court of law shall be requested by the person adopting the child within one year after the adoption has taken place or within one year from the date that this Law comes into force.

7. From the above two paragraphs (a) and (b) it is apparent that the existing written procedure refers only to the adoption of a child of an Indonesian citizen of Chinese origin by an Indonesian citizen also of Chinese origin, namely, through obtaining a notarial document and through legal procedures in a court of law.

8. According to Article 2 of Law No. 62/1958 Indonesian law recognizes the necessity of legal proceedings in a court of law for the adoption of a child in adoption cases where different citizenships are involved and thus S.1917 no. 129 will not be applicable to a child of an alien resident of Chinese origin. Such a case falls within the purview of article 2 of Law No. 62/1958, referring to the adoption of a child internationally.

9. As no legislation dealing specifically with child adoption has been established so far, adoption placements at present are made by virtue of a decision of the court which has legal jurisdiction over the place of residence of the child to be adopted and as such is in accordance with the contents of the Circular Letter of the Supreme Court dated 7 April 1979, no. MA/Pemb/0294/1979. The Circular Letter stated that the need for child adoption within the community was being increasingly felt and that in order to obtain the necessary guarantee of legal safety, adoption placement was to be made by virtue of a court decision.

10. The Circular letter classifies child adoption as follows:

In general, the requests for legitimation of child adoption which is not included in the process of legal suit in the civil court are classified as follows:

- (a) Request for legitimation of the adoption of an Indonesian child by an Indonesian citizen;
- (b) Request for legitimation of the adoption of an Indonesian child by a foreign citizen;
- (c) Request for legitimation of the adoption of a child of a foreign citizen by an Indonesian citizen.



11. Traditional adoption is included under the classification in subparagraph (a) above. This is due to the fact that adoption certificates are usually required as evidence in applying for children's allowances, schooling and tax purposes, etc. These certificates are obtained by the foster parent by receiving an endorsement from a court of law. Legalization of adoption can also be achieved by decision of a court of law once all requirements, such as payments and clearance, are fulfilled.

JAMAICA

[Original: English]

[19 May 1980]

The Government of Jamaica has studied and is in accord, in principle, with the provisions of the draft Declaration contained in General Assembly resolution A/36/167, annex. With particular reference to paragraph 17 of the draft, Jamaica considers it the right of each individual to be aware of his/her true identity. There should be further research to assess the desirability of adopted persons being able to discover their origins at the age of majority.

JAPAN

[Original: English]

[15 April 1980]

1. We have no objection to paragraph 22, provided that "proxy adoption" here does not include the case of a child being represented by his/her legal representative in giving his/her assent to his/her adoption. If, however, the said term is meant to include that case, we cannot agree with this paragraph.

2. If not legally binding, the particular sentence in paragraph 23 which says that "It must be definitely established that the child will be able to immigrate into the country of the prospective adopters and can subsequently obtain their nationality" is considered inappropriate in that, if granting of an entry permit is a prerequisite for an intercountry adoption, there is the possibility of such an adoption being made use of by any person as a means for getting himself or herself into the country where he or she wishes to live. On the other hand, another possibility is that an application for such an entry permit will eventually be turned down in the light of various factors surrounding it; and that it will be technically difficult for the authorities concerned to determine how to handle the particular person who fails to effect the adoption after being admitted into the country concerned on condition of his or her adoption in that country. It is recommended in this connection that this particular sentence should be modified either by the insertion of a phrase like "as a principle" or by replacing the part of the sentence which reads "it must be definitely established that ..." with a more moderate expression such as "efforts should be so exerted that ...".

/...

3. Further, if the said sentence is interpreted to imply that the country of the adopter concerned is required as a matter of course to provide the child adopted with a nationality at the time adoption is effected, we cannot agree with the paragraph on that point.

KUWAIT

[Original Arabic]

[7 April 1980]

A. Position of the Council of Ministers, Department of  
Legal Advice and Legislation

General family and child welfare

1. With regard to the principles of general family and child welfare, the Kuwaiti Constitution provides guarantees for the family, motherhood, childhood and youth and makes their welfare a basic principle of society. Article 9 states that "the family is the foundation of society and is based upon religion, ethics and patriotism. The law protects and strengthens the family, and under its auspices, protects motherhood and childhood". Article 10 states that "the State takes care of youth and protects youth against exploitation and against moral, physical and spiritual neglect".

Foster placement

2. The provisions of the Declaration on this matter seek to affirm the right of every child to live in a family and the consequent regulation of placement of children outside of their biological family, either with another family or in specialized institutes.

3. We have no objection to accepting the principles set forth in this regard, except for those relating to the transformation of foster care into adoption of the foster-child, e.g., the statement, in paragraph 10 of the Declaration, that foster care should serve as a bridge to permanency for a child, either through restoration to the biological family or through adoption.

4. We should point out that, in Kuwait, Act No. 82/1977 on foster care was promulgated on the basis of articles 7, 9 and 10 of the Constitution, which lay down the basic principles of society with regard to co-operation and mutual understanding between citizens and the welfare of the family, motherhood, childhood and youth. The aim of this Act is to compensate natural children for the parental affection of which they are deprived and to provide for them a life which comes as close as possible to life in a biological family. This prohibits, however, a transition from the foster family to adoption, which is forbidden by the Islamic Shar'ah.

### Adoption

5. The primary purpose of laying down provisions for adoption in the Declaration is to provide a permanent family for a child who cannot be cared for by his/her biological family (para. 12), so that the child becomes a member of this family (para. 16) and obtains its nationality (para. 23). That means that the Declaration interprets the term "adoption" in an absolute fashion: a person takes the child of another, a child of known parentage, to be his own child, so that the régime of affiliation applies and the adoptee is entitled to inherit from his adopter and is prohibited from marrying those whom a biological child would be prohibited from marrying. Islam has stated clearly the invalidity of such adoption and the invalidity of its effects. God Almighty says: "He did not make your adopted children your children. That is what you say with your mouths, and God speaks the truth and leads you on the right path. Attribute them to their parents; that is more just before God. If you do not know their parents, then to your brothers in religion and your associates" (Surat al-Ahzab, verses 4 and 5).

6. It is, therefore, not possible for us to accept the provisions of that part of the Declaration which deals with adoption or the reference to that system in the paragraphs on foster care, as we have explained above.

7. However, although Islam prohibits adoption, as explained above, it lays down other provisions for foundlings of unknown lineage. Islam permits a person to acknowledge that such a foundling is his son. This is not regarded as adoption but as an affirmation of parentage. There are three conditions, namely, that:

- (a) The child is of unknown parentage;
- (b) Such a child could have been born to that person, i.e., the age difference permits such attribution;
- (c) The child accepts the affirmation of parenthood, provided that he is capable of doing so, i.e., has attained his majority.

B. Position of the Ministry for Social Affairs and Labour,  
Youth Welfare Department

### Welfare of children

8. The State of Kuwait has accorded great attention to the welfare of children for humanitarian, religious and social reasons. The State regards solicitude for children as a preventive measure against the delinquency of maladjustment in their private lives or in their relations with society which might arise if the issue of children were neglected. Article 9 of the Kuwaiti Constitution states that the family is the foundation of society and is based on religion, ethics and patriotism and that the law safeguards the existence of the family, strengthens its bonds and protects motherhood and childhood within its framework. Article 10 provides that the State takes care of young people, protects them against exploitation and shields them from moral, physical and spiritual neglect.

9. Proceeding from these ethical and social principles which the Kuwaiti Constitution stresses as a part of the essence of Kuwaiti society, the Government has accorded attention to the categories of natural children who have been prevented by circumstance from being brought up and cared for in their biological families, such as children of unknown parentage or children from broken homes. In 1961, the Ministry of Social Affairs and Labour established a children's home to provide accomodation and care for these categories of children. This Home has been accorded the closest attention by officials in order to ensure that these children are compensated for the parental affection of which they have been deprived. The Ministry endeavours to provide specialized personnel, consisting of social and psychological specialists and social supervisors to care for the children, and the personnel are also provided with modern expertise in child-raising through specialized courses in all aspects of welfare and supervision. The Home divides the children into units that are as close as possible to foster families.

