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One Sky for all children

a sociological analysis
of domestic and international adoption in the PRC

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前言

本论文研究目的旨在透过社会学研究案例的汇总以及一些相关证人的直接证词来分析中国的境内收养与跨国收养的问题。列举了从早期一直到 2021 年的相关收养案例。

让人出乎意料的是，该国的收养制度最早可追溯到其王朝时代，随着 1950 年《婚姻法》的出台才被正式纳入中国的司法管辖范围。古代王朝时期，收养子女被频繁用作传宗接代，延续家族香火的补救措施。其实最终目的都为储备及扩充继承人选，更确切地说是子嗣：来自明媒正娶的妻子的抑或是妾室的。如果正房或妾室无法生育，对策就是去收养别家的孩子。

研究的第一部分概述了家庭方收养需走的主要法律程序，以及一项对出生率及由此产生的收养现象带来弊端的政策：独生子女政策。这一政策导致了社会结构失衡，包括出生率和人口增长率的大幅下降；与此同时，性别选择性堕胎（保男弃女）和弃婴现象急剧增加。遗弃儿童构成违反独生子女政策的罪行，因此这类行为都只在地下秘密进行。生父母弃婴一旦被警察抓获，将会面临计划生育罚款，甚至刑罚。

生父母往往选择在公共场所例如医院、市场、孤儿院附近遗弃孩子，以便其能被路过行人所注意到，进尔有机会被抱养。由于弃婴人数的增加，孤儿院变得拥挤不堪，导致卫生条件每况愈下。BBC 纪录片《垂死的房间》见证了此类景象，该片显示，在 20 世纪 90 年代，中国孤儿院的生活条件捉襟见肘，有些孩子甚至萎靡不振，近乎奄奄一息。第一章旨在通过关注“失踪女孩”事件和两例非法收养个案来分析这个问题，着重强调该国收养法制度的森严：将合法性摆在

首位，人情与伦理被漠视。随后，本论文将就跨国收养问题进行探讨，首要分析有关香港项目的初期案例。突出强调了中国在与意大利达成协议与加入《海牙公约》之前所做决策的演变历程。该公约可被视作是中方走向开放且与其他缔约国开展合作的一块历史里程碑。

其次文章着手阐述中国的跨国收养问题，从《外国人在中华人民共和国收养子女登记办法》开始，一直论述到 CCCWA（中国儿童福利和收养中心）的发展，该机构当下的任务是通过与他国的中央机关合作来规范本国的跨国收养行为。除了对中国及意大利的收养政策进行深入探究外，论文还着墨于对被收养者的原有文化实行一刀两断的旧式想法及对原有文化持保留态度的现代开明观点之间的差异。通过分析具体案例，方可得知对不同文化的接受与保留对于被收养者人格的发展至关重要。

第二章涉及特殊需求(因医疗，精神或心理障碍而需要帮助的人)收养，这是一种当今最常见的来自中国的跨国收养项目。透过一位患唇腭裂的中国孩子的成长日记的译文（后来其被一对意大利夫妇所收养），来强调特殊需求收养对象不只局限于患严重疾病的儿童，实际上还涵盖了诸如唇腭裂等程度较轻的问题。养父母须考虑到这一点，切勿听到“特殊需求”；几个字便对收养打退堂鼓。鉴于上述，文章随即强调了相关机构对希望从中国跨国收养小孩的单身女性收养者的要求，中国对收养人的条件筛选十分苛刻，要说唯一让人欣慰的一点便是对单身女性在收养方面的限制相对较少了。

第三章也是末章，旨在分析中国各部门近年来（2020-2021 年）的变化，收养机构也不例外。论文谈及了三胎政策的出台，但也明确指出了该政策对中国当前出生率的影响实际微乎其微；文章随即概述了《中华人民共和国民法典》的出台，该法典于 2021 年 1 月 1 日实施，旨在确保中国民法更为统一。本研究最后剖析了 2019 年爆发的新冠疫情以及中国之后将疫情处理的游刃有余，却在儿童收养机构方面稍加逊色的原因。然而，境内收养与跨国收养的前景又会因此如何发展？综上所述，本文以中国颇具代表性的社会经济和历史政治事件为结构，从社会学的角度，并结合了个人对收养的看法来分析该研究现象。

Introduction

This study aims to analyse domestic and international adoption in the People's Republic of China from a sociological perspective.

Starting from China's imperial age, when adoption was considered a cultural factor, the thesis will cover the Chinese modern age. In fact, according to Confucianism, adoption was accepted as soon as neither the wife nor the concubines were able to bear male children. It was only with the introduction of the Constitution in 1978 and the New Marriage Law in 1980 that adoption became legal for the first time.¹ The main steps of Chinese adoption law will be analyzed starting from the first version of Adoption Law in 1981 up to the year 2021 with the introduction of the Chinese Civil Code. The thesis will continue with one of the key events that has most influenced domestic adoption in China: the one-child policy. The problems caused by the policy will be described, including selective female abortions, a decrease in the birth rate but especially the increase in abandonment and illegal adoptions together with the overcrowding of orphanages. Two cases of illegal adoption will be included to highlight how China's adoption law is extremely rigid to the point of seeming to be at the expense of the good of the child.

The second chapter of the thesis aims to analyze the chronological history of international adoption from China, not only from a legal perspective, but also from a sociological one. All this will be analyzed together with the evolutionary path of Italian international adoption, taking into consideration Italy as the host country and China as the donor country.

The chapter begins with an excursus on China, starting with the 1988 Marriage Law - the first law legalizing intercountry adoption - and ending with the PRC Civil Code. Attention is then focused on the first case of intercountry adoption prior to the 1988 law: the Hong Kong Project. It is the first international adoption project involving children abandoned by Chinese families forced to take refuge in Hong Kong after Mao's Great Leap Forward. Through the project conceived by the ISS of Great Britain, in the early 1960s, dozens of Chinese children flew from Hong Kong to the West, in particular to England and America.²

The thesis continues to focus on the difference between the adoptive approach of "clean break", which consists of eliminating the adoptee's past, to a more open approach such as culture keeping, using real-life cases that can testify the positive and negative aspects of these approaches. This analysis aims to support culture protection and preservation of it in order to

¹ *The Marriage Law of the People's Republic of China (1980)**, Chapter 3, Article 20, Pacific Affairs University of British Columbia, 1980

² Catherine Ceniza Choy, *Global Families: A History Of Asian International Adoption In America*, New York University Press, 2013, pp. 16

let adoptees develop their own identity. The documentary about Chinese twin sisters adopted by different families who only met at the age of 8 is exemplary of how the modern vision of open adoption can be considered an opportunity for adoptees.³

Following the adoptees' educational opportunity, The Thesis continues with a favorable opportunity for China as a whole: this is the case with the PRC's adherence to the Hague Convention, ensuring collaboration and cohesion among the Contracting countries.

From here we will focus on the pivotal role of CCCWA⁴: China Center for Children's Welfare and Adoption, whose current purpose is to regulate China's intercountry adoptions through collaboration with the central authorities of other countries.

Following the in-depth analysis of the Chinese "side", the thesis will continue with the development of international adoption from the Italian point of view, and then arrive at the agreement between the two countries and the related adoption process.

To close the second chapter, attention will be drawn to intercountry adoptions of special needs cases: the kind of international adoption most common between China and Italy. A case of special needs adoption of a child with cleft lip adopted by an Italian couple will be taken as a reference, analyzing the diary compiled by the orphanage before the adoption. Finally, the chapter will conclude with a focus on single women in China for whom adoption is currently only intended for special needs cases.

The third chapter describes the main changes in 2021 that may have affected not only the Chinese domestic/international adoption sector, but society itself. Starting from the three child policy in place with the aim of healing the problems previously caused by the one-child policy, such as the increase in birth rate, decrease in abandonments and abortions. How will the adoption sector be affected?

The chapter will continue with the introduction of the Chinese Civil Code that allows the uniformity of law including Chinese law regulating both domestic and international adoptions. Finally, the chapter will conclude with the current pandemic situation which has caused not only a decrease in the number of international adoptions, but also a reduction in the desire to adopt.

The paper will therefore seek to understand how and whether the above changes may have affected both domestic and international adoptions through sociological and personal perspectives.

³ <https://www.bbc.co.uk/programmes/b053pxdt>

⁴ <http://cccwaen.mca.gov.cn/article/Inter-countryAdoption/b/c/201407/20140700664358.shtml>

Chapter 1 Chinese domestic adoption: from Imperial time until nowadays

1.1 Adoption during the Imperial age of China

Adoption has always been part of China, from the Imperial time until nowadays. Although initially adoption has been considered as a cultural aspect, within time it has acquired a legal connotation.

Moreover, it might be noticed how the image of family, from a Confucian point of view, is considered the relationship on which a society bases: without families, there cannot be a society. According to the Confucian ideology, the society is hierarchically formed as the family structure: sons have to obey and assist elder parents according to the filial piety (孝 *xiao*). One of the most important Confucian male role is continuing the blood lineage. This is one of the reasons why Chinese families have chosen adoption.

Indeed, during Imperial China, adoption has been frequently used in order to continue man's lineage. As a matter of fact, everything has been concentrated on acquiring heir, more specifically male heir: from marriages to concubines. If the spouse or the concubine was not able to give birth, the third solution was adoption. According to the Qing Code, adoption of relatives (过房儿子 *guofang erzi*), most of the time nephews, was considered legal with the aim of continuing the lineage. This type of adoption was called "ritual adoption" which differs from adoption of strangers already present but rare during the Qing dynasty.⁵ In Chinese, the ritual adoption is called 过房儿子 *guofang erzi*, composed by the character 过房 *guofang* with the meaning of "adopt" and 儿子 *erzi* which means "son". 过房 *guofang* is composed by the character 过 *guo*, "to live, to get along" and 房 *fang* which means both "house" and "a branch of an extended family"⁶. Probably these characters are chosen in order to explain how the adoptee through adoption enters in the family as a biological family member and he has to assist parents in the house.

⁵ Michael J.E. Palmer, *Civil Adoption in Contemporary Chinese Law: A Contract to Care*, Cambridge University Press, 2008 pp.388.

⁶ *Ibidem*

According to these types of adoption, male children were those which could continue the lineage of the family: this is the reason why males rather than females were mostly chosen to be part of a new family.⁷

During the Imperial age of China, another type of adoption arose and it will continue until nowadays: it is the case of informal adoptions. They were protected and recognized by custom rather than legal code. As far as informal adoption is concerned, both male and female were adopted for the new family. Female adoption was frequent for specific reasons: adopted daughters would have given economic advantages to the adoptive family after marriage, or they have been adopted in order to take care of parents in the case of no male sons, or marrying one of the son in the family⁸. There could have been other cases which customary have not accepted: it was the case of prostitution or forced to become concubine.

1.2 Adoption in People's Republic of China

The Marriage Law of the People's Republic of China enacted in 1950 might be considered a starting point for the emancipation of Chinese women free from feudal compulsory marriage system, characterized by superiority of male figures and ignorance towards children's interests. Marriage Law's articles concerning the relationship between parents and children, did not take into consideration adoption cases but emphasize children duty of assisting parents, following the Confucianism ideology of filial piety. As Chapter 4, Article 13 states “ *Parents have the duty to rear and educate their children; the children have the duty to support and to assist their parents. Neither the parents nor the children shall maltreat or desert one another*”.⁹

After the adoption of the new constitution in 1978, China for the first time enacted a legislation regarding adoption with the codification of a new Marriage Law in 1981. The new Marriage law includes several articles concerning reforms in marriage aspects such as an increase in the minimum age of marriage, but also recognizing legal adoption. Article 20 of the New marriage Law states as below: “*The state protects lawful adoption. The relevant provisions of this law*

⁷ Kay Ann Johnson, *China's Hidden Children: Abandonment, Adoption, and the Human Costs of the One-Child Policy*, University Chicago Press, 2016 pp. 163.

⁸ Nancy E. Riley, *American adoption of Chinese girls: the socio-political matrices of individual decisions*, pp.89

⁹ *The Marriage Law of the People's Republic of China*, Chapter 4, Article 13, Foreign Language Press, Peking, 1950 also see <https://www.bannedthought.net/China/MaoEra/Women-Family/MarriageLawOfThePRC-1950-OCR-sm.pdf>

*governing the relations between parents and children are applicable to the rights and duties in the relations between foster-parents and their foster- children. The rights and duties in the relations between foster-children and their natural parents are terminated on the establishment of relationship of adoption”*¹⁰.

Adoption has always been considered a consensual contract between two parties: the adopter and the adoptee.

The fundamental principle concerning adoption shall be caring for each others: adopters have to assist their own children and adoptees have to take care of their own elder parents according to the law. However, in order to avoid an instrumental use of adoption, in 1985 was enacted a new law of inheritance. In the Article 31 of the new law it was introduced a contractual form called inheritance-care agreement (供养协议 *gongyang xieyi*) which states adults, according to the contract, have to provide assistance to an aged person from whom acquiring inheritance rights after death.

The Article states as below: *“A citizen may enter into a legacy-support agreement with a person who, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her interment after death, in return for the right to legacy. A citizen may enter into a legacy-support agreement with an organization under collective ownership which, in accordance with the agreement, assumes the duty to support the former in his or her lifetime and attends to his or her internment after death, in return for the right to legacy”*.¹¹

1.2.1 History of Chinese Adoption Law

As previously mentioned, domestic adoptions first appeared in the Marriage Law of the year 1981.

Prior to the enactment of the Marriage Law, China's child abandonment was handled internally by the government itself to show the government's independence and ability to handle the problem.

China's Adoption Law allowed the adoption of children under the age of 14 who were orphaned, abandoned or whose biological parents were unable to raise the child. In the case of abandonment, before declaring a child adoptable, the government had to make a two-month

¹⁰ *The Marriage Law of the People's Republic of China (1980)**, Chapter 3, Article 20, Pacific Affairs University of British Columbia, 1980

¹¹ *Law of succession of the People's Republic of China*, 1985, Chapter 4, Article 31

announcement and if the biological parents came forward, the child could have not been considered eligible for adoption.

With the modification of Adoption Law in 1992, the aim was to uniform international adoption requirements with domestic ones eliminating any sort of corruption and illegality. Since requirements were still rigid, many couples were not eligible to adopt with the result of overwhelmed orphanages. According to the law, the adoptive couple had to be at least 35 years old and if they adopted a blood relative, they could bypass the classic adoption procedures.

Through the 1998 amendment, in place since 1999, the government of the People's Republic of China sought to relax adoption requirements in order to encourage more domestic adoptions to the disadvantage of intercountry adoptions. The new requirements were to be childless, capable of rear and educating the child, to be at least 30 years old to adopt a healthy child, and to have no mental illnesses that could interfere with parental capacity. Unlike the original adoption law, as a result of the amendments, if parents exceeded the maximum age for adoption, they were not allowed to adopt both special needs children nor orphans. Interestingly, single men were already allowed to adopt as long as they were 40 older than their female adopted daughters.

One substantial difference that came about as a result of the amendments was the possibility for parents with children to adopt an abandoned child placed in a social welfare institute. This meant that many abandoned children were adopted by Chinese families.

Starting from January 1st, 2021, Chinese Adoption Law has been abrogated with the introduction of Chinese Civil Code which covers the entire sphere of Civil Law.¹²

1.3 Introduction of the One Child Policy

Following the creation of the People's Republic of China in 1949, the government quickly changed its economic and social choices. At first, it pushed for the growth of the Chinese population in order to increase the labour force in the countryside.

Later, however, population growth was deemed a threat to the country's economic development. More people would mean more mouths to feed.

¹² O. Dilberto, D.Dursi, A. Masi, Codice Civile della Repubblica Popolare Cinese, Traduction of Meiling Huang, 2021, Pacini Editore Srl

At the beginning of the 1970s, the Chinese government implemented the "Later-Longer-Fewer" policy "晚稀少 *wan xi shao*" in order to promote marriage at a later age, with a maximum of two children. The policy consisted of postponing the first child in time at least until the age of 24 and only after 3 or 4 years give birth to a second child.¹³ The National Family Planning Group affirmed "*one birth to be considered the best, two births the maximum, and a third strictly regulated*".¹⁴

As the above policy did not have the desired effect of decreasing population growth, the one-child policy was introduced in 1979 in order to keep the population growth rate under control. In the early 2000s, the Chinese government discussed the potential elimination of the one-child policy by the year 2003, but expectations have not been fulfilled. In the third chapter the transition from the one-child policy to the three-child policy will be discussed.

Adoption in China has to be analyzed according to the one-child policy implemented in 1979.¹⁵ The Central Government of China wanted to reduce population growth rate through limitation of birth to one child for each family. The implementation of one child policy has had a huge influence on adoption, both domestic and international.

Chapter 1, Article 3 of the Adoption Law enacted in 1991 states "*Adoption shall not contravene laws and regulations on family planning*".¹⁶

As the Adoption Law affirms, families cannot give birth or adopt more than one child in order to maintain a sustainable population growth rate. This restriction has caused a decrease in domestic adoption with the consequence of an increase in international ones. Through this legislation, the government of PRC limited domestic adoptions to childless couples over thirty-five and only in case the child was considered "orphan" and not abandoned. Indeed, abandoned children adopted by couples under thirty-five years old could be taken in any moment by the government and placed in an institution until a "new legal" couple adopted the child.

Chinese government, through the modification of the Adoption law in 1999, managed to cease adoptions outside legal channels and enlarged the potential adoptive parents: indeed, only children declared abandoned and located in institutions/orphanages could be adopted legally by a couple over thirty years old.¹⁷

¹³<https://lostingalapagos.corriere.it/2013/11/18/scienza-e-ideologia-della-politica-del-figlio-unico/>

¹⁴Rachel A. Bouman, *China 's Attempt to Promote Domestic Adoptions: How Does China 's One-Child Policy Affect Recent Revisions in China 's Adoption Law and Measure Up to the Hague Convention*, 13 *Transnational Law*. 91 (2000), p 97.

¹⁵*Ibidem*.

¹⁶http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content_21908201.htm

¹⁷ Kay Ann Johnson, *Abandonment, Adoption, and the Human Costs of the One-Child Policy*, p. 59

Although Chinese government allowed more couples to adopt, it continued to be strict towards the definition of “abandoned children”.

According to the Chinese adoption Law, a child could be considered eligible for adoption and declared abandoned only after an announcement of two months in order to give the biological parents the possibility to take the child back.

1.3.1 Consequences of the One Child Policy: abandonments and illegal adoptions

Birth restrictions, as stated above, began in 1970’s but were strengthened in 1979.¹⁸ The one-child policy was established both in urban and rural areas but there might be some differences in the application of it. Although in urban areas birth restriction had to be strictly respected due to the policy control, in rural areas local officials had the responsibility to implement it. Indeed, as many studies affirm, rural areas usually had more freedom in birth restriction: most of the time those families which had a first-born daughter could have a second child in the hope of giving birth to a son, in order to continue the lineage of the family.

