

**Migration Review Tribunal
AUSTRALIA**

MRT RESEARCH RESPONSE

Research Response Number: BGD35136
Country: Bangladesh
Date: 8 July 2009

Keywords: – Bangladesh – Adoption procedures

QUESTIONS

- 1. Please provide a brief summary of the adoption procedures in Bangladesh.**
- 2. What is the procedure where the child's natural parents are alive and consent to the adoption?**

RESPONSE

- 1. Please provide a brief summary of the adoption procedures in Bangladesh.**

A previous research response dated 27 February 2009 provides some relevant information on adoption procedures in Bangladesh (MRT Research & Information 2009, *Research Response BGD34330*, 27 February – Attachment 1).

In particular, the response highlights a report by the United Nations Committee on the Rights of the Child, which states that the *Bangladesh Abandoned Children (Special Provisions) Order, 1972*, which governed adoption, was repealed in 1982. Since then, Bangladesh has had “no civil law governing adoption, although individuals can apply for guardianship of either the person or the property of a child under the Guardians and Wards Act 1890.”

136. Since the repeal of the Bangladesh Abandoned Children (Special Provisions) Order 1972 in 1982 there is no civil law governing adoption, although individuals can apply for guardianship of either the person or the property of a child under the Guardians and Wards Act 1890.

137. The institution of adoption does not exist under Muslim law. Under the Hindu, Christian and Buddhist personal laws, however, adoption is permitted and encouraged. Hindu men who have attained the age of discretion (15 years) may adopt boys only. A Hindu woman may adopt a boy only with the consent of her husband. There is no provision for the adoption of girls (United Nations Committee on the Rights of the Child 2003, ‘Committee on the Rights of the Child: Consideration of Reports Submitted by States Parties – Bangladesh’, 14 March, pp. 30-31
[http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/crc.c.65.add.22.en?opendocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/crc.c.65.add.22.en?opendocument) – Accessed 2 March 2007 – Attachment 2).

The research response also cites a 2007 paper which outlines adoption law in Bangladesh, indicating that “[w]ith the 1982 repeal of the law, a 19th-century colonial law known as the Guardian and Wards Act 1890 was reinstated.” The process of acquiring guardianship, rather than adoption, was considered to be more consistent with Muslim law:

The Adoption Law was, however, repealed by Ordinance No. 5 in 1982. The Islamicist party Jamaat-e-Islami opposed the Law on grounds that it believed that these children were being converted to Christianity or being used for child pornography and prostitution in the Netherlands and Thailand (pers. comm., Sigma Huda, a human rights lawyer; Chowdhury and Shamim, 1994: 6, 25). With the 1982 repeal of the law, a 19th-century colonial law known as the Guardian and Wards Act 1890 was reinstated with an amendment that prohibits foreigners from being appointed guardians of minors who are citizens of Bangladesh. The aim was to ensure adoption of children by Bangladeshis instead of foreigners. The process of appointing a guardian was also deemed to be consistent with Muslim personal law and by birth the child belonged to the latter (Chowdhury and Shamim, 1994: 25). Henceforth, religious laws would predominate over secular laws in the case of acquiring guardianship (instead of adoption) of a child (Mookherjee, Nayanika 2007, 'Available Motherhood: Legal Technologies, "state of exception", and the dekinning of "war-babies" in Bangladesh', *Childhood*, Vol. 14, No. 3, pp. 347-348 – Attachment 3).

In addition, a report by Bangladesh's Ministry of Women and Children Affairs similarly states that "no civil law regarding adoption exists," however, "[p]ersons, who cannot adopt, may take a child under his or her guardianship as per the Guardians and Wards Act, 1890. Only a citizen of Bangladesh can be declared a guardian of a Bangladeshi "minor"."

In Bangladesh no civil law regarding adoption exists. Majority population of Bangladesh are Muslim and most of their family affairs are guided by Muslim personal law. The Muslim Law in general does not allow adoption, but Hindu Law as well as Christian and Buddhist traditions do. However, in particular Hindu law contains many restrictions that are not compatible with the CRC. Persons, who cannot adopt, may take a child under his or her guardianship as per the Guardians and Wards Act, 1890. Only a citizen of Bangladesh can be declared a guardian of a Bangladeshi "minor". The fact that adoption is not permitted under Islamic law does not exclude the possibility of a child being fostered by a Muslim family. While Islam does not recognize adoption, it does allow an individual to take charge of a child and provide for his or her maintenance (Kafala). The child fostered enjoys no inheritance right (Government of the People's Republic of Bangladesh, Ministry of Women and Children Affairs 2007, 'Third and Fourth Periodic Report of the Government of Bangladesh Under the Convention on the Rights of the Child', August, p. 49 http://www.unicef.org/bangladesh/BD_CRC_Report.pdf – Accessed 7 July 2009 – Attachment 4).