10. As a result of its concern about these categories of children, the Ministry decided to separate boys over 12 years of age and established a special home for them (Boys' Hostel), consisting of 12 apartments. The boys, who total 23, are divided into seven groups, by age and educational and vocational level, and each group occupies a separate apartment. The boys are supervised by an integrated team of technical and administrative staff, including a number of male and female upervisors who act as substitute parents.

11. Below are statistical tables covering all categories.

Table 1  
 Numerical development of the inmates of the Children's Home, 1961-1979

Year	1961	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	
Number of children																				
without family:	34	31	58	69	104	134	66	46	52	68	84	84	88	98	105	110	117	119	144	
from broken homes:	-	-	61	12	17	56	51	45	52	37	21	26	27	22	25	33	31	39	23	
Total	34	31	119	81	121	190	117	91	104	105	105	110	115	120	130	143	148	158	167	

Note: From table 1 may be seen that:

The number of children of unknown parentage increased by 25 last year.

The total number of the inmates of the Children's Home increased by 9.

The number of children from broken homes decreased by 16 last year as against the previous year. This is due mainly to the fact that the family situation of those cases has improved, as a result of the follow-up action of the Bureau of Social Research. Those cases have been sent back to lead a natural life in their biological families.

Table 2  
Numerical breakdown of the inmates at the Children's Home by age and sex

Age group	Under 2	2+	4+	6+	8+	10+	12+	14+	16+	18+	20 and above	Total
Sex:												
Male	20	22	12	17	7	5	-	-	-	-	-	87
Female	22	12	14	10	7	2	-	4	2	3	4	80
Total:	42	34	30	27	14	7	-	4	3	3	4	167

Note: From table 2 it may be seen that:

The great majority of the children are less than 2 years old. A large percentage are between 6 and 12 years old, and a small percentage are over 12 years old (all of them female).

The percentage of male children, in the Home is greater than that of females. The proportions correspond to those in the society outside.

Table 3  
 Numerical breakdown of the inmates of the Children's Home by family and by sex

Family	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	Total
Sex																		
Male	2	6	7	5	6	3	5	6	3	7	5	5	6	6	4	5	6	87
Female	7	5	3	4	4	6	5	4	7	3	5	4	4	4	6	5	4	70
Total:	9	11	10	9	10	10	10	10	10	10	10	9	10	10	10	10	10	167

Note: From table 3 it may be seen that:

Families 1-5 comprise infants and small children from about 1 week to 2 1/2 years of age. The infants' section of the Home comprises 49 children.

Families 6-17 comprise children from 2 1/2 to 24 years of age.

Table 4

Numerical breakdown of the inmates of the Children's Home by social situation and sex

Social situation	C h i l d r e n f r o m b r o k e n h o m e s							Overall total
	Without family	both parents dead	mother dead	mother divorced	mother ill	mother in prison	father dead	
Male	80	1	3	1	2	-	-	7
Female	64	2	5	2	5	1	1	16
Total	144	3	8	3	7	1	1	23

Note: From the table it may be seen that:

The total number of children without a family is 144, 80 of them male and 64 female.

The total number of children from broken homes is 23, 7 of them male and 16 female.

Table 5

Numerical breakdown of this year's admissions by sex and reasons for admission

Reasons for admission	W i t h o u t f a m i l y				B r o k e n h o m e s				Overall total
	Referred by official agency	girls returning	children returning from foster care	Parents unknown	mother ill	mother dead	mother in prison	Number of cases from broken homes	
Male	13	-	1	14	14	5	-	8	22
Female	18	1	-	19	19	2	1	7	26
Total	31	1	1	33	33	7	1	15	48



Table 6

Numerical breakdown of the inmates of the Children's Home by sex and educational level

Sex	Educational level	Kindergarten	Primary	Intermediate	Secondary	Technical education			School enrolment or employment	Not employed or at school	Overall total
						Nursing institute	Training in the institutes	Female employees			
Male	16	27	2	-	-	1	-	46	41	87	
Female	13	15	4	2	1	5	3	43	37	80	
Total	29	42	6	2	1	6	3	89	78	167	

Table 7

Breakdown of the inmates of the Boys' Hostel by academic, training and employment level

Level	Number	Primary	Intermediate	Advanced theoretical education	Training	Employment	Total

Foster care

12. It is, nevertheless, believed that, to whatever degree this Home may provide a child with care and concern, it will be unable to satisfy a large portion of his psychological need, which can be satisfied only in the bosom of a family where the child feels secure and confident and finds true love, natural tenderness and parental affection. When the State perceived the desire of some citizens to raise these children, out of love, kindness and pity towards them and seeking God's reward, it introduced the system of foster care, which was first applied in August 1967, under which a child is placed in a family which provides him with an opportunity for a happy life and where the child feels the love, affection and confidence which he does not have in the Children's Home. This is a system which differs in form and in substance from adoption, which is prohibited by the Islamic Shari'ah. The Foster Care Act, promulgated by Amiri Decree NO. 82 of 1977 on foster care, laid down the conditions which must be met by a prospective foster parent as follows:

(a) He must be a Kuwaiti national and of the Muslim faith;

(b) He must be not less than 30 years of age;

(c) He must be currently capable of caring for a foster child;

(d) He must be of good repute and must not have been convicted of a crime or a moral offence, unless he has been rehabilitated;

(e) He and the members of his household must be free from contagious diseases and mental disorders.

13. As an exception and in the case of necessity, an unmarried or divorced Kuwaiti woman or one whose husband has left Kuwait permanently may be permitted to be a foster parent.

14. Article 4 of the Foster Care Act prohibits engagement in any matter relating to foster care by individuals and private organizations, and the Act entrusts matters relating to foster care to a committee called the "Foster Care Committee". Article 5 of the Act provides that this Committee shall be constituted under the chairmanship of the Under-Secretary of State for Social Affairs and Labour, and the vice-chairmanship of the Assistant Under-Secretary. Its members include representatives of the Ministries of Social Affairs and Labour, Education, the Interior, Justice and Public Health and two members who are citizens concerned with children's affairs. The Committee may seek assistance from such specialists as it deems appropriate, but the specialists do not have the right to vote on the decisions of the Committee.

15. The competence of the Foster Care Committee includes the following:

(a) The establishment of a general policy for the foster care system which guarantees the welfare of foster children and ensures that they are given a sound upbringing and that their needs are met;

- (b) Consideration of reports, studies and recommendations on questions relating to foster care which are submitted to it by the competent authorities; the Committee may request from these authorities such reports and studies as it deems necessary;
- (c) Acceptance or rejection of applications from prospective foster parents;
- (d) The granting of financial assistance to any foster family which suffers any economic injury or material decline;
- (e) Abrogation of foster placement decisions;
- (f) Co-ordination of the services of the Ministry and those of the other administrative authorities in the field of the welfare of children of unknown parentage.

The Committee also considers the cases of children placed in foster care through channels other than those of the Ministry of Social Affairs and Labour and extends the application of the provisions of this Act to such cases.

16. Article 3 of the Foster Care Act stipulates that foster care terminates when the foster child reaches his majority, by which is meant the age at which the mental and social maturity of an individual is complete and he is capable of assuming his responsibilities and conducting his own affairs. Article 9 of the Foster Care Act allows the Ministry of Social Affairs and Labour to take any precautionary measures that may be necessary to protect a foster child, even before the issuance by the Committee of a decision to terminate foster care, including taking charge of the foster child, for his protection and benefit. Article 11 of the Act provides that the supervision and follow-up of these foster children is a right of the Ministry of Social Affairs and Labour which ceases only with the foster child's attainment of his majority. The Ministry has drawn up measures for supervision and follow-up through the Foster Care Inspectorate of the Youth Welfare Department in the Ministry of Social Affairs and Labour. Female workers of the Inspectorate - specialists and social researchers - supervise the child and monitor the care which he receives in the foster family through the scheduling of periodical visits to the foster families, as follows:

- (a) Weekly visits during the first month;
- (b) Monthly visits during the first year following the first month;
- (c) If the child proves compatible with the foster family and has been well cared for during the first year, a visit once every three months during the second year, which is subsequently cut down to a visit once every six months.