As a matter of fact, women mostly in rural areas were subjected to opposite forces: one was the government which imposed birth restrictions, the other one was the family which pressed towards births for the survival of the family: more children meant more labour force.

The quotation below from “Frogs” by Mo Yan is an exemplar image of how birth restriction has been considered during the 1970’s: *“Some call me “the devil incarnate”, an epithet that fills me with pride! For those children who will be born according to the plan, I will burn incense and give them a ritual bath to help them come into the world; but as for the supernumerary pregnancies, - my aunt cut off the air with a violent gesture, - none will escape the meshes of my net!”*¹⁹

As a consequence to the one-child policy, in the 1980’s, informal adoption increased severally. Many women were obliged to abandoned their children due to the several punishment, from fees to abortion or even sterilization.

In order to avoid punishments, many families helped each other by introducing abandoned children in their families as biological children to give them the same status of birth sons. This

¹⁸ Nancy E. Riley, *American adoptions of Chinese Girls: the socio-political matrices of individual decisions*, Oxford University Press, 2003 pp. 89

¹⁹ Mo Yan, *Le rane*, Einaudi, 2014, op. cit. pp. 109-110.

kind of informal adoption is called “*de facto adoption*” 事实收养 *shishi shouyang* with the purpose to emphasize an actual adoption of an “out of plan” children.²⁰

Indeed, as far as Chinese definition is concerned, it is composed by the noun 事实 *shishi* which means “fact” and 收养 *shouyang* with the meaning of “adoption”. As Kerry O’Halloran affirms in her book: ‘*de facto adoptions*’ (that is, where children were looked after by relatives or strangers either with the parent’s consent or following the latter’s abandonment of their children) by preventing parents or guardians from removing their children after they had consented to the ‘adoption’ unless they could persuade the court that such recovery was for the child’s benefit.”²¹

The definition given by the United Nations is similar to the one above, consisting in the practice of caring for a child either temporarily or permanently without a legally recognized contract.²² As far as “illegal children” (黑孩子 *hei haizi*)²³ are concerned, through the new regulations of Chinese Adoption Law enacted in 1999 as stated above, the Chinese government tried to eliminate any possible child adoption outside legal channels such as institutions and orphanages.

Concerning the so-called 黑孩子 *hei haizi*, it may be noticed how the word is formed by the character 黑 *hei* with the meaning of “black”, and 孩子 *haizi* indicating the word “children”.

The use of these characters could be associated with the connotation of black color: it reminds of the obscurity in which illegal children were obliged to live: they had to live in darkness, hidden in their families, hidden from the rest of society.

Moreover, Chinese government, in order to implement one-child policy, adoption restrictions became more and more strict. Although adoptive parents' ages could be over thirty differently to thirty-five years before, an adoption was considered legal only in the case of children placed in an orphanage. For those children found in street or public places, the only option was the

²⁰ Kay Ann Johnson, *Abandonment, Adoption, and the Human Costs of the One-Child Policy*, University of Chicago Press, 2016 pp. 58

²¹ Kerry O’Halloran, *The Politics of Adoption: International Perspective on Law, Policy and Practice*, Springer Nature; 3rd ed., 2015 pp. 20

²² United Nations, Department of Economic and Social Affairs, *Child Adoption: Trends and Policies*, United Nations Pubns, 2010 pp.28

²³ Kay Ann Johnson, *China’s Hidden Children: Abandonment, Adoption and the Human Costs of the One Child Policy*, University of Chicago Press, 2016 pp.6

orphanage: they would have been placed in state-run institutions with other abandoned children hoping for a forever family.²⁴

Those children adopted outside legal channels were not allowed to obtain an *hukou* certificate. 户口 *Hukou* was a residence certificate enacted in 1958 with the aim of dividing people of people's communes from those ones of work units. The certification was subjected to various reforms during the 1990's, but it still emphasizes the discrimination between rural and urban areas. Through it, families' residence areas are registered guaranteeing different rights according to different areas of residence: this is the reason why many rural inhabitants moving towards urban area for better life conditions cannot possess public services rights such as health care or instruction.²⁵

The same conditions are reserved for children adopted illegally: they do not possess an *hukou*, they cannot attend public school, they have to live in the shadows and hidden by families.

1.3.2 Case translation of illegal adoption²⁶

The article above is an example of how the Chinese government, due to a mistake in declaring the child abandoned cannot, protect the illegal adoption. The article states how an adopted child has been returned to her biological parents after three years of foreign adoption. Indeed, the child was wrongly declared abandoned because of the non-announcement by the Chinese government. The following passages of the article summarize the reported case, focusing on the difference between conditions to adopt and obligation to support. In the following passage it is described how, following the divorce of the biological parents, the child is left with the father who, due to work, is unable to look after the child seeking help from a friend. Without knowing it, the friend turns to the authorities and declares that the mother has found the child abandoned. The central authorities declaring the child abandoned make the adoption of the child eligible. It is only after six months that the father, back in his country of origin, will discover the fate of his son.

²⁴ Toby Alice Volkman, *Cultures of transnational adoption*, 2005 pp. 123

²⁵ Travis S. K. Kong, *Chinese Male Homosexualities: Memba, tongzhi and golden boy*, Routledge, 2010 pp. 180

²⁶ APPENDIX I

http://k.sina.com.cn/article_3177450665_bd640ca902000vc13.html

- 2016年4月，XX的生父周某、生母王某经法院调解达成离婚协议，XX随父亲周某生活。因需要外出打工，2016年8月，周某将XX委托给朋友金某代为照顾。但一段时间里，周某没有顾及与金某沟通孩子的情况，金某遂对其产生不满。2017年2月，金某故意报警，称她母亲捡到一名男婴，后派出所出具了捡拾弃婴报案的证明。6月30日，鲍某、郑某夫妇向民政局申请收养该男婴，民政局为其办理了收养登记。半年后，XX的亲生父亲周某从外地回来，方才知道自己的儿子已被北京居民鲍某夫妇收养了。

- *In April, 2016, XX's biological parents reached a divorce agreement in the court of justice and it has been decided that XX must live with the father. Due to father's work outside the city, in August 2016, the father had given XX to a friend with the aim to bring him and look after him. But in that period, the father had not communicated the decision to the biological mother with the result of friend's dissatisfaction. In February 2017, the father's friend who had taken care of the child deliberately called the police saying that her mother had picked up a baby boy. As a consequence, the police issued a certificate of picking up and reported the abandoned baby. On June 30, Y1 and Y2 applied to the Civil Affairs Bureau to adopt the baby boy, and the Civil Affairs Bureau handled the adoption registration for him. After six months, XX's biological father returned from a foreign country and only then he discovered that his son had been adopted by Beijing residents Y1 and his wife.*

Following investigations, it was discovered that Civil Affairs produced an adoption certificate on the day the prospective adoptive couple filed an application for adoption. Here below it is analysed what happened:

- 二审法院南通中院经调查后发现，在鲍某夫妇提出收养申请当天，民政局便制作并发放了收养登记证。而收养法明确规定，收养查找不到生父母的弃婴和儿童的，办理登记的民政部门应当在登记前予以公告。

- *The Nantong Intermediate Court of the second instance after investigation has discovered that the Civil Affairs Bureau had produced and issued an adoption registration certificate on the day the adoptive parents had filed an adoption application. The Adoption Law clearly stipulates that for abandoned baby and children whose biological parents cannot be found, the Civil Affairs Department that handles the registration shall make an announcement before registration.*

- 主管部门应当慎重履行职责，确保收养登记的准确、规范、有序
- *The competent authority should carefully perform its duties to ensure that the adoption registration is accurate, standardized and orderly*

As can be seen, the article also mentions how essential the announcement is before declaring a child eligible for adoption:

- 收养查找不到生父母的弃婴、儿童的，收养登记机关应当在登记前公告查找其生父母；自公告之日起满 60 日，弃婴、儿童的生父母或者其他监护人未认领的，视为查找不到生父母的弃婴、儿童。公告期间不计算在登记办理期限内。

- *As far as abandoned baby or children whose biological parents cannot be found are concerned, the registration adoption agency before the registration shall make an announcement in order to find biological parents; if the biological parents or other guardians of abandoned baby or children have not claimed for them within 60 days from the announcement, the found infants and children shall be considered abandoned. The announcement period is not included in the registration period.*

In the following passage, it is specified how the basis for adopting the child xx goes against the law:

- 根据法律规定，查找不到生父母的弃婴和儿童可以被收养，但金某关于捡拾婴儿的报警内容纯属虚假，因此 xx 并不属于查找不到生父母的情况。

- *In accordance with law, abandoned infants or children whose biological parents cannot be found, they can be adopted; but father friend's alarm in picking up the baby was completely false, therefore XX's case was not about biological parent not found.*

In the second part of the article, the moral and psychological aspects of the situation are discussed. Was the good of the child respected? Or was it only focused on the legality of the case? It can be seen that the judgment was extremely harsh on the child but, according to the article, always in favour of him. While acknowledging the pain of losing both biological and adoptive parents, the good of the child is recognized through compliance with the law. At the

end of the article, it is specified that the Party branch of the Administrative Division of Nantong Intermediate People's court will endeavour to meet the child's interests in the future through psychological assistance.

The below mentioned passages are exemplar:

- 不过，如果收养的程序不合法，不但不能保证孩子的权益，很可能还会引发一系列问题，进而造成社会的不稳定和重重的隐患。

- *However, if the adoption procedures are not legal, the adoptees rights and interest may not be guaranteed and it may also cause a series of problems producing social instability and hidden dangers.*

- 一方面是血脉亲情、一方面是养父母无私的爱，法律规则与道德情感孰轻孰重？法官如何找到两者的平衡点？

- *Legal rules and moral emotions, which are more important? How does the judge find an equilibrium between them?*

- 今后，南通中院行政庭党支部成员将通过结对帮扶等方式，对 XX 的未来成长进行持续跟踪与关照。

- *In the future, members of the Party branch of the Administrative Division of Nantong Intermediate People's court will continue to follow and care about XX's future growth through paired assistance and other methods.*

- 父母与子女是血浓于水的亲情关系

- *Parents and children are a family relationship that is thicker than water and deserves particular protection.*

The above sentence is intended to highlight the indissoluble bond between family and child, but which family are they talking about? The biological family or the adoptive one? Or perhaps both? This is a difficult question to answer, but basing on the case mentioned, the good of the child seems to coincide with the law and the biological family. However, is this really the only answer?

1.4 Chinese orphanages

During the 1980's, due to PCR political and economic decision of birth restriction, many children were abandoned.²⁷ Infant abandonment is still considered a crime against one-child policy, this is the reason why it has been always done in secrecy. If parents were caught by police, they would have been subjected to birth planning fines or even punishments. Biological parents have often chosen public places to abandon their child in order to be noticed by people passing by, for example near hospitals, market places, orphanages.

According to the law, abandoned children have to be sent to orphanages. But even in the 1990's the majority of them, were adopted illegally before they entered in social welfare institutes²⁸, probably due to high fees adopters had to pay, or long time and too many restrictions before confirming adoption. In the event adoptive parent were caught, they would have been considered illegal as families with over-quota births, also called 超生 *chaosheng*.²⁹ 超生 *Chaosheng* literally means “unplanned births, give more birth than allowed” and it is formed by characters 超 *chao* “exceed” and 生 *sheng* “give birth to”. It might be noticed how ironically the terms 超生 *chaosheng* is phonetically similar to 超声 *chaosheng* with the meaning of “ultrasound”. As it will be analyzed below, the majority of women, in order to follow one child policy and desiring to give birth to sons instead of girls, have been involved in ultrasound selective abortion.

1.4.1 Missing girls and sex selective abortion

As far as Chinese abandoned children are concerned, most of them are girls. Indeed, it might be noticed how during the 1980's China has been characterized by gender imbalance mostly due to pre-natal sex selection.³⁰

Many Chinese families, in order to respect birth policy and give birth at least to one son, have been involved in prenatal sex determination through ultrasound technology. The first Chinese ultrasound B-machine was manufactured in 1979 coinciding with one-child police's

²⁷ Toby Alice Volkman, *Cultures of transnational adoption*, 2005 p. 86

²⁸ *ibidem*, p.121

²⁹ *ibidem*, p.123

³⁰ Avraham Ebenstein, *The “Missing Girls” of China and the Unintended Consequences of the One Child Policy*, University of Wisconsin Press, 2010 pp.4

strengthening.³¹ The diagnostic purpose of the machine such as monitoring pregnancy has been often bypassed, the actual purpose has been let parents know the sex of their child. Due to the potential controversies for pregnant women and the imbalance of Chinese' sex ratio at birth, in 1986³² Chinese government forbid sex determination by ultrasound, but many institutions and doctors continued to provide these services.

As a consequence, many biological mothers submitted to sex selective abortion in case of daughters, hoping for a future son. The following quotation from a mother is an example of what said above “ *When I saw the face of my son, I was overwhelmed with pride and joy. Finally, I have a son. I can raise my head high. I forgot all the sufferings from previous abortions.* ”³³

Due to imbalance of birth sex ratio, Chinese orphanages even today, are full of abandoned girls. A testimony might be the documentary “Dying rooms”³⁴ directed in 1995, showing Chinese state-run orphanage conditions not safe for children. Journalists affirmed that abandoned children in those years were considered a shame for society so that state orphanages were difficult to find, nobody talked about them. The documentary described how abandoned children were mostly girls or disables boys. Instead of preparing them for adoption, they seemed to be prepared for death. This was the case of a girl with no name, left to death in a dark room and abandoned twice: once by biological parents and twice by the orphanage. Sanitary conditions were so bad that the majority of children would have been designated to death.

As journalists said, considering that orphanages were most of the time run by the state, employees kept a distance from children, they did their work without any kind of compassion. Every child shall perceive physical contact they did not receive by parents before, but in the case described above it was completely absent.

In the second part of the Dying rooms documentary, journalists entered a different state orphanage: funds given by the State are equal to the situation before, but in this case parents informally adopted abandoned children and lived together under one single roof.

As far as Chinese orphanages are concerned, another inside vision has been given by Ying Ying Fry in her book entitled “Kids like me in China”.³⁵ It is the story of a Chinese-American girl adopted by an American family. She has been given the opportunity to know her life before adoption through a journey in China visiting her orphanage where she lived her first years. . Differently to the vision stated above, probably thanks to international financial support given

³¹ Chu Junhong, *Prenatal Sex Determination and Sex-Selective Abortion in Rural Central China*, Population Council, 2001 pp.260

³² *ibidem* pp.261

³³ *ibidem* pp.274

³⁴ <https://www.youtube.com/watch?v=hY5sMNIbcD4>

³⁵ Amy Klatzkin, *Kids Like Me in China*, Ying Ying Fry 2001

by adoptive families to Chinese orphanages, Ying Ying in 2000 was happy to have had the opportunity to know her previous life in her “comfortable larger home”. She spent some days in her orphanage together with other children, most of them were girls. She played with them, laughed with them and lived with them.

“I kind of feel like I belong”; “It’s good to know there are so many kids like me” Ying Ying words describe the orphanage as a big family with many sisters and brothers: everyone is taking care of each other.

Considering the two cases mentioned above, some differences might be analyzed as sanitary conditions. In the first orphanage everything has been left to death, even children; while in the second one collaboration has been considered the key for keeping the orphanage safe and comfortable.

One reason for different sanitary conditions between the two orphanages, not considering the time frame from 1995 to 2000, might be that Ying Ying’s orphanage no longer exists: it has been demolished and completely rebuilt, probably thanks to international adoptive families support. But another reason might be taken for granted: journalists through the documentary showed they entered in the orphanage with hidden cameras, describing the actual conditions of the place, while Ying Ying together with her family lived in her orphanage, wrote a book about it, took photos with other children and foster people.

Therefore, it is difficult to know exactly whether life conditions of Chinese orphanages are always adapted for children as Ying Ying’s orphanage or lifeless as in the “Dying rooms”.

Ying Ying shall be considered lucky for only entering in her “new” orphanage differently to many adoptive families who want to let their child know about Chinese previous life but not allowed to visit the orphanage.

1.4.2. “it is not *family relationship* but a *foster care relationship*”: dispute between orphanage and illegal “adoptive” family ³⁶

As mentioned before, illegal adoptions, even today, are not protected by law in any case. Even though children succeed in integrating in the new family, social welfare institutes are able to legally cease the foster relationship.

³⁶ APPENDIX II

As it happens in the case below, a Chinese child has been taken away from his foster parents who adopted the child illegally. According to the social welfare institute, the child has been considered kidnapped by his adoptive parents due to the non-qualification for adoption: foster parents have been accused of buying the child; this is the reason why he has been returned to the orphanage waiting for a new adoptive family.

The accusation consists in the term “buyers”: police’s crackdowns’ aim is to save those children from “buyers” used to indicate adoptive parents who rear the child illegally.³⁷

In the case described below it can be observed how a foster family was separated from their child because of the non legality of their relationship. In the first part it is analyzed what happened:

- 2016年6月，C被相关部门以打拐儿童名义解救至德化县社会福利中心。2017年元月间，德化县社会福利中心委托专业评估机构对郭哲星家庭的寄养能力评估。经综合评定合格后，双方共签订两份《家庭寄养协议书》。2018年1月11日，德化县社会福利中心假借检查名义，要求郭进来到夕阳红敬老院小住几天，结果不让郭进回家。2018年2月11日，德化县社会福利中心邀请多部门进行联合执法，将郭进来转移泉州市鲤城区福利院。
- *C child has been adopted by X2 and others 25 days after his birth. In June 2016, the child has been rescued by related departments to the Social Welfare institution in the name of child trafficking. During January 2017, the Dehua County Social Welfare Centre commissioned agencies specialized in evaluation to examine the foster capability of XI’s family.*

After passing a comprehensive assessment, the parties conjointly signed two copies of the Family Foster Care Agreement.

On January 11, 2018, the Dehua County Social Welfare Centre, using the pretext to examine, asked to child C to stay for a few days at the elderly home, but the result was the child was not allowed to return back home.

On February 11, 2018, the Dehua County Social Welfare Centre has invited multiple departments to conduct jointly law enforcement and transfer the child to the welfare institution of Licheng District of Quanzhou.

³⁷ Kay Ann Johnson, *China’s Hidden Children: Abandonment, Adoption, and the Human Costs of the One-Child Policy*, University Chicago Press, 2016 p. 153

As it can be observed above, the child has been taken by the Dehua County Social Welfare Centre and placed for domestic adoption. It is important to mention that, C child was not the only child taken away from his foster parents:

- 2018年8月16日, X1等人得知, 德化县社会福利中心同时将10个家庭的10个孩子包括C在内, 同步安排到了新寄养家庭中去。
- *On August 16, 2018, X1 and others have learnt that the Dehua County Social Welfare Center have taken ten children, including C child, of ten different families planning for them new foster homes.*

In fact, due to foster parents' non-eligibility to adopt, the child has been placed for domestic adoption not considering them as potential adoptive parents. They tried to defend themselves at any cost basing on three main points:

- 寄养人能力评估报告
- *Foster Career Ability Assessment Report, Foster Care plan.*
- 解除家庭寄养通知书
- *Notice of dismissal of Foster Care*
- 《照片》一组
- *A group of photos proves that C has integrated into X1's family*

Through these points, foster parents wanted to affirm their eligibility to adopt the child confirmed by a report of the Quanzhou Social Organization Promotion Center. Moreover, they affirmed how the Dehua Social Welfare Institution has signed a protocol accepting the de facto adoption; this is the reason why, according to foster parents, the institution cannot unilaterally terminate the agreement at will.