A copy of the *Bangladesh Abandoned Children (Special Provisions) Order, 1972* is provided ('Bangladesh Abandoned Children (Special Provisions) Order, 1972', *The Bangladesh Gazette*, 25 October, pp. 2857-2859 – Attachment 5).

Additionally, a copy of the *Guardians and Wards Act, 1890*, which outlines specific procedures for applying for legal guardianship is provided (*The Guardians and Wards Act, 1890*, Laws of Bangladesh website, 21 March http://bdlaws.gov.bd/print_sections_all.php?id=64 – Accessed 24 February 2009 – Attachment 6).

2. What is the procedure where the child's natural parents are alive and consent to the adoption?

The research response of 27 February 2009 provides information received from the Department of Foreign Affairs and Trade, which outlines the requirements of acquiring legal guardianship of a child, particularly indicating that the "[b]iological parent must sign an irrevocable release of the child before a Notary Public or local Magistrate in Bangladesh."

Actual adoption of children is not permitted under existing Bangladesh law. However, Bangladesh law does permit its own citizens to apply for guardianship of children under the purview of Guardianship and Wards Act. There are some cases of ‘informal adoption’ mostly in rural areas, but this does not have any legal basis.

Under Bangladesh law, the 1982 Guardianship and Wards Amendments Ordinances prohibit granting guardianship of Bangladeshi children to non-Bangladeshi parents. Further, these restrictions have limited adoption of Bangladeshi children to only a few each year and mostly in cases of orphans.

Requirements of obtaining legal guardianship:

- i) Biological parent must sign an irrevocable release of the child before a Notary Public or local Magistrate in Bangladesh
- ii) An application for legal guardianship must be made to the Family Court. In Bangladesh the Family Court has sole jurisdiction over family matters. The Bangladesh government does not approve adoption agencies or attorneys.
- iii) A ‘No Objection Certificate’ must be obtained from the Bangladesh Ministry of Home Affairs.
- iv) The ‘No Objection Certificate’ and ‘legal guardianship’ documents should be presented to the Bangladesh Passport Office for the child’s passport. Prospective adopting parents should be listed as the legal guardians in the child’s passport.
- v) Prospective adoptive parents must be at least 18 years old and provide proof of Bangladeshi citizenship. There is no age limit for the children being adopted (DIMA Country Information Service 2007, *Country Information Report No. 07/47 – Bangladesh: Bangladeshi Adoption Laws*, (sourced from DFAT advice of 31 May 2007), 1 June – Attachment 7).

A research response dated 30 April 2007 cites a number of relevant sources which provide similar information (MRT Country Research 2007, *Research Response BGD31681*, 30 April – Attachment 8). For example, the US Department of State’s Office of Children’s Issues website indicates that “relinquishment requirements” exist for a child to be eligible for adoption. These requirements are that “[t]he biological parent must sign an irrevocable release of the child before a Notary Public, 1st Class Magistrate or the relevant Family Court in Bangladesh...[A]fter the biological parents have signed a release of the child, an application for legal guardianship must be made to the Family Court” (US Department of State Office of Children’s Issues 2006, ‘Bangladesh: Country Information’, Intercountry Adoption website, November <http://adoption.state.gov/country/bangladesh.html> - Accessed 7 July 2009 – Attachment 9).

Section 11 of the *Guardians and Wards Act, 1890* outlines the procedure to be followed on admission of an application for guardianship of a child, indicating that once an application for legal guardianship is lodged, a hearing is scheduled and notice of the hearing is served to “the parents of the minor if they are residing in Bangladesh.”

11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing-

(a) to be served in the manner directed in the Code of Civil Procedure on-

- (i) the parents of the minor if they are residing in Bangladesh,
 - (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
 - (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and
 - (iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and
- (b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the 1[Supreme Court] under this Act, thinks fit (*The Guardians and Wards Act, 1890*, Laws of Bangladesh website, 21 March http://bdlaws.gov.bd/print_sections_all.php?id=64 – Accessed 24 February 2009 – Attachment 6).