After each visit to the foster child, the specialist submits a report on the child's condition, the degree of his compatibility with the foster family and the quality of the care provided by the family. Should any problem emerge which interferes with the child's relationship to the foster family, weekly visits are resumed until the child's adjustment to himself, his family and his school is

restored. It is clear from the above that the foster care system is entirely different from adoption, which is prohibited by the Shari'ah, inasmuch as the Act provides for the possibility of the abrogation of foster care, reclamation of the foster child and the termination of foster care when the foster child reaches his majority, and inasmuch as the last paragraph of article 11 of the Foster Care Act stipulates that the Ministry of Social Affairs and Labour shall provide the necessary care upon termination of foster care in cases where this is required. A former foster child may find himself in circumstances in which he needs assistance and support, for example, where a girl is divorced or a boy needs assistance for education. In such cases, the Ministry, as a continuation of its duty towards these young persons, extends assistance to them according to its capacities.

20. We should draw attention here to the fact that the Ministry of Social Affairs and Labour has defined the obligations of a foster family towards a foster child in article 4 of Ministerial Decision No. 66 of 1977, on the basis of the principle that a foster parent is the guardian of the foster child, as follows:

- (a) Protecting the child, supplying his daily needs and providing health, psychological and social care;
- (b) Enrolling the child in school, monitoring his academic achievements, providing guidance and co-operating with the school in all matters affecting the child;
- (c) Providing religious, patriotic and ethical guidance and education;
- (d) Monitoring any changes which may occur in the child's health, psychological and academic circumstances, notifying the Youth Welfare Department of such changes, and co-operating with foster care officials in monitoring the child's development, providing him with assistance and endeavouring to solve his problems;
- (e) Notifying the Youth Welfare Department if the foster parent changes his place of residence in Kuwait;
- (f) Not leaving the country with the child before obtaining the consent of the Youth Welfare Department to such a step.

21. Article 5 of this Ministerial Decision defines the cases in which the Foster Care Committee may abrogate foster care. These are:

- (a) On the basis of a request by the foster parent or the foster child;
- (b) Where the foster parent dies or is intermittently absent and the remaining spouse refuses to provide foster care for the child;
- (c) Where it is proven that the family is remiss in the care of the child;
- (d) Where a couple separate and both spouses refuse to care for the child.

22. Article 6 of this Decision permits, instead of the abrogation of foster care in the cases set forth in article 5, the transfer of the child to a new foster parent, either a relative of the first foster parent or another person who meets the requirements for foster parenthood.

23. The above shows clearly the extent to which the State of Kuwait is concerned with the welfare of children and caring for the generation of the future, its sound upbringing and the guaranteeing of its rights, foremost among them being Kuwaiti nationality, which is guaranteed by law for every child born in Kuwaiti territory of unknown parentage. In addition, there is the creation of the saving system.

24. On the basis of Ministerial Decision No. 1 of 1970, promulgating the Statute of the Savings Fund for Children of Unknown Parentage, the Ministry of Social Affairs and Labour saves the sum of 10 dinars per month for each one of these children, whether the children are in a children's home or in foster care, until each child reaches the age of 21. The Statute was amended by Ministerial Decision No. 7 of 1977, which increased the monthly amount saved for each child to 20 dinars. The savings installments are paid out of classified convertible expenditures, under the head of general assistance from the budget of the Ministry of Social Affairs and Labour. Payment of savings contributions for each child begins after his admission to a children's institution, counting from the second month after his birth. The amount paid to the account of each child is entered in the savings registers of the Services Department and the Department of Social Affairs and Labour (inmates of the Children's Home). The interest paid by the bank on the money deposited in each child's account is added to his savings. Payment of the savings benefit to a child ceases in the following cases:

- (a) When the child reaches the age of 21 years;
- (b) In the event of death;
- (c) If the child's parentage is established and he is handed over to his family.

25. The amount of the savings is paid to the person concerned, upon attainment of the age stipulated in the Statute, in successive instalments in the following instances:

- (a) Upon the person's execution of an economic or social project of proven benefit to him;
- (b) Upon attainment of steady employment and establishment in the community or upon marriage.

By a ministerial decision, a proportion of the savings not exceeding 50 per cent may be paid to the person before he reaches the age of 21, where it is established that he is in urgent need of such an amount and it is impossible for him to obtain it from another source. We give below the statistical data for foster care activity.

Table 8

Breakdown of foster-children by age groups as at end December 1979

Age group	Under 2	2+	4+	6+	8+	10+	12+	14+	16+	18+	Total
Male	8	7	10	14	21	13	19	14	6	3	115
Female	8	10	26	18	23	15	21	17	10	8	156
Total	16	17	36	32	44	28	40	31	16	11	271

Table 9

Numerical development of foster-children, 1967-1979

Year	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Children consigned to foster care	91	40	23	10	26	27	10	18	24	19	8	13	13
Children returned	6	14	6	2	3	1	3	1	1	1	1	4	1
Deaths	-	2	-	-	-	-	-	-	-	2	-	-	-
Total at end of year	100	102	122	136	154	180	181	204	227	243	250	259	271

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Table 10

Breakdown of foster-children by academic level for the academic year 1979/80

Academic Level	Kindergarten		Primary				Intermediate				Secondary				Special institutes	Total
	1	2	1	2	3	4	1	2	3	4	1	2	3	4		
Sex																
Male	2	9	6	12	10	15	11	10	9	6	3	1	-	-	4	98
Female	13	14	10	13	15	11	16	20	7	8	3	1	-	1	1	133
Total	15	23	16	25	25	26	27	30	16	14	6	2	-	1	5	231
Total	38			92			87				9				5	231

Table 11

Breakdown of foster-children not attending school

Category	Under school age	Mental retardation	Employment	Military Service	Marriage (females)	Departure from Kuwait	Total
Male	13	1	2	1	-	-	17
Female	15	1	1	-	5	1	23
Total	27	2	3	1	5	1	40

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The preceding table 9 shows that the number of children in foster care at the end of 1979 totalled 271.

Table 9 shows that they comprised 115 boys and 156 girls placed in 236 foster families, 202 of these families providing care for 1 child, 33 for 2 children and 1 for 3 children.

MALTA

[Original: English]

[19 August 1980]

1. The draft Declaration of Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally is eminently laudable and reflects the most advanced social thought and practice.

General family and child welfare

2. As regards the first six paragraphs, recognition of their value in Malta has led to the introduction of numerous social measures aimed at enabling heads of families to provide the best possible upbringing for their children. Such measures include the introduction of a national minimum wage, statutory wage increases, children's allowances payable by the State, free education and free health services, as well as various social security benefits designed to assist the unemployed, the chronically ill and other deserving sectors of the community.

3. Welfare Officers in the Department of Social Services are given training both locally and abroad, within the limits of Malta's limited economic resources.

4. Paragraphs 1 to 6 have our full agreement.

Foster placement

5. Legal provision for foster placement has been introduced in Malta by the Children and Young Persons (Care Orders) Act, 1980. Under this Act foster placement is under the general supervision of the Minister responsible for Social Welfare, who is assisted by a board known as the Children and Young Persons Advisory Board.

6. Paragraphs 7 to 11 have our full agreement, provided that as regards paragraph 10, the overriding consideration remains the provision of a stable environment conducive to the full development of the child's personality.



Adoption

7. Adoption in Malta has always been resorted to wherever possible in preference to institutionalization. It is regulated by law under the general supervision of the Court of Voluntary Jurisdiction in terms of the relevant provisions of the Civil Code and regulations made thereunder.

8. Paragraphs 12 to 25 have our agreement, subject to the following comments:

(a) Paragraph 17

While the adopted persons' need to know about their background is fully recognized and appreciated, there should never be a legally enforceable obligation on the part of the public authorities, forcing the adoptive parents or any other person or persons involved in the adoption to divulge such information to the adoptees. This is particularly relevant in the context of a small, insular community where compulsory revelation of adoptees' backgrounds may create unnecessary problems.

(b) Paragraph 19

Intercountry adoption should only be resorted to when possibilities of adoption within the country are exhausted.

NETHERLANDS

[Original: English]

[18 April 1980]

Paragraph 3

1. If the biological parents are not, or are no longer, able to take care of the upbringing of their children and if placement in a foster family is indicated, the interests of the child should prevail when deciding who the foster parents are going to be. Thus, placement either with other family members or in a foster family can be considered, and the former should not be preferred to the latter as a matter of principle.