Unfortunately, the third evidence did not possess any legal basis, even though representing the deep affection of the family.

But then it has been affirmed:

- 根据《家庭寄养管理办法》规定，被解救的被拐卖儿童不应由原收买家庭继续寄养另外寄养家庭成员应无犯罪记录；郭哲星、郭丽霞等家庭成员不具备寄养的条件。
- *According to the Law on the Protection of Minors, children kidnapped shall not be fostered by families engaged in purchase, moreover members allowed to foster shall not have committed any type of crime; X1 and X2 and members of the other families do not possess foster care qualities.*

Therefore, foster parents' requests have been rejected because of their non eligibility to adopt the child. Here below a summary of the judiciary decision:

- 对于暂时查找不到生父母及其他监护人的，应当送交社会福利机构或者救助保护机构抚养，由社会福利机构或者救助保护机构承担临时监护责任。社会福利机构收到查找不到生父母或其他监护人的证明后，对于符合收养条件的儿童，应当及时进行国内送养，使儿童能够尽快回归正常的家庭生活。
- *If the biological parent or other guardians cannot be found temporarily, children shall be sent to social welfare institutions or rescue and protection institutions for support, and they shall assume the temporary foster responsibility. After the social welfare agency has received the certificate that the biological parents or other guardians cannot be found, the child who meets the conditions for adoption shall be sent for domestic adoption in time so that the child can return to normal family life as soon as possible.*

The legal case described above emphasizes the difference between a family relationship and a fostering one: since this family is united through a fostering relationship, it seems to not be considered as a family relation, legitimating the breaking of the emotional bond.

This thought is confirmed by the passage below:

- 双方系家庭寄养的法律关系，不是家庭成员的关系
- The parties are in a legal relationship of family foster care, not family members

CHAPTER 2 INTERNATIONAL ADOPTION FROM CHINA

2.1 History of Chinese Law about international adoption

International adoption is a phenomenon increasing day by day whose China is one of the main country participants. An international adoption occurs when a child is adopted by a family whose resident country does not coincide with the natal country of the child.

The majority of participants are usually poor countries or those weakened by political, social or economic environments whose main purpose is delivering children adapt for adoption towards developed countries as western countries, considered the best option for the future of children. As it can be noticed from the international adoption stream, the first Asian cases are those one concerning children coming from war countries such as Korea or Japan. An example of mass adoption is derived from Korean War in the years '50: many children had lost their native family and the majority of them would have been adopted by Americans.

However, Korean families, according to the Confucian ideology, often believe that continuing the lineage through an adoption of nonrelatives is wrong: together with the war situation of Korea, this was the reason why many Korean orphans had been internationally adopted.

Modern age marked the turning point for international adoption: western families began to opt for international adoption not only to save those children from war, but also for other demographic reasons. As it is proved, nowadays developed countries' natality rate is decreasing and infertility rate is increasing³⁸: the amount of domestic adoption in developed countries has been limited in contrast to international adoption that becomes a new instrument able to compensate for domestic adoption decreasing.

China, as mentioned before, is one of the major countries that contributes to international adoptions. Moreover, it is an example of how political and economic decisions have influenced social changes and child abandonment. Many Chinese families have been forced to abandon their own children in order to avoid punishments due to the one-child policy. The majority of abandoned children were girls as a result of the influence that Chinese culture imposes on people's minds.

International adoption can be considered from an economic point of view: developing countries offer orphans willing to be adopted, while developed countries represent the demand of the

³⁸ Crystal J. Gates, *China's Newly Enacted Intercountry Adoption Law: Friend or Foe?*, Indiana University Press 1999, p. 373

equation. According to adoptive parents, international adoption is often preferred because of the distance from biological parents and the consequence of having less contact with them.

However, before giving start to the long journey of international adoption, parents have to bear in mind the difficulties that orphans have to face, for example living in a country completely different from the native one both from a cultural and social aspects including language difficulties, opposite habits.

As far as international adoption is concerned, China emanated the first law concerning domestic adoption through the Marriage Law of 1981 and only with the reform in the year 1988 allowed international adoptions.³⁹

With the revision of Adoption Law in the year 1992⁴⁰ China enabled strangers to have the same adoption requirements of Chinese nationals, however they still were too rigid and difficult to satisfy: this is the reason why domestic adoptions were still preferred to international ones resulting in overcrowded Chinese orphanages. According to the law, adoptive parents shall be at least 35 years old, childless and capable to rear and educate the child.

Although China in the year 1992 began formally allowing international adoptions, it has been suspended for 10 months due to corruption within the system.⁴¹

After the Adoption Law revision of the year 1999, the Chinese government decreased the minimum age of adoptive parents to 30 years with the aim of increasing domestic adoption but the result was not the one expected. Starting from 2021, the minimum age of adoptive parents is disciplined by Article 1098 of Chinese Civil Code (Book V, Title V, Chapter I).

With the emanation of “the Measures on the Registration of Adoption of Children by Foreigners in the People’s Republic of China” international adoptions should operate in accordance with the Chinese Adoption Law.⁴²

Article 1 of the Measures proves the above stated: “*These Measures are formulated in accordance with the Adoption Law of the People's Republic of China in order to regularize foreign-related adoption registration practice.*”⁴³

³⁹Rachel A. Bouman, *China's Attempt to Promote Domestic Adoptions: How Does China's One-Child Policy Affect Recent Revisions in China's Adoption Law and Measure Up to the Hague Convention*, 13 *Transnat'l Law*. 91 (2000), p. 115

Available at: <https://scholarlycommons.pacific.edu/globe/vol13/iss1/7>

⁴⁰ <http://www.lawinfochina.com/display.aspx?lib=law&id=995&EncodingName=big5>

⁴¹ Robert S. Gordon, *The New Chinese Export: Orphaned Children-- An Overview of Adopting Children From China*, 10 *Transnat'l Law*. 121 (1997), p. 136

⁴² Rachel A. Bouman, *China's Attempt to Promote Domestic Adoptions: How Does China's One-Child Policy Affect Recent Revisions in China's Adoption Law and Measure Up to the Hague Convention*, 13 *Transnat'l Law*. 91 (2000), p. 119

⁴³ <http://www.china.org.cn/english/LivinginChina/184132.htm>

According to the law, those people who are planning to adopt a Chinese child, shall provide several documents to foreign adoption organizations as an initial step for the future adoption. Article 4 explains: “*Foreigners attempting to adopt children in China shall deliver adoption applications, family situation reports and certificates to adoption organizations authorized by Chinese government (hereinafter referred to as Chinese adoption organizations) through governments of their home countries or adoption organizations authorized by governments (hereinafter referred to as foreign adoption organizations).*”⁴⁴

The documents required are the following:

- application for transnational adoption;
- birth certificate;
- certificate of marital status;
- certificate of occupation, income and property;
- certificate of health examination;
- certificate indicating whether the adopter has ever been subject to critical punishment;
- certificate certifying the approval of the transnational adoption by the competent authority of the home country;
- family situation report, including the adopter's status, the qualification and suitability of the adoption, family background, medical history, motive for adoption and specialty for caring children.

The points listed above are replaced by Article 1109⁴⁵ of the Chinese Civil Code, which came into force on January 1, 2021. Indeed, the year 2021 is a pivotal point for the development of Chinese law. Through the Civil Code, analysed in Chapter 3 of this thesis, China achieves a legal uniformity that it had not previously obtained and Chinese adoption law together with the Measures on the Registration of Adoption of Children by Foreigners in the People’s Republic of China have been abrogated as stated in Article 1260 of the Code⁴⁶.

2.2 The Hong Kong Project: the first case of international adoption from China

⁴⁴ <http://www.china.org.cn/english/LivinginChina/184132.htm>

⁴⁵ O. Dilberto, D.Dursi, A. Masi, Codice Civile della Repubblica Popolare Cinese, Traduction of Meiling Huang, 2021, Pacini Editore Srl

⁴⁶ *ibidem*

As far as the first Chinese international adoptions are concerned, the Hong Kong project can be observed as the manifesto of Western vision's change about Asian people.

The project took place during the 1950's, when International Social Services of the United Kingdom, abbreviated as ISS, extended their work in different countries such as Hong Kong.

The ISS is an NGO founded in 1924⁴⁷ with the aim of protecting and assisting children and parents' interests subjected to social difficulties. Thereafter, interventions by NGO organizations with the aim of helping those children abandoned by their parents were implemented: in fact it can be pointed out that in 1955 and later in 1957 branches of the ISS were born respectively in Japan and Korea following the devastating wars.⁴⁸

The ISS UK, initially called ISS GB founded in 1955, has been involved in different projects based on the actual needs during those times. This was the case of Hong Kong refugees coming from Mainland China after Mao's Great Leap Forward: the Chinese Communist Party's economic and social campaign lasted from 1958 to 1962, resulting in tens of millions of deaths without reaching the goal of transforming the country.

The ISS, taking into consideration the critical situation of Hong Kong, decided to open a branch there with the purpose of helping Chinese orphans or those children abandoned by parents who cannot afford them.

Concentrating initially on potential adoptive families located in Hong Kong, ISS changed the course with oversea families such as those one in the United Kingdom or in the USA.

Indeed, through the collaboration with ISS USA, many Chinese children succeeded in being adopted by American families as it has been marked by the year 1961 during which five hundred children flew from Hong Kong to the USA.

Most of the time, adopted children were those one already known by the adoptive family, probably connected by a relative relation or friendship one.

There is also a substantial difference between traditional wartime adopted children and those one adopted through the Hong Kong project: the latter were often older. With reference to the Hong Kong project, adoptive families preferred male children, probably due to Chinese culture about lineage continuance.⁴⁹ These children, often adopted at an advanced age, remember life spent in their birth country, loved by their biological family: this is the case of Christopher, adopted by an American family but eager to hear from his Chinese family. The adoptive mother,

⁴⁷ <https://www.iss-ssi.org/index.php/en/>

⁴⁸ Catherine Ceniza Choy, *Global Families: A History of Asian International Adoption In America*, New York University Press, 2013, p. 16

⁴⁹ Catherine Ceniza Choy, *Global Families: A History of Asian International Adoption In America*, New York University Press, 2013, p. 61

aware of her son's needs and after unsuccessful attempts to contact his family of origin, decides to contact the ISS USA which, in collaboration with the ISS Hong Kong, manages to find the child's biological mother. The biological mother responds with a letter explaining how she has voluntarily ignored her son's messages to allow him to create a new life in America with his "new parents".

At first glance the message might seem cold and detached but reading carefully it can be seen the care with which it is written and the concern of the biological mother. Secondly, while referring to the adoptive parents as "new parents", the biological mother signs herself "*Your mama*", probably to emphasize and not forget her son's past life.⁵⁰

2.2.1 Hong Kong adoptees

There are few studies concerning the post adoption of Hong Kongers including one that has been conducted by two researchers Bagley and Young. They developed the study about 20 adult-aged transnational Hong Kong adoptees attending a gathering in Hong Kong in 2015. The purpose of this study was to examine the transnational identity of Hong Kongers along with feelings and thoughts about the gathering, considering two different viewpoints: pre and post gathering.⁵¹

The study has also been accompanied by several face-to-face interviews of adoptees during the gathering week.

In the article, reference is made to the "Chinese Adoptee Worldwide Reunion": a reunion of Chinese people held in Hong Kong in 2010 through which Chinese adoptees from every region came into contact. Among them, those with Hong Kong origins, kept in touch and later formed the "Hong Kong Adoptees Networks" that brings together transnational Hong Kong adoptees from the 1960s.

It is interesting to note that adoption through the Hong Kong project differs from transnational ones during 1990's for specific characteristics: in fact, Hong Kongers faced the adoption and post-adoption process in a society that was still technologically backward: a society without Internet is equivalent to a society in which establishing interpersonal relationships with

⁵⁰ Catherine Ceniza Choy, *Global Families: A History Of Asian International Adoption In America*, New York University Press, 2013, p. 64

⁵¹ Kit Myers, Amanda L. Baden & Alfonso Ferguson (2020) Going Back "Home": Adoptees Share Their Experiences of Hong Kong Adoptee Gathering, *Adoption Quarterly*, 23:3, 187-218

strangers who have shared the same kind of history is hardly possible. This is the case of Hong Kongers who only in 2010 created the Hong Kong Adoptees Networks⁵². Secondly, unlike now, adoptive families had not received education and support for post-adoption, with the result of eliminating the adoptee's original culture.

The research is divided into three parts: the pre-gathering part in which general data of the adoptees such as age, gender, questions regarding one's personal identity and culture of origin are requested. While the post-gathering part is concentrated on how the gathering has impacted adoptees' life and transnational identity concerning feelings about returning to the country of origin.

According to the results, it can be observed that most of the respondents feel a strong interest in obtaining information about life in China such as the orphanage and looking for biological parents. In addition, the respondents' feedback about the gathering is mostly positive and highlights how important it is to find a group of people who have shared the same kind of story. All the adoptees shared different emotions and motivations in going back to Hong Kong, for example they expressed their feelings through the following expressions: "*seeing our homeland*", or "*Feet on the ground for root tracing and birth search*".

The final goal of the study is emphasizing the importance of origins not only through keeping their own past alive, but also affirming and strengthening the identity and cultural belonging. The article closes with the following sentence: "*With this article and epilogue, we hope to honor adoptee lives, their many desires, and their complex family portraits*".

The theme on which the above study is based can be summarized with terms like belonging, union, kinship. As far as kinship is concerned, many institutions succeeded in creating connection beyond family line as it can be observed among communities of adoptees: in fact communities are created by adoptive parents, Chinese adoptees and any person around them as relatives and friends. The following quotation by a founder of FFC is exemplary of all this: "*We felt as if we knew an amazing secret that we had the obligation to tell the world about*"⁵³

The first institution able to create kinship is FCC that includes various voluntary organizations created with the purpose of assisting adoptive families with Chinese children. In fact, the acronym means "Families with Children from China". Starting in Manhattan in the 1990s as a parent support group, FCCs have expanded throughout the United States and Canada. Each FCC organizes meetings, festivals to bring together as many families as possible and to create

⁵² <http://www.hkadopteesnetwork.com/>

⁵³ Toby Alice Volkman, *Cultures Of Transnational Adoption*, Duke University Press, 2005, p. 87

a community united by a common reason. Among various events there are the Lunar New Year, the Moon festival, and the Heritage Festival.⁵⁴

In the same vein as the American FCC, an organization formed by mothers of children without Hukou registration was born in China in the 1990s. By joining together, they tried to attract the attention of central authorities to solve a problem that many people were facing. This organization is called "Sunflower" and became so popular that it appeared on Chinese television. It had its highest moment in 1997 and 1998 even though it failed to achieve legalization.

The idea to create an association came from Chang Lixin, a woman who found an abandoned child on the street. Despite the right to adopt the child early declared abandoned, the government of Beijing refused to give to the child an hukou considering the fact that Chang was single and young and therefore she could not ensure that in future she could not have another child: therefore, according to the government, it means circumventing the one-child policy.

Although the child could be considered a Special Case Adoption by having cleft lip, therefore exempt from the age and child restrictions, the government will never consider these points. Instead, the government argues that Chang, having taken the child out of Yunnan, she should return the child to Beijing.⁵⁵

One of the purposes of the Sunflower organization was to create a private school for children without hukou so that they could enjoy the right to education like any other child.

2.3 A new opportunity for adoption: from clean break towards openness

An illustration of international adoption through the Hong Kong Project is well described in the series "Call the Midwife": an English series produced by the BBC and set in the 1950s-60s in London's poor East End district. It tells about intertwined stories of a group of midwives among whom stands out the character Shelagh Turner. Together with her husband Patrick Turner, a local doctor of nuns and midwives, they decide to devote themselves to the life of the Chinese girl May Tang by becoming her foster carer through the Hong Kong project. In fact, the foster parents in the ninth season, after a period of fostering, will have to face the appearance of May Tang's biological mother who, having abandoned the child for economic reasons, only now demands custody of her daughter. In episode six of season nine it can be seen that the foster

⁵⁴ <http://www.fccsocal.org/>

⁵⁵ Toby Alice Volkman, *Cultures Of Transnational Adoption*, Duke University Press, 2005, p. 133

parents are shocked by the appearance of the biological mother, having always thought that the child was an orphan. Only at first, afraid of May Tang's possible recognition of the biological mother, they are hesitant about the possible meeting, but then decide to let them meet. Following discussions, the two protagonists of the episode decide to formalize the adoption for both economic stability of the child and both the imminent expiration of their custody, even acknowledging the displeasure of the biological mother.

The above representation is confirmed by a story that actually happened: Sue Jardine who testified to Radio Times about her experience of adoption through the Hong Kong Project.⁵⁶ She recounts how, following a period in a Chinese orphanage as children in *Call The Midwife*, she arrived at Heathrow Airport together with four other Chinese girls. Jardine, through *Call The Midwife*, feels represented, realizes how she has something in common with other people who have had the same experience as her.

From this representation of the '50s - '60s, it could be already observed an openness towards the adopted child's past: in fact, unlike what it might have been expected, foster parents decide to let May and her biological mother meet again: this is a profoundly avant-garde step, in contrast to the so-called Clean Break that will be discussed later.

In a broader vision, how did we manage to overcome the rejection of the adopted past by opting for an involvement and interest in cultivating it?

Everything could be analyzed considering the term Orientalism, coined in 1978 by Edward Said indicating the European vision of an unknown East understood as something "different".⁵⁷ The word plays with two terms: denomination and domination: in fact, Orientalism is the denomination of East and all that surrounds it from a Western dominant point of view.

This issue is related to intercountry adoptions both from an adoption point of view on its own and in terms of post adoption decisions. In fact, the number of children born from two different race parents increased during wars like Korean one, such as those born from American and Asian parent one, were considered "impure" and referred to as "occupational babies" or "GI babies" emphasizing a unity that cannot take place: occupying country and occupied country.⁵⁸ These children were left alone, discredited by both the Asian and Western sides: no one took responsibility for protecting or caring for them. In addition to being considered unworthy, they were accused and discriminated against because of their physical appearance: these were the reasons why the number of abandonments increased severely overwhelming Asian orphanages.