In addition, the research response of 27 February 2009 refers to a 2007 paper which indicates that in the event of the death of a child's father, guardianship of the child is often undertaken by a male relative, even if the mother is still alive, in accordance with Muslim personal law. It is also stated that a Court may appoint a legal guardian in cases where both parents are deceased or abandon their child:

The international definition of an orphan is a child (under 18 years) that has lost both parents. However, in Bangladesh, in accordance with Muslim tradition, it is the presence or absence of the father that determines the social status of the child. Therefore if the father dies or abandons the child, he or she is considered to be an orphan (*etim*), and is passed into the guardianship of another elder man, such as an older brother. Other members of the extended family normally also assume responsibility for the care and upbringing of the child. On the other hand, if the mother dies, the child may stay with the father and a new stepmother or with grandparents, maternal aunt and uncle or paternal uncles. However, this child is not considered to be an orphan. If both parents die or abandon the child, the Court may appoint a legal guardian under the Powers of the Children Act 1974. Normally he or she would come under the care of the maternal grandparents or uncles when possible (Nasreen, Mahbuba & Tate, Sean 2007, 'Social Inclusion: Gender And Equity In Education Swaps in South Asia – Bangladesh case study', UNICEF website, p.37 [http://www.unicef.org/rosa/Unicef_Rosa\(Bangaladesh_cash_study\).pdf](http://www.unicef.org/rosa/Unicef_Rosa(Bangaladesh_cash_study).pdf) – Accessed 24 February 2009 – Attachment 10).

List of Sources Consulted

Internet Sources:

Government Information & Reports

US Department of State <http://www.state.gov/>

Bangladesh Ministry of Home Affairs <http://www.mha.gov.bd/>

United Nations

United Nations High Commissioner for Human Rights <http://www.unhchr.ch/>

United Nations Children's Fund <http://www.unicef.org/>

Topic Specific Links

Laws of Bangladesh website <http://bdlaws.gov.bd/>

Intercountry Adoption website <http://adoption.state.gov/>

Search Engines

Google <http://www.google.com.au/>

Ingenta Connect <http://www.ingentaconnect.com/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

List of Attachments

1. MRT Research & Information 2009, *Research Response BGD34330*, 27 February.
2. United Nations Committee on the Rights of the Child 2003, 'Committee on the Rights of the Child: Consideration of Reports Submitted by States Parties – Bangladesh', 14 March, pp. 30-31 [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/crc.c.65.add.22.en?opendocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/crc.c.65.add.22.en?opendocument) – Accessed 2 March 2007.
3. Mookherjee, Nayanika 2007, 'Available Motherhood: Legal Technologies, "state of exception", and the dekinning of "war-babies" in Bangladesh', *Childhood*, Vol. 14, No. 3, pp. 338-354.
4. Government of the People's Republic of Bangladesh, Ministry of Women and Children Affairs 2007, 'Third and Fourth Periodic Report of the Government of Bangladesh Under the Convention on the Rights of the Child', August http://www.unicef.org/bangladesh/BD_CRC_Report.pdf – Accessed 7 July 2009.
5. 'Bangladesh Abandoned Children (Special Provisions) Order, 1972', *The Bangladesh Gazette*, 25 October, pp. 2857-2859.
6. *The Guardians and Wards Act, 1890*, Laws of Bangladesh website, 21 March http://bdlaws.gov.bd/print_sections_all.php?id=64 – Accessed 24 February 2009.
7. DIMA Country Information Service 2007, *Country Information Report No. 07/47 – Bangladesh: Bangladeshi Adoption Laws*, (sourced from DFAT advice of 31 May 2007), 1 June. (CISNET Bangladesh CX178498)
8. MRT Country Research 2007, *Research Response BGD31681*, 30 April.
9. US Department of State Office of Children's Issues 2006, 'Bangladesh: Country Information', Intercountry Adoption website, November <http://adoption.state.gov/country/bangladesh.html> - Accessed 7 July 2009.

10. Nasreen, Mahbuba & Tate, Sean 2007, 'Social Inclusion: Gender And Equity In Education Swaps in South Asia – Bangladesh case study', UNICEF website [http://www.unicef.org/rosa/Unicef_Rosa\(Bangaladesh_cash_study\).pdf](http://www.unicef.org/rosa/Unicef_Rosa(Bangaladesh_cash_study).pdf) – Accessed 24 February 2009.