Paragraph 17

2. In the Netherlands, prospective adoptive parents start informing the children about the adoptive or foster relationship as early as possible. Reference should be made here to article 227, paragraph 4, Book 1 of the Civil Code as amended by the Act of 13 September 1979 (Staatsblad - Bulletin of Acts, Orders and Decrees - 501) which entered into force on 1 November 1979. Under this article the courts are obliged to hear a child of twelve years or over on the subject of an application to adopt. Paragraph 17 is clearly less far-reaching.

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Paragraph 18

3. It is not entirely clear what is meant by this paragraph. It should be pointed out that under Netherlands law, adoption of lineal descendants is only permitted if adoption by a biological parent and a step-parent is concerned. Grandparents may not adopt a grandchild. The law does not prohibit other types of adoption within the family.

4. With the exception of the above points, the Netherlands Government approves of the draft Declaration as contained in General Assembly resolution 36/167, annex.

NEW ZEALAND

[Original: English]

[11 November 1980]

Paragraph 8

It is suggested this should read:

"Children for whom institutional care was formerly regarded as the only option should be placed with families who can provide long-term substitute care either by fostering or adoption."

Paragraph 10

It is suggested this should read:

"Foster family care should be a planned, temporary service as a bridge to permanency for a child, which includes but is not limited to restoration to the biological family, stable long-term fostering with adequate security, or adoption."

Paragraph 11

It is suggested that the word "competent" is unnecessary and should be deleted.

Paragraph 12

It is considered that this section pays insufficient regard to the growing view that the adopted child need not be cut off from all contacts with its biological family. A child who cannot be brought up by his biological parents requires permanent family care but this need not imply the complete substitution of the adoptive family for the biological family in the child's life.

Paragraph 17

It is considered that this paragraph treats only one side of the problem. A need for the natural and adoptive parents to know the family background of each other should be recognized as equally valid and this should be reflected in the draft.

This particular provision is not met in New Zealand law at present. The Adoption Act 1955 and the Births and Deaths Registration Act 1951 contain restrictions, respectively, on access to court records on adoption and to the original birth certificates of adopted persons. The issue of opening up access to this material is politically sensitive and it is not possible at this stage to predict whether the law will be changed.

Paragraph 18

It is considered that the meaning of this paragraph is not clear. If "traditional adoption" means, for example, adoption by Maori custom, this is no longer recognized in New Zealand law. On the other hand, New Zealand law does recognize legal adoption within the family, even to the extent of permitting a natural mother and her husband to adopt the mother's child. The reference to counselling is obscure.

Paragraph 19

It is suggested that the second sentence begin "For some children ..."

Paragraph 23

The recognition of an overseas adoption in New Zealand law turns not on the nature of consent forms but on the legal validity of the adoption in the place where it was made (sect. 17 of the Adoption Act 1955). Under subsection 3 (2) and 7 of the Citizenship Act 1977 a child adopted overseas by a person who is a New Zealand citizen (other than by descent) automatically becomes a New Zealand citizen if the adoption order is recognized in New Zealand under section 17 of the Adoption Act. Subject to the requirements of section 17, a child adopted overseas by a New Zealand citizen (other than by descent) acquires New Zealand citizenship and is entitled to entry to New Zealand in his own right.

Paragraph 24

Although the New Zealand authorities approve of this statement in principle, such assurances could only be given if an international standard of adoption law was developed.

NORWAY

[Original: English]

[27 May 1980]

Paragraph 3

It is suggested that a reservation be made to the effect that such "other family members" must be suited for the task, and that the child should be placed where it is the best for him or her.

Paragraph 6

It is not clear if "providers of service" also include persons involved in the various stages of the process of mediating the adoption, i.e., the adoption societies. If so, it is suggested that a modification be made on this point.

Paragraphs 7 and 8

These paragraphs might possibly be modified, for instance with: "in cases where this is a possible and a better solution for the child". The placing in foster homes is often a better solution for the child than institutions, but there are exceptions. One should therefore try to find a language which underlines the necessity of evaluating this in comparison to the situation of the individual child and the possibilities that exist.

Paragraph 10

This paragraph is unclear, as it is emphasized that the placing in a foster home should be a temporary disposition - serving as a bridge to a final solution for the child - while, at the same time, returning the child to the family or adoption cannot be considered as the only possible solutions. As far one can see, the alternatives in such cases are permanent placement either in a foster home or in an institution.

Paragraph 13

Flexibility seems adequate in cases of adoption in the home country, but more difficult to accept for adoptions abroad.

As regards paragraphs 1 to 8, it should be made clear whether they are restricted to national conditions. If so, the above comments will be valid only for paragraphs 3, 8 and 10.

PERU

[Original: Spanish]

[13 February 1980]

General family and child welfare

1. The six principles proposed in relation to general family and child welfare are compatible with the provisions of the Minors' Code currently in force in Peru; they strengthen the guidelines of the policy for minors advocated by the National Institute for the Welfare and Protection of Minors and the Family (INAPROMEAF); and they are also in line with the Declaration of the Rights of the Child.

Foster placement

2. With regard to foster placement, through the "substitute homes" programme (foster placement) the provisions of paragraphs 7 to 11 of the Declaration of Principles have been put into practice experimentally in Peru, and favourable results have been obtained. It should also be noted that INAPROMEAF is responsible for carrying out all activities benefiting children.

Adoption

3. With regard to adoption, national legislation and the policy for the protection of minors in Peru fulfil the principles proposed in the Declaration.

Peruvian adoption procedures were modified on 13 June 1978 through the issuing of decree-law No. 22209. Its provisions increased the flexibility of adoption procedures concerning abandoned children and those in moral danger (children in special situations) and facilitated the placement of children in adoptive families. These provisions are also being continuously evaluated so as to develop both the legal norms and the services provided in this connection.

POLAND

[Original: French]

[14 April 1980]

1. Polish legislation contains the main principles defined in the draft Declaration and ensures that they are carried out both in the State's social policy and in the practices of the courts and the administration. The aim is to guarantee that every child is raised in a family setting, whether his biological family or a foster family.

2. In accordance with article 79 of the Constitution of the Polish People's Republic, marriage, motherhood and family are safeguarded and protected by the State. It is the parents' duty to bring up their children properly, while the State ensures the implementation of the rights and obligations of maintenance.
3. The child's welfare is the basic principle of the Polish Code of the Family and Guardianship. This Code governs problems relating to affiliation, parental authority, adoption, maintenance, guardianship and tutelage. The child's welfare is also the basic criterion for the exercise of parental authority and guardianship. This criterion in turn is a decisive factor in the decisions taken in connection with the family; ensuring the child's welfare is considered to be in the interest of society. Legal measures can be taken vis-à-vis persons who fail to fulfil their obligations relating to parental authority and guardianship; these measures include loss of parental authority and a change of guardian.
4. The courts and other State bodies must assist parents in exercising parental authority.
5. The principle of the equal rights of all children, as expressed in the draft Declaration, has for a long time been fully reflected in the Polish Family Code. As early as 1945-1946, decrees were issued to deal with rights in marriage, relations between parents and children, guardianship and the equality of rights between children born out of wedlock and those born in wedlock.
6. The current Code of the Family and Guardianship defines the principles governing adoption in the light of modern practice.
7. According to Polish law, only minors may be adopted and only if this is in their interest (art. 114, para. 1). The decision concerning adoption is taken by the surrogate's court, according to an incontrovertible procedure, at the request of the adopter and with the consent of the adoptee, if he/she is 13 years of age or older. Theoretically, the consent of the adoptee's parents is required or, when the adoptee has a guardian, that of his guardian. The detailed provisions governing this subject are contained in articles 117 to 120 of the Code of the Family and Guardianship.
8. As to the situation resulting from adoption, current Polish law provides for three possibilities. The 1964 Code endorsed the principle of full adoption (art. 121). However, it left open the possibility of minus plena adoption, which can be decided at the request of the adopter and with the agreement of the persons whose consent is required (art. 124, para. 1). In the light of these provisions, new changes have been proposed. For example, it has been suggested that provisions governing the secrecy and irrevocability of full adoption should be introduced. Jurists have pointed out that these postulates are particularly justified in the case of adoption based on the blanket consent of the parents, because in such situations there is generally a break in all the ties between the adoptee and his biological family and the adoptee is raised to believe that he is the child of the adopter. The disclosure of his real parentage might be a serious psychological trauma for him.