⁵⁶ <https://www.radiotimes.com/tv/drama/call-the-midwife-christmas-chinese-refugee-crisis/>

⁵⁷ Edward W. Said, *Orientalism: Western Conception of the Orient*, Routledge & Kegan Paul, 1978

⁵⁸ Catherine Ceniza Choy, *Global Families: A History Of Asian International Adoption In America*, New York University Press, 2013, p. 16

In addition, the first international adoptions, as mentioned above, involved mostly previously known children, probably due to fear of the adoptive parents about something new and unknown. Hardly any traditional Caucasian family would have adopted an unfamiliar Asian child.⁵⁹

The term clean break can be used to define the clear decision by adoptive parents to definitively eliminate their children's past, perhaps out of fear of future relations with the biological family or hoping to integrate the child as best they can into the adopted culture without interfering with the past.

This vision is severely criticized because it imposes on the adoptee the elimination of his or her previous life regardless of child benefits. Indeed, the best interest of a child does not always mean an exclusivity of filiation. Instead of exalting the interaction between different cultures, parents sometimes prefer the univocality of them. This closure towards the adoptee's culture of origin makes it difficult to form and develop his/her own identity. This is why it is suggested a more open type of adoption, one that allows both the biological family and the adoptee to have information about each other according to their wishes.

Referring to the case described in the series "Call the Midwife" it can be seen that the protagonists are opened to encounter the biological mother allowing her to meet the daughter. This is the reason why Call the Midwife can be considered one of the first examples of culture keeping at the expense of clean break.

Considering Clean Break as a basis, the journey of adoptive parents to the country of origin of the adoptee is compared to childbirth. The quotation above represents exactly the idea: "*We went to get her, and we think it is important. It was like an initiation. She was coming out of her world. It was even a little like childbirth. [...] This child must put down roots in her new life, in her new country and with her new family*"⁶⁰. However, this mother pointed out the importance of her daughter's origins, in fact she convinced her to study Chinese, and taught her to be proud to be Chinese.

The cases above mentioned concern plenary Adoption whose validity is no longer determined by the original birth certificate of the child but a new birth certificate that includes the replacement of the biological parents' name with the adoptive ones. Through this type of adoption, all legal relationships between biological parents and children are ceased. In contrast to the above mentioned, the so-called simple adoption applied in Countries like France and Belgium, refers to an open adoption characterized by a combination of elements of childbirth

⁵⁹ Catherine Ceniza Choy, *Global Families: A History Of Asian International Adoption In America*, New York University Press, 2013, p. 170

⁶⁰ Ouellette, Françoise-Romaine (2003). *Plenary Legal Adoption and its Implications for the Adopted Child*, Institut national de la recherche scientifique, Montréal, p. 10

status and adopted child one. Simple adoption lets the adoptee keep a relationship with biological parents or any other bounds with his/her origins.

For example, concerning international adoption from China, those children adopted by Canadian families, with reference to Quebec district, are engaged in plenary adoption probably due to the difficulty that many adoptive parents face in looking for information on the birth family.

Nowadays, intercountry adoption should be seen as a blend of different cultures, an opportunity to broaden one's physical and mental boundaries. In fact, there are several ways of integrating the adoptee's past culture into his or her present life, not only by introducing biological parents, but also by making the adoptee an active participant of his culture of origin.

Learning the mother tongue is probably one of the most effective tools: there are many parents who, in agreement with their adopted child, decide to undertake language courses not only by learning it but also by using it as a means of getting to know similar family cases. Moreover, undertaking or maintaining the language of one's country of origin may provide a starting point for increasing interest and connection between the biological and adoptive families.⁶¹

The issue of native language is often discussed through studies of transnational families where it has been noted that international adoptees older than the average are more likely to experience language learning problems.

It has been found, however, that most adoptive parents take into consideration both the emotional and cognitive abilities of the child before making language decisions of any kind.

The article highlights several positive points regarding the bilingualism of the adopted elder: first, speaking one's own language of origin in the family environment can be a comfort for the adoptee in the initial period. In addition, attending language courses can help the adoptee to reach not only scholastic but also personal goals: in fact, having a reference figure such as a tutor is considered fundamental for the child.

However, often the adoptive parents' wishes exceed what their son or daughter would really desire: this is the case of Oona adopted by a family resident in the San Francisco Bay Area who undertook various activities regarding her origins: the attitude of the Irish mother developed a behavior of the daughter in contrast to what was expected. In fact Oona became passionate about Irish dancing rather than Chinese culture. Oona's story has been widely discussed online

⁶¹ Lyn Wright Fogle, *Parental ethnotheories and family language policy in transnational adoptive families*, Springer Science+Business Media Dordrecht 2012, p. 85

during which the adoptive parents are blamed for forcing something that probably would have come by itself sooner or later.⁶²

Another example of how cultural integration and past memories are an added value for the adoptee is described in the BBC documentary video "*Twin Sisters: A World Apart*"⁶³ which describes the life of a couple of Chinese twins adopted by two different families: Mia and Alexandra. As it can be seen in the documentary, the adoptive parents went to the orphanage and took the future adoptees in their arms noticing their similarity; but it was only later, after a DNA test, that they discovered that the two girls were twins.

The girls grew up in two completely different environments: Mia, adopted by an American family, lives a cosmopolitan life full of activities, while Alexandra, in a small fishing village in Norway, spends her days in the middle of nature.

After years of telephone contact between the adoptive parents, it is only at the age of 8 that the girls met in the Norwegian village: the long-awaited and exciting meeting surprised: the twins, despite having completely different lifestyles and speaking different languages, immediately built an indissoluble bond, highlighting a line that distinguishes and unites at the same time the genetic family with the acquired one.

2.4 A new opportunity for China: the Hague Convention

"(1) The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship." (Art. 2, Hague Convention).⁶⁴

The Hague Conference on Private International Law is a permanent intergovernmental organization whose task is to unify, as far as possible, the rules of private international law. The General Secretary of the Hague Convention on Intercountry Adoption is charged with convening regular sessions of a Special Commission to examine the practical implementations of the treaty. In addition, the Bureau of the Conference, in collaboration with experts from other

⁶² Toby Alice Volkman, *Cultures of Transnational Adoption*, Duke University Press, 2005, p. 88-89

⁶³ <https://www.bbc.co.uk/programmes/b053pxdt>

⁶⁴ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

international organizations, advises individual States on how to adapt their legislation and procedures to the Convention. Moreover, it holds a list of all contact details of all Central Authorities and recognized bodies, so that cooperation is facilitated.

The Convention was drafted by the Hague Conference on Private International Law with the aim of examining problems relating to the intercountry adoption process and establishing the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, Concluded on May 29, 1993 in The Hague, the Netherlands, entered into force on 1 May 1995.⁶⁵ In May 2019, the Convention has been ratified by 99 States and those that have not ratified the Convention (South Korea, Nepal, Russian Federation) do not allow foreign adoptions of their children or adoptions of foreign children. Nowadays, there are currently 104 Contracting States.⁶⁶

China, in 1998, although not yet a signatory state to the Convention, through the amendment of the 1998 law, moved closer to the guidelines and principles enshrined in the Hague Convention. Probably considering the strong incentive of the Hague Convention and the previous years' increase of international adoptions in China, the Chinese government signed the Hague Convention on November 20, 2000, hence becoming a Contracting state. During the Second Special Commission on the Practical Operation of the 1993 Hague Convention held in September 2005, China's participation was confirmed: on September 16, 2005, China deposited its ratification documents with the Ministry of Foreign Affairs of Netherlands and since then the Chinese Ministry of Civil Affairs has been appointed as the Central Authority. China formally implemented the Convention on January 1, 2006.

The Convention contains provisions regarding the responsibilities and tasks to be shared by States of origin and Receiving States. This must be done while respecting the diversity of national legislation. In fact, according to the convention, adoption is considered a social and legal act and not a personal one. Instead, the responsibility belongs above all to the State, which must be able to guarantee respect for the child's fundamental rights.

Under the Hague Convention there are five actors in charge⁶⁷:

- the Governments of the countries of origin
- the Central Authorities
- the judiciary;
- the governments of countries receiving children;

⁶⁵ <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html>

⁶⁶ <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>

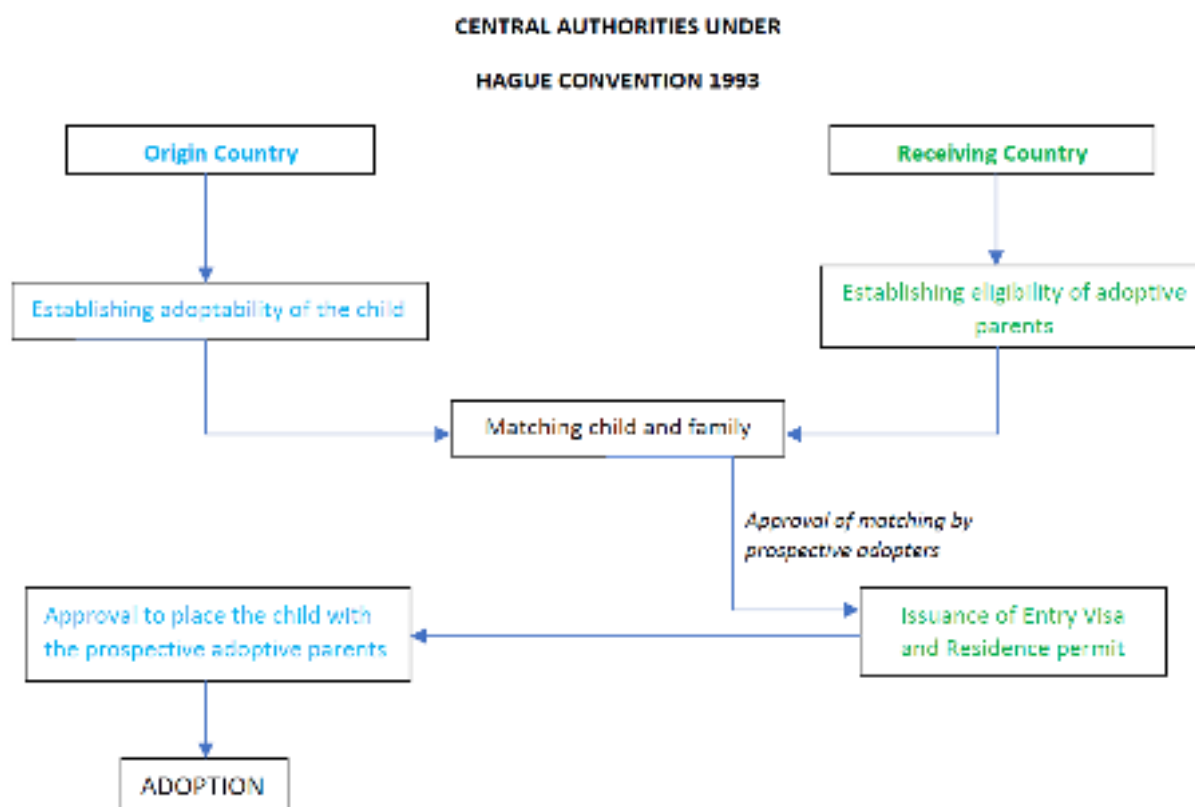
⁶⁷ <https://www.unicef-irc.org/publications/pdf/digest4i.pdf>

- agencies involved in intercountry adoption

One of the fundamental objectives of the Convention is to establish a Central Authority in each Participating Country to manage the adoption process in accordance with the Convention rules. The mission of the central authority is twofold: in fact, the central authority of the host country must ascertain the suitability of the adoptive family and the one of origin country has the task of verifying the child's potential adoption. One example is the China Center for Children's Welfare and Adoption, which, in accordance with Article 21 of the Convention⁶⁸, handles intercountry adoptions on behalf of the Ministry of PRC.

The Central Authorities are responsible for cooperating with each other and promoting collaboration among the competent authorities of their States to ensure the protection of children and to achieve purposes of the Convention.

Here below a scheme to summarize Central Authorities' rule:



The judiciary is essential to law enforcement because all the material concerning the practice of the child has to be fully and adequately prepared together with the documentation regarding families' choice.

⁶⁸ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

Respecting the independence of the judiciary, authorities shall be prepared to appeal the decisions of the courts in the first instance in the event that it is realized that such decisions contradict the principle or letter of the law.

The purpose of the Convention is expressed in three fundamental points within Article 1⁶⁹: first, to safeguard the best interests of the child and his or her rights in intercountry adoption; second, to create cooperation among the countries parties to the Convention by eliminating the risk of abduction or child trafficking; and finally, to recognize intercountry adoption in each Contracting State.

The Convention is based on needs and wishes of the adoptee, as it can be seen from Article 4⁷⁰, which emphasizes the importance of the child's consent, duly informed of the consequences of such choices. It also specifies how the child's wishes and opinions should be taken into account. In accordance with the Convention, it can be appreciated that the origins of the adopted person are privileged and preserved, in particular Article 30⁷¹ of the Convention states that Central authorities of each country are responsible for maintaining information about the origin of the child such as his/her medical history of the child or the identity of the biological parents. They must also ensure that the person concerned or his/her representative has access to such information in accordance with the law.

Furthermore, a scale of preference can be observed regarding family solutions: return to the biological family is generally preferred to placement in an institution; permanent solutions like return to the birth family or adoption should be preferred to temporary solutions such as placement in an institution or foster family; national solutions as returning to the birth family, domestic adoption must be preferred to international ones.

Italy has ratified the Hague Convention with law no. 476 of 31 December 1998, more precisely with “Ratification and implementation of the Convention for the Protection of Children and Cooperation in Respect of Intercountry Adoption”⁷², done at The Hague on 29 May 1993. Amendments to Law No 184 of 4 May 1983 on the subject of the adoption of foreign minors”⁷³ adapting the internal procedure regulated by Law 184/83.

2.4.1 CCCWA and its influence on Chinese international adoption

⁶⁹ <http://www.commissioneadozioni.it/media/1435/convenzione-dellaja-1993.pdf>

⁷⁰ *Ibidem.*

⁷¹ *Ibidem.*

⁷² <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

⁷³ <https://www.camera.it/parlam/leggi/984761.htm>

It is interesting to note that China, unlike other states of origin, has an adoption system famous to be slightly corrupted, indeed it has always managed to impose its own rules on intercountry adoption.⁷⁴

“The Chinese Center for Adoption Affairs” (CCAA) is the body that regulates intercountry adoptions in the People's Republic of China. Until 2005, the Chinese name was 中国收养中心 *Zhongguo shouyang zhongxin*, whose official translation into English was “Chinese Center for Adoption Affairs”. Only later the name has been changed in 中国儿童福利和收养中心 *Zhongguo ertong fuli he shouyang zhongxin*, translated into English as “China Center for Children's Welfare and Adoption” abbreviated with CCCWA.⁷⁵

On May 1st 2007 the CCCWA published new requirements for the adoption of Chinese children by foreigners: in accordance with the Hague Convention, the CCCWA has modified the eligibility requirements for potential adoptive parents: heterosexual couples married for at least two years were considered potential adoptive couples. A further restriction was in the event one partner had previously divorced, the couple had to have been married for at least five years, including no more than two divorces.⁷⁶

The CCWAA is divided into eight different departments, each with different responsibilities and obligations⁷⁷:

- **Administrative Office:** Mainly responsible for receiving and sending adoption documents and coordinating the departments of the CCWAA listed below. It verifies official documentation and cases considered special. It is also in charge of drafting and publishing CCWAA statements, advising on adoption policies, receiving international guests, and protecting the interests of children adopted through intercountry adoption.

- **Adopter's Eligibility Review Department:** This is the department that deals with international adoption agencies. In fact, it is responsible for reviewing the necessary requirements for foreign adoption agencies, choosing the basic standards required of non-Chinese citizens who want to adopt in China and verifying the official documents that foreign governments or adoption agencies send to the CCCWA.

⁷⁴ David M. Smolin, *Child Laundering: How The Intercountry Adoption System Legitimizes And Incentivizes The Practices Of Buying, Trafficking, Kidnaping, And Stealing Children*, The Berkeley Electronic Press, 2005, P. 131

⁷⁵ Consolato Generale D'Italia a Shanghai, www.consshanghai.esteri.it

⁷⁶ <http://cccwaen.mca.gov.cn/article/Inter-countryAdoption/b/c/201407/20140700664358.shtml>

⁷⁷ https://www.internationaladoptionhelp.com/international_adoption/international_adoption_china_adoption.htm

- **Child's Inter-Country Placement Department:** its main purpose is selecting children to be placed for adoption by foreign adoptees, sending regular communications regarding the health status of children up for adoption. It also contacts local authorities for any problems that may arise during the child's registration process. This department is considered the promoter of studies on international adoptions and the creator of new regulations on them.

- **Domestic Adoption Department:** is responsible for research and development of domestic adoption studies. makes recommendations with the aim of creating a new adoption policy and coordinating its development.

- **Child-Raising Department:** involved in studies and research in order to create scientific recommendations regarding children care within social programs in institutions, and to promote methods, programs and experiences for children's benefit.

- **Archives Management Department:** it is responsible for filing and cataloguing all adoption-related documents, including certificates and other necessary documents. It also assists families in the post adoption phase.

- **Information and Technology Department:** a department required to maintain communication between departments, it also creates new software to administer adoption documentation, etc.

- **Finance Department:** it handles the financial side of international adoptions; it receives and supervises donations and funding from adoption agencies and foreign governments, etc.

- **General Affairs Department:** has to do with logistics, properties, offices management.

The CCWAA uses two different agencies to provide support: 中国妇女旅游网 *Zhongguo funü luyou wang* (China Women Travel Service)⁷⁸ and 爱之桥收养中心 *Aizhiqiao shouyang zhongxin* (Bridge of Love Adoption Service)⁷⁹.

⁷⁸ <http://www.cwts.com.cn/gg/english/index.html>

⁷⁹ <http://www.china-blas.org/newsinfo/288166/1133604.html>

Moreover, both government agencies, those one of Origin and Destination Country, have the main purpose of facilitating the adoptive family journey to China by providing everything necessary: for example, finding an interpreter, organizing and planning the phases of the adoption process in China, and then providing guided tours for visiting the origin country of the adoptee.

As far as adoptive families are concerned, Chinese civil affair department has the responsibility to combine the potential adoptive families with the child placed for adoption. This important task is made through the examination of families that satisfy adoption requirements taking into consideration both parents' and child interests.

As Article 15 of the Convention declares “*The activities of China adoption organization shall be subject to the supervision of the civil affairs department of the State Council*”⁸⁰.

The journey to China has got the aim to finalize adoption processes and let future parents meet with the child. The authorized Chinese organization shall send a notice to the future adoptive parents and to the placing child informing about the future encounter.

That moment, according to parents, can be considered the realization of the adoption process even though it is not legalized yet. Adoptive parents decide to undertake a long journey in order to extend their own family always with the assistance of organizations or agencies.

They will be hospitalized by Chinese hotels as in the case of White Swan Hotel that became famous with its limited edition “Barbie going home”(Picture A). It represents a Barbie taking in her arms a baby Asian child only available for those children placed in White Swan Hotel.

It is curious to notice that the girl is represented as young, blond and single as the typical Caucasian girl. However, several critiques arose on this theme: in fact this kind of Barbie is available only for those children that have been placed in White Swan Hotel⁸¹. The limited disposal of Barbie Going Home created speculation: Barbie going home is sold online on Ebay at a price of 300 USD⁸².