9. These opinions have determined the orientation of the amendments made to the provisions on adoption by the Act of 1975. Adoption based on the blanket consent of the parents now has specific consequences:

(a) It can entail only full adoption (art. 124, para. 2). If two spouses adopt the child jointly (cf. art. 115, para. 1), a new birth certificate is drawn up for the adoptee, listing the adopters as his parents, and the previous birth certificate may no longer be disclosed;

(b) The adoptee may not be acknowledged nor may his parentage be established judicially (art. 124);

(c) The adoption may not be revoked (art. 125).

10. Polish law does not provide for any cancellation of adoption. Regular full adoption as well as minus plena adoption can be revoked by a court decision handed down, through litigation, at the request of the adoptee or the adopter, or of the public prosecutor (art. 125 and art. 127). By law, such a decision can be justified only on serious grounds. This question is the subject of quite a wealth of Supreme Court jurisprudence. Generally speaking, serious grounds are considered to be only those circumstances which justify the revocation of adoption, in view of the rules of life in society. Legal opinion reflects a trend towards a restrictive interpretation of such circumstances. Thus, neither the difficulties encountered in raising the adoptee nor negligence on the part of the adopter in the exercise of his duties, even when such negligence might justify loss of parental authority, are considered to be sufficient grounds for revocation. According to a widely-held opinion, the party who bears sole responsibility for preventing the establishment or the strengthening of an emotional tie between the adopter and the adoptee - a tie proper to any family relationship - may not request the revocation of adoption.

11. The provisions of paragraph 17 of the Declaration concerning the adoption of adult persons cannot be implemented under Polish legislation, because this legislation provides only for the adoption of minors. However, these provisions should be kept in the draft Declaration, because the legal systems of some States recognize the adoption of adults.

12. The various activities undertaken in Poland, particularly in connection with public education, health protection, the systematic development of different types of social benefits, the development of substitute families and of foster homes for children, ensure the general welfare of all children, even of those who cannot be raised within their biological family.

13. The placement of children in substitute families is governed by the regulation concerning substitute families adopted by the Council of Ministers on 26 January 1979 (dziennik Ustaw/Journal of Laws/No. 4, text 19) and by the regulation issued by the Minister of Instruction and Education of 21 September 1979 concerning the selection of substitute families and the principles governing assistance to such families (Monitor Polski, No. 24, text 135). The provisions of article 22 of Poland's private international law (the Act of 12 November 1965, Journal of Laws No. 45, text 290) implement the provisions of the draft Declaration

(paras. 22-23). In accordance with this article, the national laws of the adopter apply to adoption, while the provisions of the national laws of the person to be adopted are maintained, insofar as they relate to this person's consent, to that of his legal representative or to the authorization of the competent State body.

14. The draft Declaration should be supported, because it alerts States to the need for them to continue to increase the protection of children's rights through the adoption of various measures, including legislative measures.

15. One thing should be stressed: in 1978, Poland took the initiative of proposing the adoption of a convention on the rights of the child and, since that time, it has actively sought to attain this objective. The draft convention submitted by Poland (E/CN.4/1349) on 17 January 1980 is consistent with the draft Declaration in many respects: its provisions represent a generalization of the principles set forth in the Declaration on the social and legal principles relating to adoption and substitute families.

#### QATAR

[Original: Arabic]

[18 June 1980]

The State of Qatar has considered the draft Declaration on Social and Legal Principles relating to the Protection of Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.

1. The State of Qatar approves the content of the principles of general family and child welfare. Family welfare is a part of child welfare, and priority in child care should be accorded to a child's natural parents and then to a family member.
2. Where for any reason, it is not possible for the natural parents or the family to care for the child, responsibility falls on the society.
3. The society should shoulder its responsibility for care of the child in accordance with its laws.
4. Since the Islamic Sharia is the basis of legislation in the State of Qatar and since the Islamic religion categorically forbids adoption, the State of Qatar does not endorse the provisions of the part of the above-mentioned Declaration relating to adoption.
5. The foster placement system, where the child is placed in a family which gives him an opportunity for a secure life and where he feels the love, affection and security which he is missing, differs in form and content from adoption, inasmuch as foster care may be terminated and the child reclaimed from the foster family, and this system is lawful and commendable in the Islamic religion.



ROMANIA

[Original: French]

[25 March 1980]

1. Romania has always supported United Nations efforts to elaborate international documents in the social and humanitarian field. Thus the competent Romanian authorities have studied with interest and all due attention the "Draft Declaration on Social and Legal Principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally".

2. In keeping with the position it expressed in the Commission for Social Development and the Economic and Social Council, Romania considers - by way of a general comment - that drafting this Declaration is an important and timely step and consequently it supports the document.

3. The Romanian authorities share the conviction that once all the comments and observations by States on the draft Declaration have been received, it will be possible to prepare a document which is genuinely useful for the international community, which is based on the same principles as other similar documents adopted by the United Nations and which forms part of a series of important actions and steps taken on the occasion of the International Year of the Child.

4. Romania, wishing to take a constructive hand in drafting the Declaration, puts forward the following comments and suggestions:

(a) In accordance with international practice in drafting such documents, the Declaration could usefully be introduced by a preamble setting forth the principles it contains; the principles proclaimed in the Declaration of the Rights of the Child could serve as a reference.

(b) In the opinion of the Romanian authorities, the Declaration should - to forestall any possibility of exploitation - state the principle that adoption should be arranged only if it is in the minor's interest or at least does not serve purposes contrary to his interests.

5. It would be useful to consider the advisability of adding, in the section on adoption, a reference to the need for the consent of the minor adoptee (once he reaches a certain age). This would fall naturally into line with the principle set out in paragraph 11 of the section on foster placement, which also recommends consideration of the views of the child.

6. Since there are certain ethical norms and rules for maintaining physical well-being, it would be useful to consider including in the Declaration some recommendations regarding the legal position of the adoptee (age, capacity to function, financial situation), the acceptable age difference between the adopter and the adoptee, and the prohibition of fraternal adoption.

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SEYCHELLES

[Original: English]

[16 June 1980]

The Government of the Republic of Seychelles supports the Declaration in its entirety since it firmly believes that it is in the best interest of every nation to give a high priority to family and child welfare in its plans for the use and further development of national resources.

SINGAPORE

[Original: Spanish]

[2 April 1980]

General family and child welfare

Paragraphs 1 - 5

The principles are acceptable and are being practised in Singapore.

Paragraph 6

These provisions seem rather idealistic and might not be feasible in developing and underdeveloped countries where manpower resources are very limited.

Foster placement

Paragraphs 7, 8 and 10

The principles enunciated in these paragraphs are being observed in Singapore and are fully acceptable to us.

Paragraph 9

While it is a good measure for maintenance of a minimum standard in child welfare services, it will involve the registration and monitoring of private foster homes. Here again, it will be difficult to implement in some countries where resources are limited.

Paragraph 11

The principle under this paragraph is being observed for cases under the Social Welfare Department's Fostering and Home-makers' Schemes. However, it could

not be observed in private fostering cases because there is no compulsory registration and monitoring of private foster mothers. Here again, the recommendation is a measure to ensure a minimum standard of child care but owing to limited resources, such a recommendation may not be practical or feasible.

#### Adoption

##### Paragraphs 12, 13, 14, 16 and 18

The principles in these paragraphs are being observed in Singapore and we find them totally acceptable.

##### Paragraph 15

We would like to suggest that apart from giving sufficient time and adequate counselling to the biological parents to enable them to reach a decision on the child's future, this provision should also extend to the adoptive parents and to the child so as to permit them to make the necessary adjustments to adoption.

##### Paragraph 17

We agree to this proposal in principle but feel that professional help should also be made available to adoptive parents to assist them in preparing an adopted child for a better understanding of his/her status.

##### Paragraphs 19 - 24

These paragraphs, which pertain mainly to intercountry adoption, are good safeguards for the welfare of children who are involved in such practices. However, Singapore does not participate in intercountry adoption because of the shortage of supply of children for adoption.