⁸⁰ *ibidem*

⁸¹ <http://www.hearttoheartadopt.com/going-home-barbie-adoption-doll/>

⁸² https://www.ebay.ca/sch/i.html?_nkw=barbie+going+home



Picture A: "Going Home Barbie"



Picture B: Elliot, Chinese Adoptee

One testimony of Barbie Going home and the adoption journey is given by Elliot (Picture B), a Chinese abandoned boy adopted by an American family. Through their online diary they explain every single moment of the trip to China in order to encounter their future son. Moreover, they included all the bureaucratic steps and documents provided to the Civil Affairs Department once they arrived in China.

Here we can see how the use of a diary, both physical and digital, is a practice widely used nowadays by adoptive parents in order to keep the memory of the adoption alive and make it easier to explain it to the child. A list of online diaries can be read on the "My adoption website" through which different stories of international adoptions from China are told.⁸³

As will be explained in detail in the next chapter, an Italian couple wishing to undertake the adoption process, carries out the first phase in Italy during which it will be declared eligible for adoption. From that moment on, an authorized agency in China will take over and collaborate for the future process. Following the matching between parents and child, the couple will travel to China to complete the adoption.

⁸³ <http://www.myadoptionwebsite.com/elliott/trip042811.htm>

2.5 History of Italian Law about international adoption

In Italy, intercountry adoption is regulated by Law 184/83 as amended by Law No. 476/98 and Law 149/01.⁸⁴

The first cases of international adoption in Italy occurred in the 1960s and increased in the following decade. Initially, there was no real law sanctioning intercountry adoption, but only art. 5 of Law 431 of 1967 through which a foreign child could be declared an Italian citizen. The lack of formality and the excessive freedom during those years allowed the development of illegal adoptions, trafficking in children and speculation on them.

In 1983, with the promulgation of Law 184, international adoption was regulated. The purpose of the law is to equalize the rights of a foreign adopted child with those of an adopted child of Italian nationality.

The above-mentioned law is called "Discipline of adoption and foster care of minors"⁸⁵. The law devotes a chapter to intercountry adoption divided into two sections: the first one concerning the adoption of children of foreign nationality (articles 29-39), the second one on the expatriation of Italian children for adoption (articles 40-43).

Adoption was considered the last attempt at a child's life because, according to the law described above, adoption is considered "legitimizing": the adoptee loses all legal connection with his family of origin by establishing a relationship of legitimate filiation with the adoptive family. According to the law, adoption would be applied in the event the family of origin was unable to provide for the child's maintenance and if the interventions of the State and/or its articulations had failed.

It may be noticed how the first version of 184 Law emphasize how adoptee opinions are influential for adoptive choices, in fact the Article 7⁸⁶ states: "*A minor who has reached the age of fourteen years may not be adopted unless he or she personally gives his or her consent, which shall be given even when the minor reaches the age indicated above during the proceedings. The consent given may however be revoked until the adoption has been finally decided. If the adoptee is over twelve years of age, he/she must be personally heard; if he/she is younger he/she may, if appropriate, be heard, unless the hearing would be prejudicial to the child.*"

⁸⁴ Chiara Enrica Tuo, The Italian Regime of Recognition of Intercountry Adoptions of Children In Light of The ECHR: What About Singles? Cuadernos de Derecho Transnacional (Octubre 2015), Vol. 7, N° 2, pp. 357-368

⁸⁵ <http://www.comune.jesi.an.it/MV/leggi/1184-83.htm>

⁸⁶ *Ibidem*.

Prior to Law 184, intercountry adoption was not legally controlled, but acted in accordance with Articles 17 and 20 of the Preliminary Provisions of the Civil Code. In fact, it may be noted that article 17⁸⁷ states that: “*the status and capacity of persons and family relationships are governed by the law of the State to which they belong [...]*” and the following Article 20⁸⁸: “*the relationships between the adopter and the adopted are governed by the national law of the adopter at the time of the adoption*”. The two above-mentioned articles were abrogated by Law 218 Art. 73 of 1995⁸⁹, Reform of the Italian system of private international law.

Law 184 can be considered a great step forward concerning intercountry adoptions even though it included some weaknesses, for example, the ineligibility of single persons to adopt legitimately. In fact, the law required that those eligible for international adoption have to meet the following requirements:

- The couple was supposed to have been married for at least three years;
- Not be in a legal separation (not even de facto);
- To be able to educate, instruct and maintain the children they intend to adopt and to be at least; eighteen years of age but not more than forty years of age older than the adoptee.

As for single person, he/she could engage in international adoption only in special cases as stated in Article 44 letters a) and c)⁹⁰:

a) *by persons united to the minor, fatherless and motherless, by a ties of kinship up to the sixth degree or by a stable and lasting relationship;*

(a) *by persons united with the child, who has lost his or her father and mother, by a kinship up to the sixth degree or by a stable and lasting relationship existing before the loss of the parents;*

c) *when there is the established impossibility of pre-adoptive custody.*

Following Law 184, Law 218 was enacted in 1995⁹¹, which improved the jurisdiction of the Italian judge.

Article 29 of Law 184 concerning the adoption of foreign minors, states that the competent court is the one in the country of residence of the adoptive parents. Where the adoptive parents reside in a foreign country, the last Italian domicile shall be taken into consideration; where

⁸⁷https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.versione=1&art.idGruppo=2&art.flagTipoArticolo=1&art.codiceRedazionale=042U0262&art.idArticolo=17&art.idSottoArticolo=1&art.idSottoArticolo1=10&art.dataPubblicazioneGazzetta=1942-04-04&art.progressivo=0

⁸⁸ <https://www.brocardi.it/preleggi/capo-ii/art20.html>

⁸⁹ http://www.jus.unitn.it/cardozo/Obiter_Dictum/codciv/legge218_95.htm

⁹⁰ <http://www.comune.jesi.an.it/MV/leggi/1184-83.htm>

⁹¹ <https://www.gazzettaufficiale.it/eli/id/1995/06/03/095G0256/sg>

there is no previous domicile, the Juvenile Court of Rome shall be considered. To summarize, the law attributed territorial competence to the Italian judge.

With the enactment of Law 218, jurisdiction will be described in Article 9, which states that Italian courts have jurisdiction in any case in which the measure concerns an Italian citizen or resident in Italy, followed by Article 40 which goes into more specifics:

"1. Italian courts shall have jurisdiction in adoption matters where:

(a) the adopters or one of them or the adoptee are Italian citizens or foreigners resident in Italy;

b) the adoptee is a child in a state of abandonment in Italy.

2. In matters of personal or property relations between the adoptee and the adoptive parent, or the adoptees and their relatives, the Italian courts shall have jurisdiction, in addition to the cases provided for in Article 3 whenever the adoption has been established under Italian law."

Unlike the previous law, through the Law 218 described above, adoptions having only an Italian spouse residing abroad will also be regulated.

A further amendment to the law resulted in Law 476 of 1998⁹². It consists of a ratification and execution of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption taking into consideration the Hague Convention (May 29, 1993).

In the year 2001, there would have been a further change in the law without positive results on the adoption of children by singles.⁹³

2.6 International adoption from China to Italy

Adoptions between Italy and China has been sanctioned by an agreement that came into force on February 3, 2008, following negotiations held in October 2007 between the Ambassador of the Italian Republic to the People's Republic of China, Riccardo Sessa, and the Minister of Civil Affairs of the People's Republic of China, Li Xueju.⁹⁴

Its text was published in the Official Gazette no. 109 of May 10, 2008, Ordinary Supplement no. 11822. The formalization of the agreement was preceded by the pivotal date of November

⁹² <https://www.gazzettaufficiale.it/eli/id/1999/01/12/099G0015/sg>

⁹³ <https://www.camera.it/parlam/leggi/011491.htm>

⁹⁴ https://consshanghai.esteri.it/consolato_shanghai/it/i_servizi/per_i_cittadini/adozioni

26, 2007 during which the Exchange of Letters between the Italian Government and the Government of the People's Republic of China on international adoptions was finalized⁹⁵.

Therefore, in 2009 the first minors of Chinese origin started to arrive in Italy and probably this is also the reason why 2010 was announced as "The year of China in Italy": the year in which the two countries strengthened their commercial relations.

As far as international adoptions are concerned, each country has agencies or organizations authorized and recognized both by the government of the country of residence and by the government of the countries where the children will be placed for adoption.

On the other hand, regarding Italy, during the initial phase of the adoption program, Chinese authorities authorized four Italian bodies to submit adoption applications by Italian couples: "Centro Italiano Aiuti all'Infanzia" (CIAI)⁹⁶ - Italian Center for Aid to Childhood - since 1968 CIAI has been working to guarantee the right to a family through the promotion and implementation of international adoption. It is the first association to deal with international adoption in Italy and in 1986 it received the eligibility and authorization for implementing it. CIAI guarantees information, training and support to adoptive families during the pre and post adoption stages. In addition to owning eight offices in Italy, there are also 5 branches in the rest of the world. It is interesting to underline CIAI Psychological and Educational Center, present in various offices throughout Italy and composed of a team of psychologists specialized in the field of adoption. It has the responsibility of assisting various types of families such as homoparental, foster, and recomposed families.

Associazione Amici dei Bambini (AiBI)⁹⁷ - Association Friends of Children: is a non-governmental association born from a movement of adoptive and foster families. Founded in 1986, it has a national headquarters and eleven regional offices in Italy. It received eligibility and authorization for international adoption in 1992. Ai.Bi. is present, as an adoption agency, in 25 countries. As it can be seen from the official website, steps before and after the adoption assignment are described as below:

Before the assignment:

- 1) *meeting with International Adoption (attend the meeting)*
- 2) *Meeting with my child*
- 3) *Individual interviews*
- 4) *assignment of the International Adoption assignment*

⁹⁵ <http://www.commissioneadozioni.it/media/1158/accordocina.pdf>

⁹⁶ <https://ciai.it/cosa-facciamo/adozione/>

⁹⁷ <https://www.aibi.it/ita/attivita/adozione-internazionale/#incontro-m-f>

After the assignment of the mandate:

- 5) The support process from the appointment of the assignment to the pairing process*
- 6) Matching and departure*
- 7) The period of stay abroad*
- 8) Return and post-adoption*

CIFA Ong ⁹⁸ (Centro Internazionale per l'Infanzia e la Famiglia). Non-governmental organization founded in 1980, It has a national headquarters in Turin and four other regional offices on the Italian territory.

BAMBARCO "I Bambini dell 'Arcobaleno" has been active since 1995 with offices in Belluno, Florence, Portici and Varese.⁹⁹ As stated by CAI (Commission for International Adoption), the purpose of the above agencies is to provide comprehensive support to future adoptive parents in the pre- and post-adoption period and to facilitate/speed up the adoption process.

C.A.I. has the responsibility of supervising international adoptions in collaboration with the Central Authorities of other countries, but above all it is the only body authorized to allow the introduction of adopted children into Italy.

In practice, the child, not having obtained authorization from the Commission, cannot receive a Visa to enter the receiving State. CAI has also established the minimum and maximum costs for all the expenses that the requesting couple must sustain: the costs vary from institution to institution but mainly according to the foreign country chosen for the adoption.

Couple's choice of agency is a personal one, and will be based primarily on consultation of the agencies' websites, which provide information about the general process of adoption, prices and timelines, etc. Each agency offers training sessions, often free of charge, for couples who are taking their first steps towards adoption. Before choosing an agency, applicants must fill out an application at the Juvenile Court in their province of residence: once the decree of eligibility has been obtained, after a few months, they can start the collaboration with one of these agencies.

⁹⁸ <https://www.cifaong.it/>

⁹⁹ <http://www.bambarco.it/adozioni-internazionali/adozione-in-cina/>

2.6.1 International adoption process between the two Countries

The process of intercountry adoption between Italy and China, in accordance with the above-mentioned Convention, can be summarized in five basic steps, which can also be seen on the website of the Commission for Intercountry Adoption¹⁰⁰.

The first step a couple must take in order to adopt, after identifying the youth court in their country of residence, is to submit their adoption availability along with various documents to the Ministry of Civil Affairs. Once the couple meets all the requirements for international adoption, the juvenile court will forward the eligibility to the services of local authorities within 15 days of receiving the documents. At that point, the local authority services will have to issue a report following the evaluation of the adoptive capacity of the family: the information requested is personal, regarding historical background in order to understand whether the couple is capable of raising and maintaining the child.

The social services of the local authorities shall send the report to the Court, which shall decide whether or not the couple is suitable for intercountry adoption on the basis of the document received. If suitability is confirmed, the report will be sent to the Commission for intercountry adoption and any other accredited agency chosen by the couple.

Since it is mandatory to choose an accredited agency, the couple must rely on it to continue the international adoption process. At that point, the foreign authorities will take over: in fact, the documentation will be sent to the CCCWA, which will have the task of reporting the suitable child and proposing the matching with the adoptive couple. Following the CCCWA's selection of a suitable family for the adoptable child, the CCCWA sends a report to the foreign adoption agency, and therefore to the adoptive couple, regarding information about the child and the guardian responsible for adopting the child. The Chinese Central Authority always takes care not to reveal the identity of biological parents if, in the State of origin, these identities may not be disclosed.

Personal information such as history, medical records, the ability to undertake an intercountry adoption are made accessible (often with the addition of photos) to adoptive parents as in the translation analyzed below concerning a diary collected by the employees of the orphanage about the medical history and growth of a Chinese child who was later adopted by an Italian family.

At that point, the Italian agency will propose the matching to the couple: the choice is up to the parents: whether to accept or not to accept the adoption. In the event of a positive match, the

¹⁰⁰ <http://www.commissioneadozioni.it/for-an-adoptive-family/the-path-of-adoption/the-adoption-procedure/>

central authority of the country of origin will issue the Adoption Order declaring compliance with Article 4¹⁰¹ of the Hague Convention.

The next phase is carried out by the Italian Central Authority CAI which, following the verification of the adoptive child's documents in accordance with the Convention, authorizes the adoptee to enter the country. At that moment the Foreign Italian Embassy issues the Visa for entry.

The Italian juvenile court will recognize the foreign adoption decision once the Italian couple together with the adoptee return to their country of residence, after their journey to China.

Indeed, parents have to travel to China in order to complete the adoption process. They will stay in a hotel as in the case of Elliot's family mentioned above with the aim of meeting their son/daughter and finalizing the adoption at bureaucratic level.

The trip to China will be organized by the Italian agency chosen by the adopting couple. The agency often collaborates with a Chinese one to organize the journey, an example of which could be Ai.Bi. agency that collaborates with the Chinese agency BLAS (Bridge of Love Adoption Service)¹⁰². The agency guides couples through the meeting with the child and subsequent sightseeing tours, helps with the completion of all bureaucratic documents and handles the translation of them.

An additional post-adoption service is to act as a bridge of information: it helps foreign adoptive families in the procedures of a root-seeking tour during the post-adoption phase. In fact, after receiving the application from the foreign families to visit the welfare institutes where their children lived before being adopted, they will enter the application form of Adoptive Families' Root-seeking Tour and send it to the provincial Civil Affairs Departments for approval.

Each foreign family will be accompanied throughout the trip by a representative of the acts as a bridge of love adoption service in order to make the experience comfortable and efficient.¹⁰³.

The final step consists of informing the authorized body in the country of origin of the child's progress through the social and psychological support that the social services guarantee for at least one year.

The whole process is performed through the payment of large sums of money: in fact, adopters must pay a fee to the registration bodies and make a donation to the social institute for abandoned children; these contributions are chosen in accordance with the provisions of the

¹⁰¹ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

¹⁰² <http://www.china-blas.org/newsinfo/288166/1133604.html>

¹⁰³ <http://www.china-blas.org/newsinfo/288166/1133604.html>

State. In the process of international adoption from China, adopters who travel to China to meet the child assigned to them must donate a great sum of money.¹⁰⁴

2.7 Special needs adoption

As far as international adoption is concerned, the majority of children adopted from China are special needs adoptees. In China, children are abandoned for a variety of reasons including restrictions such as the one-child policy or poverty and after being placed in orphanages they will be destined to international adoption.

It can be noticed that healthy children are predominantly adopted through domestic adoption as opposed to special needs adoption. Healthy children are considered more difficult to place due to more or less severe problems. While considering special needs children, are included: children who are part of a sibling group (3 siblings or more); children over the age of 7; children with a physical or mental disability; children with behavioral problems following trauma.¹⁰⁵ Nowadays, international adoptions from China mainly involve children with special needs denied in their own country. According to CCCWA rules, eligibility of international adoption is expanded also to single women, which will be discussed shortly. Probably this happened because of the large number of special needs children who are not accepted by traditional adoptive families.

Concerning international adoption in China, there can be identified different types of adoption among which are the LID File, also called NSF File. Concerning LID file, abbreviation of Logged In Dossier File, it identifies those cases in which parents must register their file before reviewing files for LID children. This type of adoption usually concerns young children with more minor or correctable physical handicaps or children up to 4 years old.¹⁰⁶ With regard to Special Focus Files, these are cases in which the matching between child and family, following

¹⁰⁴ Cradle of Hope, Adoption Centre China Information Packet, 2021

¹⁰⁵ Cristina Legnani, *Gli Special Needs Nell'adozione Internazionale*, "Le Radici e Le Ali", Relazione Incontro 26 Novembre 2013, Sede di Paderno Dugnano (MI)

¹⁰⁶ <https://waitingchildinfo.com/acronyms-steps-and-timeline/>

the completion of the home study, can take place at any time, even before the submission of dossier paperwork.

However, foreigners have learned not to be intimidated by the definition of special needs because it can include many diversities. This category actually covers a wide range of conditions. Children with Special Needs have conditions such as cleft lip, cleft palate, minor heart disease, clubfoot, hepatitis b, and limb deformities. Children classified as Focus are children who have diseases such as hydrocephalus, deafness, visual defects, or health problems that involve an operation already carried out in China, but that may require subsequent interventions. Finally, children older than seven years are part of the category, minors that for Italian people should not be part of the special needs, because they are healthy, small and adoptable children.

As defined by Aibi, four categories of children with special needs are identified:

- 1) children with behavioural problems;
- 2) physical or mental incapacity;
- 3) children over 7 years of age;
- 4) children who belong to a sibling group.

Prospective parents must be psychologically prepared, have adequate training to understand and cover the specific needs of the child, have higher earning power to cover significant medical expenses, be physically and psychologically healthy and have no criminal record.

At this moment it is possible to see on the official AIBI website, three different children of special adoptions from Asia, respecting the privacy of the specific cases: the first one concerns a child with Agenesis of the right ear, the second one congenital syphilis and hearing problems, and the third case concerning a child with Malformation of the genitals and lower limbs.¹⁰⁷

¹⁰⁷ https://www.aibi.it/ita/attivita/adozione-internazionale/?tx_post_tag=asia

2.7.1 We are OneSky... OneSky for all children.¹⁰⁸

As mentioned in previous chapters, parents who embark on the path of intercountry adoption are often dealing with special needs cases. The following is an original diary compiled by the nannies of Half The Sky Foundation (半边天基金会) concerning the physical and educational development of a child placed in an orphanage in China and subsequently adopted by an Italian couple. The name of the organisation is inspired by Mao's famous phrase "妇女能顶半边天", which literally means "women hold up half the sky"¹⁰⁹. The non-literal meaning is much broader: Mao wanted to emphasise that women are equal to men to the point of being able to hold up the same portion of sky. Probably the organisation, by taking up the phrase, wants to highlight the importance of children, who are often underestimated.

The child, suffering from cleft lip, following an operation performed by a Dutch team, was matched at the age of 23 months to an Italian couple who after 6 months went to China for a period of 3 weeks to finalize the adoption process. The couple, with the help and collaboration of Aibi organization, concluded the adoption process.

The role of Half the Sky Foundation in the adoption process is not clear to the adoptive parents: the adoptive mother states that she has not heard of the foundation even though the pages of the diary show the logo of the association. It is actually an association with the purpose of improving standards of care in Chinese orphanages that, besides offering infant nurture programs or preschool programs, it also offers medical treatment and pre/post nurturing for children placed in Chinese orphanages. Probably, with regard to the case mentioned above, it was Half the Sky Foundation that took care of the cleft lip operation of the child.

It is interesting to note that in every photo of the official website of Half the sky there is a child, underlining how the unique purpose of the association is the life of adoptees. Today the association has changed its name into One Sky Foundation and a quotation on their website explains the meaning: "We are OneSky... OneSky for all children"¹¹⁰

The diary, if it can be defined as such, illustrates the period at the orphanage of the Chinese child, describing his behavior, his culinary preferences, the period after the cleft lip operation, etc.. In addition, works and drawings are included as if to reproduce the educational path that a child of his age undertakes in kindergarten.

¹⁰⁸ APPENDIX III

¹⁰⁹ <http://blog.westminster.ac.uk/contemporarychina/women-hold-up-half-the-sky/>

¹¹⁰ <https://onesky.org/>

The diary seems to be a comfort for both the child and the parents: it represents a memory that in many cases is lost, sometimes voluntarily and sometimes involuntarily. It gives life to a past that the child and adoptive parents can remember even though they have not experienced it personally.

It is specified several times in the diary how it is not to be considered a medical report or document to formalize the adoption through the following sentence: 半边天儿童成长报告非医学报告，不能作为判断儿童是否适合收养的依据 “*The Half the Sky Child Development Report is not a medical report and cannot be used as a basis for determining whether a child is suitable for adoption*”.

Here below it is reported the wish that the nanny dedicates to the adopted child:

- 希望你在妈妈身边，在我们这个大家庭里，就鱼儿在水中一样。自由自在的生活。健健康康地成长！
- Hoping you will be by mom's side, in our big family, just like fish in the water. Live freely. Grow up healthy!

The nanny expresses her shock at seeing the child with a cleft lip for the first time:

- 2012年7月30日
- xx是7月17日来到我身边的。第一次见到xx时我吓了一跳，他是个唇裂的孩子，孩子又瘦又小，皮肤黑黄。长着一双大眼睛还是双眼皮。
- July 30th, 2012
- The child came to me on the 17th of July. The first time I saw him I was shocked, he had cleft lip, child and 瘦 and small, dark yellow skin. With a pair of big eyes or double eyelids.

After a period of recovery, the child was dismissed and looked better than before:

- 2012年9月20日
- 学虎出院了，他比之前稍微胖了些，也好看多了。学虎吃饱后很乖，和他说话他会裂着嘴笑。
- XX was discharged from the hospital, he was slightly fatter and better looking than before. XX is very good after eating, and he will smile with his mouth open when talking to him.

After two months in the orphanage, the nanny notices a change in the child: he is more sociable and recognizes the maternal figure of the nanny:

- xx 来到我身边两个多月了，他饿时，会大声哭，吃饱后会很乖。和他说话时，他会紧紧盯着我的眼睛，嘴角一动一动发出“哦哦哦”的音。听到我叫他的名字，逗他玩，他会对着我笑，并且手舞足蹈。学虎躺在 U 型垫子上，会两手抱握在一起玩。有时他也会把手指放在嘴里吸吮。靠着垫子，他也能坐一会，眼睛会四处张望那个。喜欢我抱着他，给他做操，他会把我的手指抓得紧紧的。
- XX has been with me for more than two months. When he is hungry, he will cry loudly, but when he is full, he will be very good. When I talk to him, he will stare into my eyes, and the corners of his mouth will move to make the "oh oh oh" sound. When I call his name and tease him, he will smile at me and dance around. When he lies on the U-shaped mat, he will play with both hands together. Sometimes he would also put his fingers in his mouth and sucks on them. Leaning against the mat, he can also sit for a while and his eyes will look around for that. Likes me to hold him and give him exercises, and he will grasp my fingers tightly.
- 2012 年 10 月 10 日
- 最近看见我，我叫他的名字，他就会高兴地对我笑。他的小手抓着我的手指，很有劲。
- October 10th, 2012
- When he saw me recently, he would smile at me happily when I called his name. His little hands grasp my fingers with great strength.

After the cleft lip surgery, the nanny described the child's physical change with the term“帅”.

- 2014 年 4 月 20 日
- xx 是 4 月做的唇裂手术。他从医院回来，不太相原来的他了，变帅了。
- April 20th, 2014

xx had his cleft lip surgery in April. He came back from the hospital changing handsome.

- 2012 年 9 月 27 日
- xx 现在能骑着三轮小车在活动室来回地走，遇到障碍物时还能退着走。他也能独立站立一会。他还学会了模仿我做“1”的动作。经常还用手指点点我的手心，或是指一指其它的东西，也会把两根食指对这做“嘟嘟飞的动作”。和我玩积木，能连着垒

四块，然后自己推倒。最近又学会指出自己的鼻子、头发和耳朵。每天给他洗耳朵时，他很乖，我用手指揉他耳朵周围时，他也会来回摇头配合我。每次饭来他会给我指指窗外。

- *xx is now able to ride his tricycle back and forth in the activity room and back up when he encounters an obstacle. He can also stand up independently for a while. He has also learned to imitate my "I" movement. He often points his fingers at my palm, or points at other things, and also puts his two index fingers together to make the "toot-fly motion". He plays with blocks with me and can build four blocks in a row and then push them down by himself. Recently, he learned to point out his nose, hair and ears. He is very good when I wash his ears every day, and when I rub his ears with my fingers, he will shake his head back and forth with me. He will point out the window to me every time a meal comes.*

It is interesting to note that on the page of the diary showing a diagram of the objectives achieved and to be achieved, the nanny inserts as a future objective "继续发展我和 xx 的亲昵感情" with the meaning of "continuing to increase the feeling of intimacy with the child". This underlines how important the complicity between child and nanny is, allowing the child to have a figure who can fill the emptiness left by the parents.

2.8 International adoption by single women

*"It is the duty and right of parents to support, raise and educate their children, even if born out of wedlock. In the case of incapacity of the parents, the law provides for the fulfilment of their duties. The law ensures such legal and social protection measures as are compatible with the rights of the members of the legitimate family to any children born out of wedlock. The law shall establish rules and constraints for the determination of paternity."*¹¹¹

The Italian Constitution, despite paying great attention to the family as a natural form of association to be safeguarded and protected, protects equally those born outside of it. This

¹¹¹ https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf

means that, in addition to protecting those born outside marriage, it equally protects an Italian child and a foreign child.

According to Italian law, it is possible for a single person to pursue international adoption. Prior to 2005, the law stipulated that only a married couple could undertake a legitimate adoption. However, after that year, following the analysis of a specific case involving an Italian woman who intended to adopt a girl from Belarus, the law was mitigated. In fact, the women in question, took care of the expenses and the organization of medical care needed by the child who had been abandoned in her country of origin, establishing a stable emotional relationship living together.

The Italian case just cited is the first that allowed an unmarried woman to adopt a foreign child.¹¹² Article 44 of Law 184¹¹³ of 1983 stipulates that particular cases in which an unmarried person may adopt a child from the same country of origin are as follows:

- (a) by persons united to the child by a kinship bond up to the sixth degree or by a pre-existing stable and lasting relationship, in the event that the child is fatherless and motherless;
- b) when the child is disabled and orphaned of father and mother;
- d) when there is the ascertained impossibility of pre-adoptive foster care.

Through ordinance no. 347/05, the Constitutional Court has deemed international adoption admissible in the same cases in which national adoption can be allowed, such as, for example, legitimating adoption by a couple or adoption in special cases by a single person¹¹⁴.

In the case cited above, intercountry adoption has been approved because of the prior emotional relationship between the adoptee and the single person, the interruption of which is likely to produce serious psychological damage to the child. Intercountry adoption by a single person may only take place between two countries that allow it, such as China and Italy. Therefore, an Italian single person has an equal right to undertake domestic or international special needs adoption. Furthermore, it may be noted that in accordance with Law No. 173 on the continuity

¹¹²<http://www.tribmin.reggiocalabria.giustizia.it/doc/GIURISPRUDENZA/Ordinanza%20n.%20347%20del%2025%20maggio-15%20Luglio%202005.pdf>

¹¹³ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1983;184~art44>

¹¹⁴ <http://www.commissioneadozioni.it/linea-cai/faq/sezione-a/a1/>

of affections (Law No. 173/15) enacted in 2015¹¹⁵, fostering parents, even if single, will not be precluded from adopting the child in his or her care where, excluding the possibility of his or her re-entry into the biological family, such a solution is considered to be the one that best realises the child's best interests.

2.8.1 Single women requirements for international adoption from China

The CCCWA, as mentioned before, has allowed single women to undertake the international adoption process.

The first limitation that emerges is heterosexuality: in fact, single women with homosexual tendencies cannot undertake adoption activities.

The second limit consists of the only possibility for single women to adopt Special Focus children.¹¹⁶

Moreover, once they adopt a child, they have to wait one year before starting the procedure for a second adoption. Here below are the requirements for women to adopt internationally from China:¹¹⁷

- The adoptive mother should be between the age of 30 to 50. If over 50, the difference between the woman and the child could not be above 45 years;
- Applicant shall explain her decision to remain single and her attitude toward marriage through the submission of a letter. In other words, the potential mother has to specify the intention to include a male figure in the child's life;
- Applicant's income should total at least \$20,000 with the addition of \$10,000 for each family member, including the adopted child with a net worth of at least \$100,000;
- Applicants should be in mental and physical health (no antidepressants for past two years).
- The woman must cover the adopted child's medical needs with good medical insurance;
- A Woman with more than two children in the home cannot adopt. Moreover, the youngest child must be at least six years old;

¹¹⁵ <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2015;173>

¹¹⁶ <https://www.madisonadoption.org/china-single-parent-adoption-requirements/>
<https://www.internationaladoptionnet.org/international-programs/china/china-adoption-program/>

¹¹⁷

<https://nightlight.org/2011/03/china-changes-course-singles-are-now-able-to-adopt/>

- If the woman has a stable relationship with her partner, couple requirements shall be applied;
- the woman has to provide a certificate of marital status (divorce decree) if previously married.

CHAPTER 3 The three challenges of Chinese adoption on 2021: three-child policy, Civil Code and Covid 19

China has always been an ever-evolving country that finds its balance in innovation and changes. This evolution not only affects the economic system, but also concerns the social system.

China of 2021 is facing challenges capable of influencing and changing society itself. The chapter will focus on the influence that the three challenges - three-child policy, civil code and covid-19 - exert on a country as powerful as the PRC. Although completely different from each other, these forces could have a great impact on the country, especially in the future.

The chapter begins with a discussion on the three-child policy, a social and economic change concerning the Chinese government's choice to legalize three children per family as opposed to the one-child policy professed since 1979. Since it is a social-economic phenomenon, the new policy covers all spheres of society including the adoption one. How will domestic/international adoption be affected?

The thesis goes on describing the enactment of the Chinese Civil Code through which China acquires uniformity in its laws. The aim of the Civil Code of the People's Republic of China, born from the constitutional principles, is to build a Chinese own model, able to fill those gaps caused by the separated disciplines for each law. This is done taking into consideration the Roman Civil Code and the moral norms derived from the Chinese culture of Confucianism.¹¹⁸

Finally, the thesis points out how Covid-19 could be considered the future challenge. Nowadays, society is hinged on insecurity and doubts about the future caused by the pandemic, a phenomenon unknown to the majority of people. The Covid has affected society as a whole, including both domestic and international adoptions. The following chapter will highlight how the number of adoptions has not only dropped for obvious logistical reasons, but also for lack of desire as stated by psychologist Scimeca.

¹¹⁸ O. Dilberto, D.Dursi, A. Masi, Codice Civile della Repubblica Popolare Cinese, Traduction of Meiling Huang, 2021, Pacini Editore Srl

3.1 Three-child policy: the socio-economic challenge

The one-child policy is a program implemented at a national level since 1980¹¹⁹, aimed at containing population growth in favor of the economic development of the country. It allowed each family to have a maximum of one child and if not, the consequences inflicted could lead to abortion or sterilization. The one-child policy can be considered one of the best tools used by the government to shape the behavior and values of society in order to safeguard the economic growth of the country.

The consequences of the one-child policy should not be underestimated, in fact not neglecting the increase of abortions and sterilizations of Chinese women, the fertility rate and the birth rate have been drastically reduced. All this led to a rapid aging of the population, nowadays considered one of the main problems of Chinese society.

Following the one-child policy, the gender gap widened considerably with an unnatural increase of male children: since having limited the number of sons, Chinese families preferred male sons even considering selective abortions for female daughters. Nowadays in Chinese countryside, having a female daughter is still considered a disgrace causing social instability: men born during the period of the one-child policy, besides being only sons, will surely find difficulty to find female partners. These men, victims of a policy are called 关棍 *guangun*.

The term is formed by the two characters 关 *guan* and 棍 *gun*, with the respective meaning of “naked” and “branch”¹²⁰. The word literally means "bare branch". Bachelors are stigmatized figures and suffer constant psychological pressure from both the family and society: in fact, according to the Confucian tradition, the fundamental male role is to create offspring. Without this role, men are considered deprived of their fundamental characteristic, therefore associated with bare branches. This category of men will be the main citizens of modern Chinese society.

One of the consequences of the policy has also been an increase in abandonment by families causing the overwhelming number of Chinese orphanages as described above. At the same time, trafficking of Chinese children has increased.

¹¹⁹ Avraham Ebenstein, *The “Missing Girls” of China and the Unintended Consequences of the One Child Policy*, 2010 by the Board of Regents of the University of Wisconsin System, p. 2

¹²⁰ FINCHER L.H., *Leftover Women: the Resurgence of Gender Inequality in China*, Zed Books, London, 2014, pp. 22.

Another problem of the one-child policy to be mentioned is the future lack of workforce: in fact it is estimated that in 2050, 1 in 4 Chinese will be retired: the aging society will not have enough manpower to ensure retirements.¹²¹

Even following a relaxation of the one-child policy in 2015, the birth rate and fertility rate remain low causing the country and society to be aging.¹²² Already in 2013 a couple consisting of single children was allowed to have 2 children⁵. In the year 2021 there has been a further relaxation of the policy: from two to three children allowed. The main reasons for this change consist of safeguarding the country both from an economic and social point of view: the goal is to increase the birth rate and population growth so that the economy goes alongside.

As a result of the three-child policy, will domestic adoptions be affected in any way? On the one hand, the answer could be positive, but on the other hand, it has been found that allowing families to rear more children has had no noticeable effect on the population growth rate. Probably for economic reasons, modern families would hardly be able to support three children. Not to mention the sociological point of view: the traditional Chinese family of dozens no longer exists and has been overtaken by a family consisting only of father, mother and child. After a coercive policy such as the one-child policy and the punishments inflicted, Chinese society can only change with time, certainly not in the immediate future. Likewise, domestic adoptions in China will tend to increase slowly, hoping it will happen.

3.2 Chinese Civil Code: the legal challenge

One development held in the year 2021 has been the entry into force of the Civil Code of the People's Republic of China.¹²³ Following the approval on May 28, 2020 by the 13th National People's Congress (NPC) with 2879 in favor, it came into force on January 1, 2021.¹²⁴ It consists of the first cataloging of 1260 articles marking a turning point for the Republic that

¹²¹⁵ <https://www.bbc.com/news/world-asia-china-57303592>

<https://www.avvenire.it/agora/pagine/cina-il-dragone-ha-divorato-i-figli>

¹²² <https://www.britannica.com/story/the-effects-of-chinas-one-child-policy>

¹²³ O. Dilberto, D.Dursi, A. Masi, Codice Civile della Repubblica Popolare Cinese, Traduction of Meiling Huang, 2021, Pacini Editore Srl

¹²⁴ <https://www.sistemacritico.it/2020/12/27/2021-il-primo-codice-civile-della-repubblica-popolare-cinese/>

allows a systematization of legal organicity. However, we can say that this was not the first attempt at codification of China.

The first attempt to Civil Code entitled Civil Code of the Republic of China (*Zhongguo Mingguo Minfa*)¹²⁵ was emanated in 1930. With the emergence of the People's Republic of China, the Civil Code of 1930 was immediately abrogated as synonymous with bourgeois culture. Between the years 1949 and 1957, the main influence was the Soviet one and only one work is mentioned entitled "*Fundamental problems of civil law of the People's Republic of China*"¹²⁶.

With the presidency of Deng Xiao Ping and his four economic modernizations/reforms, a system of social and economic development is defined, with necessary systematization even at the bureaucratic level. From there ahead there has been the rebirth of legal studies. In 1986 the General Principles of Civil Law (民法通则 *Minfa Tongze*) were issued,¹²⁷ inspired by the German Civil Code (*Bürgerliches Gesetzbuch*, or BGB)¹²⁸. Since this Code remained in force only in Taiwan, the Civil Code of 2021 can be considered the first codification of the entire People's Republic of China.

The introduction of the Civil Code not only represents a codification and systematization of Chinese law but can be considered a mature step for a country that is constantly evolving and changing in the social, economic and political spheres. With the Code, China is laid for a more uniform and balanced future.

The Code is divided into seven books, of which there are 1260 articles ranging in different fields: general part, real rights, contracts, personality rights, marriage and family, successions, torts¹²⁹. As for the subject of adoption, it is included in the fifth book on Marriage and Family.

The subject of adoption is analyzed in the fifth book entitled "Of Marriage and the Family". Book V is divided into five Titles: "of general rules", "of marriage", "of family relations", "of divorce", "of adoption". The Title V is composed of three chapters, respectively: "of the

¹²⁵ Pazzaglini, La recezione del diritto civile nella Cina del nostro secolo, op. cit., p. 51.