##### Paragraph 25

We agree in principle to this provision though our Citizenship Act does not automatically grant our nationality to a foreign-born child who is adopted by local citizens.

#### General comments

We note in the draft Declaration that the age of the child is not given and we would like to suggest that anyone under the age of 21 should be regarded as a child for the purpose of this Declaration which is in line with the stipulation in our Adoption Act.

SPAIN

[Original: Spanish]

[28 March 1980]

This text - in the opinion of the Ministry of Culture - develops in a practical way the essentials of Principle 6 of the Declaration of the Rights of the Child of 20 November 1959. These rights are also recognized in article 39.4 of the Spanish Constitution now in force, where it is established that "Children shall enjoy the protection provided for in international agreements that are concerned with their interests".

SURINAME

[Original: English]

[30 May 1980]

The Government of Suriname has carefully studied the text of the draft Declaration and lends its support to that Declaration.

SWEDEN

[Original: English]

[14 February 1980]

1. The Swedish Government supports the efforts to adopt an international declaration regarding the above-mentioned subject. The Swedish Government considers that the adoption of such a declaration would be a welcome step in developing generally accepted guidelines that would improve the situation of children who, for various reasons, are not taken care of by their biological parents.

2. Sweden considers that the contents of the draft Declaration (A/34/289) that was prepared by a group of experts in Geneva in 1978 are generally acceptable. The text, however, contains some unnecessarily stringent provisions which could hamper the efforts to secure as wide as possible support for the Declaration. It is the conviction of the Swedish Government that these shortcomings could be overcome in the course of the further drafting work. For the time being he would like to limit the Swedish observations to the following points:

Paragraph 3

If the biological parents cannot provide care for their child the question of a substitute should naturally be considered against the background of what is in

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the best interests of the child. In such situations other members of the biological family may or may not be the best choice. In some cases, for instance, the grandparents could be considered too old and other persons would be a better choice. Against this background it is suggested that the expression "the first alternative" be replaced by "an alternative" or "an obvious alternative".

#### Paragraph 10

If a child is placed in a foster family on a temporary basis, the child ought to have the possibility of maintaining contact with its biological parents in order to facilitate the return of the child and to maintain the relationship between the child and its parents. It would be desirable that the right of the parents to visit their child be introduced into the draft Declaration, possibly in paragraph 10.

#### Paragraph 11

The draft declaration lacks any provision regarding the supervision of the well-being of the children that have been placed in foster families. A provision regarding the obligation of the competent authority in this respect should be introduced in this paragraph.

#### Paragraph 21

In Sweden a private person is entitled to apply for the adoption of children without going through authorized agencies. The Swedish Government therefore considers it desirable that the paragraph should read as follows: "In each country, placements should preferably be made ..."

For practical reasons it may sometimes be impossible to have the "pertinent documents necessary to complete the adoption" available at the time when an "adoption plan" is to be considered. An absolute condition in this respect could therefore jeopardize a substantial number of international adoptions.

When a foreign child is adopted in Sweden the application for adoption is examined on the basis of Swedish law. Thus it is not necessary for a Swedish court to ascertain what is required with regard to consent etc. according to the national law of the child. However, when an application concerns a child under the age of eighteen years, regard shall be paid to whether the child has a connection with a foreign State as a result of citizenship or domicile or otherwise and whether it would cause considerable inconvenience for the child if the adoption in Sweden would not become valid in that foreign State. (Sweden has not ratified the 1965 Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions.)

The wording "must be definitely established" in the third sentence appears to be too stringent. Swedish law does not explicitly provide that a foreign child who is adopted shall be granted a residence permit or Swedish citizenship. In practice, however, these questions are solved without delay after the adoption has been completed.

Paragraph 24

Normally, Swedish law does not provide that an adoption of a foreign child in Sweden has to be valid in the home country of the child as well. It could therefore create some difficulties if it was required "that legal validation of the adoption should be assured in the countries involved".

TRINIDAD AND TOBAGO

[Original: English]

[1 July 1980]

1. The Ministry of Labour, Social Security and Co-operatives of the Government of the Republic of Trinidad and Tobago established a Committee towards the end of August 1979 which had as its main task determining and making recommendations for the establishment of machinery for effectively protecting the rights and seeking the welfare of children.
2. In the course of its deliberations the Committee (which is still sitting) has recognized that special attention needs to be focused on all legislation relating to children, adoption being one of these, in addition to the whole question of placement, as well as the physical and operational conditions at existing institutions.
3. The views of the Ministry of Labour, Social Security and Co-operatives are in concert with those expressed in the draft declaration annexed to document A/34/289, and it is precisely because of this that the above-mentioned Committee was established.
4. The particular circumstances of our country make the existence of institutions necessary. We however contemplate veering away from large institutions to family-size units in instances where foster or adoptive arrangements are not possible.
5. Finally, since the activities of separate agencies impinge on the work of each other as they relate to the welfare of children, three key institutions are being considered:
  - (a) An office which will at all times seek the welfare and protection of children whether in adoption, foster placement or otherwise;
  - (b) Machinery for co-ordinating the functions of the separate agencies;
  - (c) A family court with appropriate support services sensitive to the principles outlined in the draft.

TUNISIA

[Original: French]

[21 April 1980]

1. While subscribing to the principles set forth in the draft Declaration we have deemed it opportune to make the following comments:

Foster placement

2. Tunisia's experience concerning assistance and social and legal protection for children has led to a number of major conclusions. First of all, it must be emphasized that maintenance of the child in his biological family must be preferred to institutional care and that the latter must continue to be the exception.

3. However, when an alternative environment is necessary in order to safeguard the child's physical and moral integrity, the child should be returned to his family of origin as quickly as possible; care should also be taken to ensure the development of the child who is taken from his family and to give him equal opportunities.

4. In order to attain these objectives which are those listed in the draft Declaration, a number of options must be considered: personalization of the service provided to the child, broadening of the horizons of the specialized institutions, utilization of methods of stimulation so as to encourage the child's full development and, lastly, organization of a campaign to recruit foster families.

5. Moreover, placement of the child in an alternative environment as an emergency measure in the event of conflict situations must not turn into a de facto situation and must not be felt by the child and his family as an unjust reflection of the precariousness of socio-economic conditions.

6. Furthermore, in order to ensure that the principles laid down in the draft Declaration have the desired effectiveness, it is necessary to see to it that the interest of the biological parents or of the legal representative is maintained concerning the various contacts with the child, to give the parents whatever support is necessary for their rehabilitation so that they can assume their responsibility as educators, to give each child individualized assistance and, lastly, to promote appropriate legislative and financial means necessary for the establishment of an operational network of structures ready to support and strengthen such action.

Adoption

7. When considering alternative environments for the child, adoption at the national level must be seen as a last resort. It must be accompanied by every

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socio-economic guarantee on the part of the adoptive family and by appropriate legal measures in order to safeguard the child's best interest. Given the failures that have occurred in this field, this exceptional measure should be taken with caution.

8. In that connection, it should be borne in mind that adoption may have negative effects - the breaking of contact with his biological parents may alter a child's personality, he may have difficulty in adapting to his new family and legal obstacles may arise relating to the child's personal status. Thus, when implementing the principles laid down in the above-mentioned draft Declaration, provision must be made for socio-cultural measures, so that the child may be followed up and protected in his adoptive family, and for appropriate legal measures so that his legitimate rights may be guaranteed.

9. With regard to intercountry adoption (paragraphs 19, 20 and 24 of the draft Declaration) it should be noted that Tunisian legislation makes no provision for this legal institution. On the other hand, provision is made for informal tutelage (Act No. 58-27 of 4 March 1958 - Tutelage - Article 3 and following) whereby persons placed under such tutelage may, upon coming of age, choose to be adopted by the family in which they have been placed or to return to their country of origin. This solution enables persons placed under tutelage to retain all the rights relating to affiliation, including the rights of succession.

10. In this way an individual's identity can be protected, continuity of civilization and history assured, original socio-cultural links preserved and any break with the biological parents can be avoided.

11. Clearly it is on that basis that the goals of the draft Declaration on social and legal principles relating to the protection and welfare of children can best be achieved.

#### ANNEXES

##### A. ACT NO. 58-27 OF 4 MARCH 1958 (12 CHAABANE 1377), RELATING TO PUBLIC TUTELAGE, INFORMAL TUTELAGE AND ADOPTION

Having regard to the Code relating to Obligations and Contracts;

Having regard to the Penal Codes;

Having regard to the Code relating to Personal Status;

Having regard to the Decree of 12 July 1956 (3 doul hidja 1375), which establishes the personal status of non-Muslim and non-Israelite Tunisians, as amended by the Decree of 24 June 1957 (27 doul kaada 1376), and Act No. 57-39 of 27 September 1957 (2 rabia II 1377);

Having regard to the Decree of 18 July 1957 (10 moharem 1377), on the organization and appointment of guardians and the supervision of their administration and of their accounting thereof;



Having regard to the opinion of the Secretaries of States for Justice, the Interior and Public Health,

In the name of the people,

I, Habib Bourguiba, President of the Republic of Tunisia,

PROMULGATE THE FOLLOWING ACT:

#### SECTION I.

##### PUBLIC TUTELAGE

Article 1. Foundlings and children whose parents have deserted them shall have as their public guardian:

1. The administrator of the hospital, foundling hospital or crèche or the director of the children's rehabilitation centre or children's shelter if the child has been placed in such an institution; or

2. The Governor,

Article 2. A public guardian's rights and obligations vis-à-vis his ward shall be the same as those of the father and mother.

The State, commune or public institution, as the case may be, shall have civil liability for actions committed by the children referred to in Article 1.

#### SECTION II.

##### INFORMAL TUTELAGE

Article 3. Informal tutelage is the means whereby a person of full age enjoying full legal capacity, or a relief agency, assumes responsibility for a minor of whom he or it has custody and whose needs he or it provides for.

Article 4. The certificate of informal tutelage is an agreement drawn up before a lawyer between, on the one hand, the informal guardian and, on the other, the father and mother of the ward or either one of them if the other is unknown or deceased or, failing that, the public guardian or his representative. The informal tutelage certificate shall be legally ratified by the cantonal judge.

Article 5. The informal guardian shall have, vis-à-vis his ward, the rights and obligations laid down in the Code relating to Personal Status (articles 54 and following articles).

In addition, he shall have civil liability for actions committed by his ward on the same conditions as the father and mother.

Article 6. The ward shall retain all the rights deriving from his affiliation, including his name and his rights of succession.

Article 7. The informal tutelage shall end when the ward comes of age.

The Court of the First Instance may, at the request of the informal guardian, the parents of the ward or the Public Prosecutor, terminate the informal tutelage agreement, taking into account the interests of the minor.

### SECTION III

#### Adoption

Article 8. Adoption shall be permitted on the terms provided for in the following articles.

Article 9. The adoptive parent must be a man or a woman of full age, married and enjoying full legal capacity.

He/she must be of good morals, healthy in body and in mind and in a position to meet the needs of the adoptee.

Article 10. The age difference between the adopter and the adoptee shall be at least 15 years, save where the adoptee is the child of the adoptive parent's spouse.

A Tunisian may adopt a foreigner.

Article 11. In any event, the spouse of the adopter must give his/her consent.

Article 12. The adoptee shall be a minor of either sex.

Article 13. The adoption shall be effected through a decree issued by the cantonal judge, sitting in his chambers, in the presence of the adopter, his/her spouse and, if need be, the father and mother of the adoptee, or a representative of the administrative authority having public tutelage of the child or of the informal guardian.

After having made sure that the conditions required by the law have been met and having ascertained that the parties before him consent to the adoption, the cantonal judge shall issue the decree of adoption. The decree thus issued shall be final.

An excerpt from the decree of adoption shall be transmitted, within 30 days, to the registrar competent for that area, who shall enter it in a footnote in the adoptee's birth certificate.

Article 14. The adoptee shall assume the name of the adopter.

He may change his first name; this shall be mentioned in the decree of adoption at the request of the adopter.

Article 15. The adoptee shall have the same rights and obligations as a legitimate child.

The adopter shall have vis-à-vis the adoptee, the same rights and obligations as are recognized or imposed by law on the biological parents.

However, if the biological parents of the adoptee are known, the impediments to marriage referred to in articles 14, 15, 16 and 17 of the Code relating to the Personal Status shall remain.

Article 16. At the request of the Public Prosecutor, the Court of the First Instance may, taking into account the interests of the child, remove the adoptee from the custody of the adopter if the latter has failed gravely in his obligations and give custody to another person.

Article 17. This Act shall be published in the Journal officiel of the Republic of Tunisia and shall be enforced as a law of the State.

Done at Tunis, on 4 March 1958 (12 Chaabane 1377).

Habib Bourguiba

President of the Republic of Tunisia

DECREE OF 25 SEPTEMBER 1978 ISSUED BY THE MINISTER OF SOCIAL AFFAIRS  
CONCERNING COMPENSATION GRANTED TO FAMILIES THAT HAVE RECEIVED  
CHILDREN UNDER THE FOSTER PLACEMENT SCHEME

The Minister of Social Affairs,

Having regard to Act No. 67-47 of 21 November 1967 concerning foster placement and, in particular, article 3 thereof,

Decrees that:

Article 1. Families which receive children placed in foster care, pursuant to the above-mentioned Act No. 67-47 of 21 November 1967, shall receive compensation in kind and in cash as follows:

Article 2. Supplies in kind shall consist of: (a) the bed linen necessary for each child and winter and summer clothing in sufficient quantity; (b) school supplies in sufficient quantity, to meet the child's needs, taking into account the type and level of studies being pursued. Cash benefits shall consist of an allowance of 15 dinars per month, on the understanding that if the head of household receives family benefits for the foster child, the allowance shall be reduced by that amount.

Article 3. The clothing and bed linen shall be handed to the family receiving the child by the appropriate social worker of the Ministry of Social Affairs, at the time the placement is made.

Article 4. The school supplies shall be delivered by the appropriate social worker of the Ministry of Social Affairs, at the time when the child is due to enter school or a vocational training centre. The supplies shall be renewable at the start of each school year.

Article 5. In principle, the clothing and bed linen shall be granted only once, at the time of placement. However, it may be renewed, as an incentive, whenever the social worker responsible for following up the child deems it necessary.

Article 6. The monthly cash allowances shall be paid by draft to the family by the Ministry of Social Affairs.

Approved by:

Tunis, 25 September 1978

Hédi Nouria

Mohamed Jomaa

Prime Minister

Minister of Social Affairs

ACT NO. 67-47 OF 21 NOVEMBER 1967 CONCERNING FOSTER PLACEMENT (1)

In the name of the people,

I, Habib Bourguiba, President of the Republic of Tunisia,

Promulgate this Act passed by the National Assembly, the contents of which are as follows:

Article 1. Children who have no family, who have been deserted or whose families are unable, temporarily or permanently, to ensure their education and maintenance may be entrusted to families selected for that purpose by the Office of the Secretary of State for Youth, Sports and Social Affairs. These families shall look after these children with the agreement of their legal guardians, if any.

Article 2. The family receiving these children undertakes to ensure their maintenance and education for the period agreed with the Office of the Secretary of State for Youth, Sports and Social Affairs. This family may, with the agreement of the Office of the Secretary of State, obtain informal tutelage or possibly, adopt the foster child pursuant to the provisions of Act No. 58-27 of 4 March 1958 concerning public tutelage, informal tutelage and adoption.

Article 3. Families to which children are entrusted shall receive material compensation determined by a decree of the Office of the Secretary of State for Youth, Sports and Social Affairs in order to enable them to meet the costs of caring for and educating the children.

Furthermore, where a child has been placed in foster care pursuant to this Act, the head of household of the foster family shall be entitled to family benefits, being assimilated to the person who has legal custody of the child, as stipulated in article 53, paragraph 4, of Act No. 60-30 of 15 December 1960 concerning social security régimes.

Article 4. Children placed pursuant to this Act shall be followed up periodically by the child welfare services of the Office of the Secretary of State for Youth, Sports and Social Affairs.

Article 5. Families undertake to treat the children entrusted to them like their own children.