¹²⁶ Edward J. Epstein, The theoretical system of property rights in China's general principles of Civil Law Theoretical Controversy in the drafting process and beyond, Vol. 52: No. 2, 1989 by Law and Contemporary Problems

¹²⁷ http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-03/15/content_2018917.htm

¹²⁸ Herbert Bernsteint, The Prc's General Principles From A German Perspective* , 1989 By Law And Contemporary Problems

¹²⁹ O. Dilberto, D.Dursi, A. Masi, Codice Civile della Repubblica Popolare Cinese, Traduction of Meiling Huang, 2021, Pacini Editore Srl

constitution of the adoptive relationship" - "of the effect of adoption" - "of the dissolution of an adoptive relationship".¹³⁰ It may be noted that already in Title I "of the general rules", Article 1044, the subject of adoption is introduced, specifying that it is an act which must protect and pursue the interests of the adoptee, denouncing in the same article the false denomination of adoption in reference to trafficking in children. The first chapter of Title V opens with Article 1093, which sets out the requirements for declaring a child eligible for adoption. It then continues with several articles that analyze the multiple requirements that potential adoptive parents must meet, including special cases that may exempt them from the classic requirements such as: adoption by an unmarried person (Art. 1102), adoption of special needs cases (Art. 1100), adoption by a relative (Chapter I, Art. 1099). Interestingly, explicit reference is made to intercountry adoption in Chapter I, Article 1109, which analyzes in detail the requirements/documents that prospective adoptive parents must obtain in order to be declared eligible for adoption.

Article 1111 states that once the adoptive relationship is legalized, it will be governed by the provisions of this Code concerning the parent-child relationship (Title III, Chapter II).

Finally, the third chapter analyzes the dissolution of an adoptive relationship. In the event that the adoptee is eight years of age or older, his or her consent must be sought both in the case of the establishment of the adoptive relationship (Art. 1104) and in the case of the dissolution of that relationship (Art. 1114). The dissolution of the adoption relationship must be registered with the Department of Civil Affairs as well as the creation of the adoption relationship itself (Art.1105).

3.3 Covid-19: the future challenge

Covid-19 has had and still has a great influence on the global economy and society. The human being is endowed with the ability to adapt, in fact, as we have seen during these last years, people have managed, some more than others, to adapt to a new life made of skype phone calls, masks, distancing and waiting.

The pandemic has also negatively affected the adoption sector, especially with regard to international adoptions, as described in the letter from the CCCWA addressed to adoptive

¹³⁰ *ibidem*.

agencies and families on the occasion of the Chinese New Year: The following letter's passages of have been published on the CAI website¹³¹:

“On the occasion of Chinese Lunar New Year 2021, the Center would like to express our sincere gratitude to all friends from all walks of life who have pledged to care for and support Chinese international adoptions and advocate for the rights and interests of adopted children. “

The letter expresses gratitude to all those associations and persons who have helped the Chinese institutions following the appeal by the Chinese authority during the initial phase of Covid.

It also underlines the concern and the pain for the children adopted internationally, together with a recommendation to adoptive parents to protect and safeguard their children.

“The Coronavirus outbreak (COVID-19) is the most serious pandemic seen in the last century. It is a rapidly spreading public health emergency with difficulties in prevention and control worldwide, including China. The Chinese government has always adhered to the primacy of life and the people, and has rapidly fought a people's war, a general war, and an interdiction war to prevent and control the epidemic while ensuring the safety and health of the people to the maximum. The Department of Civil Affairs and child welfare institutions across the country have taken strong measures to ensure that 65,000 children in institutions and 177,000 orphans living outside institutions have "zero infections."

The letter outlines the decision to suspend international adoption operations in order to safeguard the health of each child involved, while continuing with updates regarding pre-adopted children:

“Considering that children raised in institutions are among the sensitive groups and are at risk of being infected after being adopted abroad, we have taken measures to suspend the registration of overseas adoptions. These acts have gained the understanding and support of government departments, adoptive agencies, and adoptive families in all partner countries”.

The letter ends with a message of hope represented by the coming spring:

We firmly believe that the epidemic will eventually pass and spring will come. May the adopted children grow up healthy! May adoptive families have good fortune and prosperity! May all the friends who care for and support international adoption in China be happy and healthy!

¹³¹ http://www.commissioneadozioni.it/notizie/comunicato_per_le_famiglie_adottive_in_cina/

The psychologist Roberta Scimeca, who collaborates within the association "L'insieme Famiglia ONLUS", during an interview on the topic of international adoption says that one of the identifiable problems consists in the decline in the adoption desire. Probably caused by the economic crisis that has affected the whole world, international adoptions have decreased a lot, from 4000 cases of international adoptions in 2010 to 500 in 2020.¹³²

People are unmotivated to undertake or continue adoption's processes because waiting times have lengthened due to well-known causes; moreover, many procedures, begun before Covid-19, have been frozen.

The psychologist, however, during the interview, emphasizes positive effects of the pandemic: the first is the boost that the pandemic has given to several developing countries including Colombia, which has implemented online sentencing, post adoption interviews, proceeding with new methodologies in line with other countries.

Dr. Scimeca also affirms that the period in which we are living must be taken into consideration by adoptive parents: in fact, the isolation of the child can be considered a first step towards starting and developing a relationship of intimacy without external interference represented by school, or contacts outside the family.

Another reason that has probably influenced the decline in adoption is the reduced supply of children: most adoptable children today have special needs and the number of healthy adoptable children is declining year by year. What is more, there are countries of origin, such as China, which prefer to protect children locally by blocking adoption procedures. This means, however, that potentially adoptable children remain stuck in orphanages, further reducing their chances for future adoption.¹³³

An example of this is an Italian couple who, in an article published on "Il Fatto Quotidiano", complained about the injustices reserved for China-Italy intercountry adoptions. The couple explains how, having already begun adoption procedures and waiting to obtain the red parchment - the document needed to obtain a visa to enter China - they were blocked because of Covid-19.

Unlike countries like Colombia that wanted to maintain contact between adopters and adoptees, the bureaucratic system in China and Southeast Asia have not allowed this.

However, it is interesting to observe that, according to the adoption data published semi-annually by the Committee on Intercountry Adoption, there was a significant drop of adoptions

¹³² https://qds.it/adozione-internazionale-come-funziona/?refresh_ce

¹³³ <https://www.aibi.it/ita/perche-il-crollo-delle-adozioni-internazionali-bonetti-presidente-cai-la-cultura-negativa-creata-dalle-pressioni-di-alcune-ong-internazionali/>

between 2019 and 2020. There were 969 international adoptions in 2019 with a drop of almost 50% in 2020.¹³⁴

It can also be noted that the official CAI website lists the agencies authorized to operate in China and the number of pending adoptions by associations with a total of 134 in the year 2020.¹³⁵

What might be a solution for the continuous decrease of international adoptions? One idea could be a more efficient collaboration between countries that involves local authorities to a greater extent. In fact, more attention should be paid to both pre- and post-adoption, accompanying the family throughout the adoption process in a completely new and unpredictable period as during Covid-19.

The government of each country should pay more attention to adoption procedures, which have been neglected in recent years. The fundamental principle on which adoption is based is enshrined in Italian Law 184 of 1983, according to which it is the right of every child to have a family, whatever it may be. Neglecting adoption damages the future of our country represented by children.

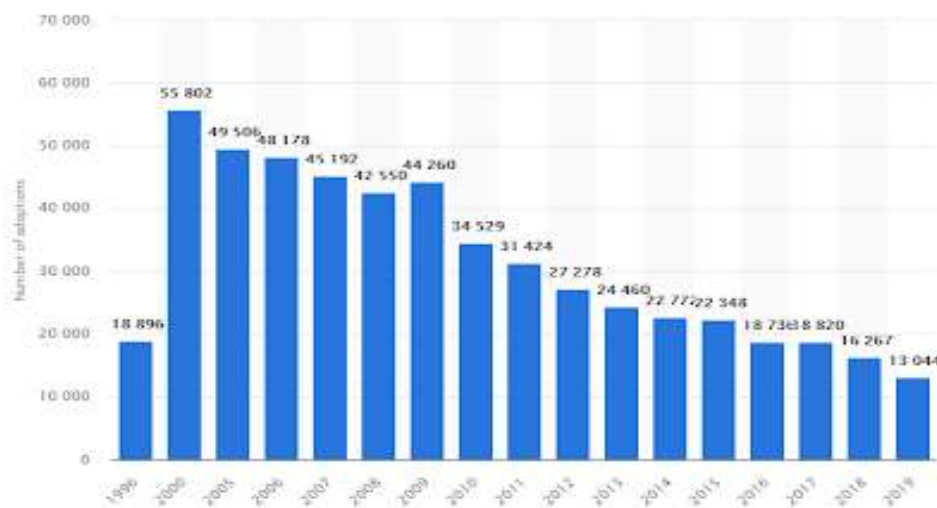
The graph below illustrates the number of domestic adoptions in China from 1996 to 2019. It can be seen that there has been a peak in adoptions from 1996 to 2000 and then a dramatic drop until 2019. The peak is five years earlier than the one of international adoptions from China coinciding with the year during which China becomes a contracting state of the Hague Convention. It is interesting to note that even following the abrogation of the one-child policy in 2015, in the following year there is no increase in domestic adoptions continuing to decline steadily.

Number of registered adoption cases in China from 1996 - 2019¹³⁶

¹³⁴ <http://www.commissioneadozioni.it/media/1909/procedure-pendenti-e-adozioni-2020-2019-suddivise-per-paese-dati-al-31dic2020.pdf>

¹³⁵ <http://www.commissioneadozioni.it/per-una-famiglia-adottiva/continenti/continente/schedapaese?idPaese=40&UID=ASIA>

¹³⁶ <https://www.statista.com/statistics/687360/china-number-of-registered-adoptions/>

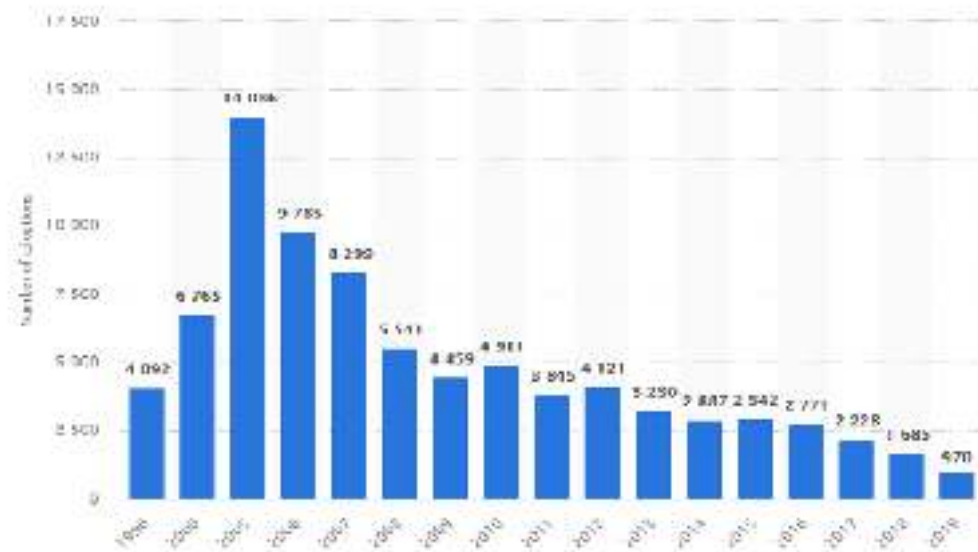


Additional Information

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Show source

Number of adoptions registered by foreign citizens in China from 1996 - 2019¹³⁷



© Statista 2021

The second graph shows international adoptions from China from 1996 to 2019. It can be seen how, starting from a small number in 1996, international adoptions doubled in 2005, reaching 14,036 cases of adoption. The probable reason for the exponential increase is due to China's

¹³⁷ <https://www.statista.com/statistics/687381/china-registered-adoptions-by-foreign-citizens/>

participation in the Hague convention through which it reviewed and adjusted adoption standards with other contracting countries.

The drop following the Hague convention could be caused by the increasingly rigid restrictions on foreign couples, favoring domestic adoption, such as the one implemented in 2007.

With reference to Italy, 135 adoptions originating from China were registered for the year 2020¹³⁸.

¹³⁸ <https://www.statista.com/statistics/716979/number-of-children-adopted-from-asia-by-country-italy/>

Conclusion

The aim of the research is to analyse, through the collection of sociological studies and through the voice of some direct testimonies, domestic and international adoption in PRC. The phenomenon is represented starting from the first cases of adoption arriving at the year 2021.

This thesis addresses the issue of domestic and international adoption from the imperial age of China to the modern era influenced by Covid19 pandemic, facing legal, social and economic changes along the way.

Contrary to what one might imagine, adoption is a phenomenon that has been present in China since the imperial age but only included in Chinese jurisdiction through the Marriage Law of 1981¹³⁹. The first part of analysis describes the main legal stages of domestic adoption and the policy that has most negatively influenced childbirth and consequently the adoption phenomenon: the one-child policy.

Like a domino, the one-child policy, with the primary aim of limiting population growth and favoring economic development, has caused social problems including female abortions, sex ratio gap, child abandonment, child trafficking and illegal adoption. The case of the missing girls is addressed to underline the preference for male children and the consequent increase in selective female abortions: this has caused an increase in gender gap among Chinese population which will certainly lead to future social and economic problems.

With reference to illegal adoptions, two cases were translated in order to analyse the phenomenon from a legal point of view.

The first case concerns the adoption of a Chinese child wrongly defined as abandoned. In fact, according to Chinese law, a child can only be defined as such following the announcement by authorities or delegated bodies (Chinese Civil Code, Art. 1105).

Only after a legal declaration of abandonment, the child could be considered adoptable. From this case we can see that China is strict and rigid, putting legality first even at the expense of manifestation of personal moral standards and emotions. Indeed, the child, after being abandoned by the biological parents, will be forced to suffer the loss of the acquired parents.

Another case described in the paper concerns a case of illegal adoption of a child who was separated from his adoptive family and handed over to an orphanage due the non eligibility of the adoptive parents.

¹³⁹ *The Marriage Law of the People's Republic of China (1980)**, Chapter 3, Article 20, Pacific Affairs University of British Columbia, 1980

Through the two judgments, it is visible how Chinese law is inflexible: if there is no legality in the adoption, the adoption itself cannot exist.

The second chapter examines the evolution of Chinese law on international adoption, starting with the 1988 Marriage Law¹⁴⁰, which legalized international adoption for the first time. Following the introduction of the Measures on the Registration of Adoption of Children by Foreigners in the People's Republic of China, the year 2021 will see the adoption of the Chinese Civil Code through which the previous laws will be repealed.

Before 1988, however, a case of international adoption became so well-known that it has been called The Hong Kong Project. Through the analysis of it, the thesis aims to focus on the difference between a retrograde vision of clean break and the modern vision of culture keeping. Through the analysis of specific cases, the aim is to show how welcoming different cultures and preserving them is essential for the adoptee to develop his or her identity.

In fact, culture keeping is supported by adoption agencies, who are aware of how influential it is in a child's future. The representative case of twin sisters' documentary emphasizes how the acquired family is important as well as the biological one: the first meeting was the beginning of a life together, with one's twin sister.

The second part of this chapter focuses on the co-protagonist country of this thesis: Italy, representing the receiver in the intercountry adoption process. Following an in-depth study of Italian law, attention was drawn to the China-Italy agreement on intercountry adoption and the adoption process itself. Following China's adhesion to the Hague Convention, the CCCWA will acquire greater importance and a fundamental role as a central authority capable of collaborating with the other contracting countries. Together with the CAI of Italy, they are the undisputed protagonists after the adoptee and the adopters.

The last part of the chapter focuses on the type of international adoption most widely used between the two countries: Special needs adoption. The various requirements for defining such an adoption have been analyzed, together with the translation of a specific case of a child affected by cleft lip. The above-mentioned case was chosen to highlight how broad the definition of special needs is: even a child with reversible health problems or simply suffering from a cleft lip are defined as special needs cases. It refers mainly to single women eligible for adoption: they will be able to choose only between special needs cases.

¹⁴⁰ Rachel A. Bouman, *China's Attempt to Promote Domestic Adoptions: How Does China's One-Child Policy Affect Recent Revisions in China's Adoption Law and Measure Up to the Hague Convention*, 13 *Transnat'l Law*. 91 (2000), p. 115

Available at: <https://scholarlycommons.paci9c.edu/globe/vol13/iss1/7>

For this reason it is important to make an appeal to future parents: do not dwell on the word "special needs", do not be afraid, investigate, inform yourself ... your future child could be right there.

The third chapter discusses the changes that have taken place in the year 2021, on a social, legal and economic level: Three-child policy, Chinese Civil Code and Covid-19. They will certainly have an influence not only on Chinese society but also on society worldwide. China, being the most populous country, affects the economy of other countries in various ways.

The change from the one-child policy to a three-child policy will only have an impact on society in the future: in fact, Chinese society will need time to overcome the past policy characterised by repression and supervision. From this point of view, adoptions could increase together with the growth of childbirth, but only in a long-term perspective: the adoption requirements are still too rigid, allowing international adoption only for special needs children and giving priority to national adoptions.

From a legal point of view, the Civil Code has allowed a codification and linearity of law in the People's Republic of China. Within the Civil Code, Book Five of Marriage and Family includes the issue of adoption by repealing the Adoption Law of the People's Republic of China. Interestingly, the word intercountry adoption appears only in Article 1109 stating that foreign parents may adopt a Chinese child in accordance with the laws of the People's Republic of China.

Today's adoptions, however, are affected by the Covid19 pandemic: unlike other countries, China wanted to stop international adoption routes, triggering reactions from prospective adoptive parents who had already been matched. It is hoped that in the near future, China will be able to adapt to Covid situation regarding adoptions as well, so that the right of every child to obtain a family can be fulfilled as soon as possible.

Some international adoption experts fear that the number of adoptions from China will continue to decline over the years or at the best remain stable if other countries around the world are unwilling to welcome more special needs children who are unlikely to find families in China. In fact, Chinese children intended for adoption are mainly children with special needs/special focus while healthy children are fewer and fewer. It could be affirmed that healthy abandoned children are now adopted domestically, while special needs children are adopted by foreign families.

On the contrary, those who support intercountry adoption argue that it is in the best interest of the child to choose a family, even if foreign, to raise and love the child who would otherwise

live in an orphanage. With the rights of the child and openness to interracial families in mind, it is thought and hoped that intercountry adoptions will increase.

Therefore, based on the socio-economic and historic-political events that have marked China, this thesis analyses the phenomenon from the perspective of sociological point of view with personal perceptions of adoption.