They undertake, in particular, to see to their education and to refrain from assigning them any housework other than that which they normally give to their own children.

In the event that the undertakings set forth in the above paragraphs are not observed or in the event that the child welfare services of the Office of the Secretary of State for Youth, Sports and Social Affairs are prevented from carrying out their follow-up visits, the head of household concerned shall be liable to a fine ranging from 20 to 100 dinars.

This Act shall be published in the Journal officiel of the Republic of Tunisia and enforced as a law of the State.

Done at Carthage, on 21 November 1967

Habib Bourguiba

President of the Republic of Tunisia

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]

[16 April 1980]

With the exception of the specific points raised in the following paragraphs, Her Majesty's Government has no objection to the draft Declaration.

Paragraph 3

This principle is acceptable, although it is not reflected in the legislation of the United Kingdom.

Paragraph 18

The adoption legislation of the United Kingdom does not incorporate the principle contained in this paragraph. Provisions in the Children Act 1975 reflect the view that "in-family" adoptions by parents, step-parents and relatives differ fundamentally from adoptions by non-relatives, since the latter create relationships where previously none existed. In contrast, an "in-family" adoption severs in law, but not in fact, an existing relationship of blood or affinity, and creates an adoptive relationship in place of the natural relationship, which in fact, though not in law, continues unchanged. In these cases, the adopters are already caring for the child and will usually continue to do so whether or not they adopt him; and such can be particularly harmful when it is used to conceal the natural relationship from the child.

Adoption by a child's mother or father alone is not now permitted unless there is some reason justifying the exclusion of the other natural parent.

The legislation of Great Britain now also embodies the principle that legal custody should be available as an alternative to adoption for relatives and step-parents who are caring for a child. When all the relevant provisions are in force, courts will have to consider in such cases whether granting legal custody of the child to the relative or step-parent would be more appropriate in all the circumstances, first consideration being given to the long-term welfare of the child. Unlike adoption, custody arrangements enable the child's relationships with his parents and extended family to be preserved.

Northern Ireland is currently considering whether to make similar provision in its adoption legislation.

Paragraph 21

This principle is acceptable, but no machinery exists in the United Kingdom for assessing the competence of adoption agencies to deal with intercountry adoption services.

Paragraph 23

There is no provision in the adoption law of the United Kingdom for imposing the stringent conditions outlined in paragraph 23 for children coming to this country for adoption. There is in fact no provision in our immigration law for a child to be brought here for adoption, but the Home Secretary may exercise his discretion and exceptionally allow a child to be brought here for that purpose. The decision on whether an entry clearance certificate is authorized rests with the Home Office, whose administrative procedures include most of the conditions contained in paragraph 23 and are designed to safeguard the welfare of the child.

With regard to children leaving the United Kingdom, it is unlawful to take or send a British child abroad for adoption by a person who is not a relative, without the authority of a court order. The legal requirements to be met before authorization is given are generally in line with the conditions outlined in paragraph 23.

Paragraph 24

Adoption law in the United Kingdom does not require an adoption order made here in respect of a foreign child to be recognized in the country of the child's original nationality or domicile.

URUGUAY

[Original: Spanish]

[17 March 1980]

1. We feel that there are no comments to be made on paragraphs 1 to 6 of the section on general family and child welfare. The child should indeed live with his biological family, and other family members should care for him if there are no parents. Paragraph 2 is therefore logical when it states: "It is recognized that the best child welfare is good family welfare".

2. If the parents cannot bring up a child, the rights of the child must be given priority. At such a time a substitute family must be found which will surround the child with such affection and support that the child feels, in sum, like another member of the group and the family for its part truly takes the child in as one of its own.

3. We have no objections to paragraphs 7 to 10 of the section on foster placement; there are very obvious disadvantages to placing a child in an institution or shelter.

4. In paragraph 11, it would be well to add that the "foster family" is to be periodically inspected to prevent the true concept of a foster family from being vitiated.

/...

5. Lastly, with regard to the section on adoption, paragraph 12 is correct in establishing that "the primary purpose of adoption is to provide a permanent family for a child who cannot be cared for by his/her biological family". It is quite important that adoption procedures should be flexible and should give first consideration to the child's welfare (paragraph 13); this would keep the future adoptive parents from becoming discouraged.
6. As for paragraph 14, we believe that the way to protect a minor is to make legal provision for "full adoption" or "legitimation by adoption" wherever possible, without leaving it to the choice of those responsible for the child.
7. The aim must be to break the child's ties once and for all with his biological family and integrate him into the new family, but as a legitimate child. This can be done only through "full adoption" or "legitimation by adoption".
8. We make these comments on paragraph 14 because we are in agreement with paragraph 16.
9. Following the above reasoning, the word "adult" should be deleted in paragraph 17.
10. As for intercountry adoption, this is a possible arrangement provided that reliable information is obtained, during a probationary period, regarding the home in which the child is to be placed.
11. To spare the child the trauma of uprooting him from his country, it would be advisable to arrange the adoptions mentioned in paragraph 19 only in the case of very young children.
12. As paragraph 22 maintains, "proxy adoptions are not acceptable, in consideration of the child's legal and social safety".

VENEZUELA

[Original: Spanish]

[22 April 1980]

The position of the Government of Venezuela on this question is reflected in the following comments made by the National Institute for Minors:

(a) It is of the utmost importance for the United Nations to pronounce itself on this matter, since this would constitute a clear frame of reference for policies and actions at the country level, which could then be co-ordinated internationally.



(b) The National Institute for Minors is in agreement with the draft Declaration, because in essence it reflects the most important principles relating to the protection and welfare of children. These guiding principles have been embodied in our legislation and are the basis for this Institute's policy.

(c) It would be a good idea to begin the draft Declaration with a preamble that introduces and emphasizes by expressing them more directly, the principles set forth in the text.

#### YUGOSLAVIA

[Original: English]

[25 June 1980]

The responsible authorities of the Government of The Socialist Federal Republic of Yugoslavia have not any objection of principle to the draft Declaration of Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally.

#### ZAMBIA

[Original: English]

[5 August 1982]

#### General family and child welfare

1. The Party and Government's policy on child welfare is that family and community care for children is preferred to institutional care and the latter is applied only as a last resort when it is found to be the only or most practicable mode of care. Even then it is applied as much as possible as a temporary measure. With regard to the officers carrying out the responsibilities relating to family and child welfare, most of them have professional social work training, either at diploma or degree levels, or have been exposed to some shorter but relevant training.

#### Foster placement

2. As in the case of the general and family child welfare foster care and adoption are preferred to institutional care. The existing law, that is, the Juveniles Act, appears to be adequate and in accordance with the resolution of the United Nations on the matter. The Act is being amended in order to bring it into line with the present socio-economic situation in the country. Furthermore, foster

care is considered as a temporary measure with the ultimate aim of restoring the child concerned to the natural family. To this end, contacts are maintained between the foster family and the natural family while the child is under foster care.

#### Adoption

3. With regard to paragraph 18, there is no provision in this country for traditional adoption as this is not recognized by the existing law. This is a welcome provision as it would remove some of the complications that are faced by couples who take custodial responsibilities of for instance step-children who are recognized traditionally as their children, but under the existing law, they have no legal status until they have adopted them in accordance with the law. There is a need to amend the existing law in this regard.

4. While agreeing with the need for recognition of intercountry/international adoptions, care should be taken to ensure that the child so adopted is accepted in the country of adoption since otherwise such a child may face serious social problems after growing up in a different environment and country where he or she is not accepted. This is more true where, for instance, a black child who is adopted by a white couple and is taken to an environment where most of the population is white and where this is discrimination on the basis of colour. Otherwise, there would be no opposition to intercountry adoption if this would not bring out social problems like the one just mentioned.

5. In Zambia, a child (for the purposes of adoption) is one who is under 21 years of age. Other countries have a much lower age limit than this. Where a child is later informed of the implications of adoption so that he or she may understand them, it would be necessary to seek his/her consent before an adoption order is made.

#### Notes

1/ E/CN.5/574.

2/ Official Records of the Economic and Social Council, 1979, Supplement No. 4 (E/1979/24).

3/ See E/CN.5/574, sect. IV. Also reproduced as an annex to resolution 36/167 of the General Assembly.

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