APPENDIX I

9月11日，在历经三年的异乡收养生活后，小男孩安安被江苏省南通市中级人民法院和海安市民政局工作人员一同接回海安，与其亲生父母周某、王某团聚。至此，这起备受关注的“寄养‘弃婴’被收养案”终于画上了完满的句号。

考虑到安安养父母的生活条件优于生父母，在收养关系解除后，不仅养父母和被收养人会经受情感上的过渡期，安安未来的教育成长也引人关注。为此，本案二审法院南通中院在安安回家后，组织召开了由司法、公安、民政、教育、卫生等多部门负责人参加的协调会，为经历了漫长官司的安安在落户、入学等方面打开绿色通道。

寄养孩子莫名成弃婴

安安的故事，要从2016年说起。

2016年4月，安安的亲生父亲周某、生母王某经法院调解达成离婚协议，安安随父亲周某生活。因需要外出打工，2016年8月，周某将安安委托给朋友金某代为照顾。但一段时间里，周某没有顾及与金某沟通孩子的情况，金某遂对其产生不满。2017年2月，金某故意报警，称她母亲捡到一名男婴，后派出所出具了捡拾弃婴报案的证明。6月30日，鲍某、郑某夫妇向民政局申请收养该男婴，民政局为其办理了收养登记。半年后，安安的亲生父亲周某从外地回来，方才知道自己的儿子已被北京居民鲍某夫妇收养了。

2018年2月，周某、王某将海安市民政局告上法院，后被裁定驳回起诉。周某不服提起上诉，南通中院二审裁定撤销一审法院作出的驳回起诉裁定，指令集中管辖法院南通经济技术开发区法院继续审理。

案件审理中，金某作为证人在法庭上承认，周某当年系将孩子托她照顾，她报警时所说的捡拾弃婴不是事实。而周某也告诉法官，他外出打工时，迫于谋生的压力，

没有及时关爱孩子，当生活条件刚刚好转后，他就立刻想到要接回寄养的儿子，万万没想到儿子却已经被他人收养了。

由于案件事实清楚，2020年3月，南通开发区法院判决撤销民政局作出的收养登记。然而此时鲍某夫妇已经抚养了安安近3年，两人已经离不开这个孩子了。因此，两人不服，并向二审法院提出上诉。

民政局未核实疑点

二审法院南通中院经调查后发现，在鲍某夫妇提出收养申请当天，民政局便制作并发放了收养登记证。而收养法明确规定，收养查找不到生父母的弃婴和儿童的，办理登记的民政部门应当在登记前予以公告。

本案主审法官还指出，收养登记中相关当事人特定身份关系的解除和建立，关系到未成年人的合法权益，主管部门应当慎重履行职责，确保收养登记的准确、规范、有序。符合法定收养条件的人申请收养，需要满足三个条件：一是收养关系当事人应当亲自到收养登记机关办理登记手续，并提交相应的收养材料。夫妻共同收养子女的，应当共同到收养登记机关办理手续；一方因故不能亲自前往的，应当书面委托另一方办理，委托书应当经过村民委员会或者居民委员会证明或者经过公证。二是收养登记机关收到收养登记申请书及有关材料后，应当自次日起30日内进行审查。审查时，收养登记机关可以进行有关的调查、对当事人进行必要的询问，调查应当制作调查记录，询问应当制作询问笔录。收养查找不到生父母的弃婴、儿童的，收养登记机关应当在登记前公告查找其生父母；自公告之日起满60日，弃婴、儿童的生父母或者其他监护人未认领的，视为查找不到生父母的弃婴、儿童。公告期间不计算在登记办理期限内。三是经审查，对符合收养法规定条件的，为当事人办理收养登记，发给收养登记证，收养关系自登记之日起成立；对不符合收养法规定条件的，不予登记，并对当事人说明理由。

据此，法院认定民政局办理收养过程中，没有依法履行审查义务，对公安机关提供的材料审查有疏漏，没能对领养人申请材料存在的疑点进行核实，导致错误地将安安认定为弃婴，并确认了收养关系。

根据法律规定，查找不到生父母的弃婴和儿童可以被收养，但金某关于捡拾婴儿的报警内容纯属虚假，因此安安并不属于查找不到生父母的情况。

法庭上，鲍某夫妇称，他们已经和孩子产生了难以割舍的感情，并主张保护被收养未成年人的利益是收养法的最高准则。周某已经离婚，如果安安和亲生父亲在一起，就要在单亲家庭里生活，不利于孩子的成长。

一方面是血脉亲情、一方面是养父母无私的爱，法律规则与道德情感孰轻孰重？法官如何找到两者的平衡点？

收养登记依法被撤销

南通中院经审理认为，收养应当有利于被收养的未成年人成长，保障被收养人和收养人的合法权益，遵循平等自愿的原则，并不得违背社会公德。本案中，民政局办理收养登记时不仅违反法定程序，而且错误地将周某拜托朋友抚养的婴儿认定为是查找不到生父母的弃婴并确认了收养关系，被诉收养登记行为依法应当予以撤销。

2020年5月28日，南通中院对这起备受关注的“寄养‘弃婴’被收养案”作出了维持原判的终审判决。同时，对金某向公安机关、民政局、一审法院所作的虚假陈述的行为，南通中院于6月3日作出罚款决定书，对金某予以罚款1万元。

终审判决后，南通中院着眼于对未成年人权益保障，通过多方协调与努力，积极促进当事人之间民事法律关系的妥善处理，将安安接回亲生父母身边。

9月11日，该案承办法官向参与协调的相关部门介绍了安安收养案的进展情况。他指出，撤销收养登记是法院依法裁判的结果，就安安回家后面临的落户、入学、卫生防疫等后续问题，希望各部门大力协助，共同为孩子营造一个良好健康的成长环

境。与会各部门代表表示，将积极关注孩子后续生活中的各项需求，为孩子的成长打开绿色通道，让孩子尽快融入新的学习、生活环境。今后，南通中院行政庭党支部成员将通过结对帮扶等方式，对安安的未来成长进行持续跟踪与关照。

■规则阐释

不能混淆收养条件与抚养义务的界限

收养这一法律行为，可以帮助弃婴找回家庭的温暖，也可以让脆弱无助的生命得到关爱和照顾。不过，如果收养的程序不合法，不但不能保证孩子的权益，很可能还会引发一系列问题，进而造成社会的不稳定和重重的隐患。

鲍某夫妇认为，周某长达数月对孩子不闻不问，已经构成了遗弃。他们好心收养，为什么得不到法律的支持？

其实，这一主张混淆了收养条件与抚养义务之间的界限，以所谓的“不闻不问”事实来取代法定的收养条件，剥夺生父母对子女的权利，没有任何法律依据。二审生效判决明确指出，维护社会最基本的秩序是法律的终极使命，这比彰显个人内心的道德准则和情感更为重要。审判机关解决纠纷的根本标准不仅仅是道德上的对错或是非，也不仅仅是情感上的共鸣或偏好，而是权利的存在或是否受到侵犯。

因此，在法律规则与道德情感发生冲突的情形下，法律的使命就是用权利来划清人们行为的边界。公民因婚姻、家庭而产生的人身权利受法律保护，父母与子女是血浓于水的亲情关系，更应受到特别保护。收养的根本目的是在收养人与被收养人之间建立父母子女关系，但显然不能以非法剥夺他人亲生父母子女关系为代价，即使单亲家庭的父母子女身份同样也需要给予同等的保护。

法律规则的适用还需考虑对所有社会成员发挥普遍的引领作用，其所追求的是整体的、全局的公平与合理。所以，法律适用不能绝对采用具体问题具体分析的思维。即使法律适用的过程和结果对某个特定成员有所不利，也不能因此而改变法律适用的

基本原则。本案中，鲍某夫妇收养安安已近三年，一纸判决让他们分离，看起来似乎有点儿冷酷，但是，应当理性地看到，这种后天建立的感情毕竟是以剥夺周某、王某作为亲生父母的感情为代价的，这种感情产生的根源，是一系列违法和不当行为的后果。在保护亲情关系的原则下，没有理由让原生家庭的感情作出牺牲。法律保护正当的利益和感情，从这个角度而言，法律的理性与情感的感性在本案中并不存在实质意义上的冲突。

■专家点评

法律的使命是维护社会最基本的秩序

北京大学法学院教授 沈 岿

从纯粹的法律适用角度而言，“寄养婴儿被收养案”的裁判并不存在争议。法院在查清事实的基础上，通过法律解释和分析，判决撤销了一个被诉机关违反法定程序、未依法履行审查义务作出的收养登记行为。这既保障了被收养人生父母获得救济的权利，又监督了行政机关依法行政，与行政诉讼制度的宗旨和功能完全一致。

案件给审理法院提出更棘手挑战的是：一纸撤销判决意味着收养关系将不复存在；但是，被收养人与养父母毕竟共同生活将近三年，双方已有深厚感情，且养父母的生活条件优于生父母；由于收养关系的废除，不仅养父母和被收养人会经受情感上的伤害，而且被收养人的未来是更好还是更差，实在无法确定。

最终，法院坚持了法律的使命是维护社会最基本的秩序，坚持了解决纠纷的根本标准在于权利的确认和保障，坚持了司法裁判应当用权利划清人们行为的边界，而不能纯粹彰显情感的共鸣或偏好。坚持以权利为本位，既是法院解决多元价值冲突时所应遵循的基本规则，也是对“以人民为中心”理念的生动诠释，更是保障人民权益实现的必然选择。

民法典第一百一十二条规定：“自然人因婚姻家庭关系等产生的人身权利受法律保护。”可见，父母子女之间因血缘所产生的身份关系是一项基本的人身权利，确认和保障该权利体现了法律对作为社会基本细胞的家庭的高度重视。该权利的拥有和行使不受父母收入、生活条件、家庭状况等的影响。非法成立的收养关系，即便可以给被收养人提供更好的生活和成长条件，即便已经在收养人和被收养人之间形成深厚的感情，也不能因此就剥夺亲生父母的权利与亲生骨肉之间的抚养和被抚养关系。否则，不仅以婚姻或血缘为基础的家庭以及以家庭为基础的社会秩序会受到破坏，也潜藏着助长违法犯罪的危害和风险。本案以保障亲生父母抚养权、保护原生家庭的完整性作为解决纠纷的逻辑起点，是用法治思维和法治方式化解矛盾、维护良好社会秩序的有益实践。

最难能可贵的是，本案审理法院并未一判了之。收养关系的解除不只是单纯人身关系的改变，更多的则是情感的剥离以及未成年人成长环境的变化。为了让年幼的孩子尽快从是非纷扰中解脱出来，缓解因离别之痛而给孩子、养父母带来的心理伤害，法院和民政局共同携手将孩子从养父母处接回生父母身边。以人民为中心的司法，让人民群众不仅感受到了法律的公平和正义，也感受到了法律的关怀和温度。

APPENDIX II

郭哲星、郭丽霞等与德化县社会福利中心合同纠纷一审民事判决书

案由：民事 > 合同、无因管理、不当得利纠纷 > 其他合同、无因管理、不当得利纠纷

案号：(2018)闽 0526 民初 3456 号

审理法官：曾凯旋 梁碧霞 邓瑞明

文书类型：其他文书

审结日期：2018.10.19

审理法院：福建省德化县人民法院

案件类型：民事一审

审理程序：二审

代理律师/律所：李俊璇 福建闽翔律师事务所 苏德锋 福建戴云律师事务所 杨春

桂 福建戴云律师事务所

权责关键词：无效__社会公共利益__代理__合同__消除影响__合法性 质证 证明对象

诉讼请求__陪审

郭哲星、郭丽霞等与德化县社会福利中心合同纠纷一审民事判决书

福建省德化县人民法院

民事判决书

原告：郭哲星。

原告：郭丽霞。

原告：郭炯清。

三原告共同委托诉讼代理人：李俊璇，福建闽翔律师事务所律师。

被告：德化县社会福利中心。

负责人：刘云腾，该中心主任。

委托诉讼代理人：苏德锋，福建戴云律师事务所律师。

委托诉讼代理人：杨春桂，福建戴云律师事务所律师。

原告郭哲星、郭丽霞、郭炯清与被告德化县社会福利中心寄养合同纠纷一案，本院于2018年9月6日立案受理后，依法适用普通程序，公开开庭进行了审理。原告郭哲星、郭丽霞及其共同委托诉讼代理人李俊璇、被告德化县社会福利中心的委托诉讼代理人苏德锋到庭参加诉讼，本案现已审理终结。

郭哲星、郭丽霞、郭炯清向本院提出诉讼请求：1.判令确认德化县社会福利中心自2018年元月11日起单方解除《家庭寄养协议书》的行为无效；2.判令德化县社会福利中心继续履行其与郭哲星、郭丽霞、郭炯清签订的《家庭寄养协议书》；3.判令德化县社会福利中心消除履约障碍，将原由郭哲星、郭丽霞、郭炯清家庭寄养的儿童郭进来归还至其家庭。

事实与理由：儿童郭进来自出生后第25天时就由郭丽霞等人从其父母处抱养。2016年6月，郭进来被相关部门以打拐儿童名义解救至德化县社会福利中心。2017年元月间，德化县社会福利中心委托专业评估机构对郭哲星家庭的寄养能力评估。经综合评定合格后，双方共签订两份《家庭寄养协议书》。2018年1月11日，德化县社会福利中心假借检查名义，要求郭进来到夕阳红敬老院小住几天，结果不让郭进回家。2018年2月11日，德化县社会福利中心邀请多部门进行联合执法，将郭进来转移泉州市鲤城区福利院。2018年8月16日，郭哲星等人得知，德化县社会福利中心同时将10个家庭的10个孩子包括郭进来在内，同步安排到了新寄养家庭中去。由于郭哲星等人从郭进来出生后一直精心照料，怀着对孩子深入骨髓的亲情，完全无法割舍。德化县社会福利中心随意、单方、强行解除寄养协议的行为毫无正当理由。事后，郭哲

星有收到德化县社会福利中心下发的解除《家庭寄养协议书》的通知。自郭进来进入郭哲星家庭后，双方已经形成一个稳定、温馨、正常的事实家庭关系。而德化县社会福利中心自2018年元月11日开始，通过其单方解除的行为，以解救儿童之名破坏了郭进来已经建立的正常家庭生活与亲情氛围。德化县社会福利中心的做法不仅从根本上违背了人性伦理、损害社会公共利益，还违背了《未成年人保护法》、《家庭寄养管理办法》等相关法律规定，其单方解除行为应当被确认为无效。对于双方签订达成的《家庭寄养协议书》，德化县社会福利中心有义务继续履行，并采取有效措施为双方继续履约消除影响与障碍，将郭进来归还给郭哲星家庭。

郭哲星、郭丽霞、郭炯清为证实其主张，提供以下证据：

1.《寄养人能力评估报告》、《寄养计划》、《开展寄养人能力评估协议书》。共同证明：德化县社会福利中心指定专业评估机构—泉州市泉大社会组织促进中心，在对郭哲星等人的基本情况、寄养动机、职业和经济情况等综合评审的前提下，认定郭哲星等人具备寄养人条件，建议予以寄养；泉州市泉大社会组织促进中心对《寄养计划》经审核后给予确认。

2.《解除家庭寄养通知书》。证明德化县社会福利中心已经通过签订议书的形式对于儿童郭进来与郭哲星既成事实的家庭成员关系予以认可；德化县社会福利中心无权随意单方解除该协议；该通知书确认家庭寄养协议关系已自动解除，原家庭寄养协议书自2018年1月11日起自动废止。

3.《照片》一组。证明郭进来已融入郭哲星家庭，成立事实的家庭成员关系；郭进来被强行隔离至福利院后，身心健康均遭受伤害。

德化县社会福利中心对郭哲星等人提供的上述证据经庭审质证如下：

证据 1 的真实性无异议，但对证明的内容有异议。根据《家庭寄养管理办法》规定，被解救的被拐卖儿童不应由原收买家庭继续寄养，另外寄养家庭成员应无犯罪记录；郭哲星、郭丽霞等家庭成员不具备寄养的条件。

证据 2 真实性无异议，双方系家庭寄养的法律关系，不是家庭成员的关系。德化县社会福利中心解除《家庭寄养协议书》系根据《家庭寄养管理办法》第 21 条规定作出的，不是郭哲星等人所主张的无权随意解除作出。

证据 3 真实性无异议，但需要强调的是郭哲星与郭进来之间不属于家庭成员关系，而是属于家庭寄养关系。

德化县社会福利中心辩称，本案涉案儿童系已被公安机关解救并已得到妥善安置的被拐卖儿童。德化县民政局依据《中华人民共和国收养法》，民政部、公安部《关于开展查找不到生父母的打拐解救儿童收养工作的通知》、《福建省民政厅关于查找不到生父母的打拐解救儿童收养有关事项的通知》文件要求，对于符合收养条件的儿童，应当及时进行国内送养，并于 2018 年 4 月 17 日发布开展公安打拐解救儿童申请收养报名的通告。今涉案被拐卖儿童的收养工作已经完成，并与收养家庭签订了“收养协议”。涉案儿童已得到妥善安置收养。答辩人依据《家庭寄养管理办法》第二十一条、第二十二条之规定，依法解除于 2017 年 9 月 13 日与郭炯清等人签订的《家庭寄养协议书》，有法律依据，程序合法。郭哲星等人的诉讼请求缺乏依据，依法不能成立，依法应予驳回。

德化县社会福利中心为证实其主张，提供以下证据：

1. 《德化县公安局刑事侦查大队》出具的材料。证明郭丽霞参与收买被拐卖儿童，依据《家庭寄养管理办法》规定，不符合被拐卖儿童寄养家庭的条件。

2.《家庭寄养协议书》、《解除家庭寄养通知书》、《送达回证》。证明德化县社会福利中心依据《家庭寄养管理办法》第 21 条、第 22 条规定，依法解除于 2017 年 9 月 13 日与郭炯清等人签订的《家庭寄养协议书》。

3.《关于开展公安打拐解救儿童申请收养报名的通告》。证明德化县民政局依据《中华人民共和国收养法》，民政部、公安部《关于开展查找不到生父母的打拐解救儿童收养工作的通知》、《福建省民政厅关于查找不到生父母的打拐解救儿童收养有关事项的通知》文件要求，对于符合收养条件的儿童，应当及时进行国内送养，于 2018 年 4 月 17 日发布开展公安打拐解救儿童申请收养报名的通告。今被拐卖儿童的收养工作已经完成，并与收养家庭签订了“收养协议”。

郭哲星、郭丽霞、郭炯清对德化县社会福利中心提供的上述证据经庭审质证如下：

证据 1 真实性给予认可，证据内容的三性均不予认可。该份证据不属于法定的证据范畴，不能产生事实确认的法律效果。本案是合同纠纷，解除之前的合同是否合法应提供充分的、合法的证据加以证实。德化县社会福利中心无法提供郭哲星等人无权收养的法定证据。

证据 2 真实性无异议，但证明对象及合法性均不予认可。该份证据仅仅证明了德化县社会福利中心解除寄养关系的事实，但不能证明解除寄养关系的行为是依法作出的。

证据 3 的真实性无法确认。郭哲星等人对于寄养儿童具有法定的收养优先权，社会福利中心跳过郭哲星而将孩子寄养到新的家庭是违背法律规定的。

本院经审理认定事实如下：郭丽霞与郭哲星系夫妻关系；郭炯清与林云英系夫妻关系；郭哲星与郭炯清系兄弟关系。2014 年 10 月间，郭丽霞参与收买被拐卖儿童，收买了一名男婴，取名郭进来,郭进来即在郭丽霞、郭炯清家庭中生活。后郭进来被公安

机关解救，并送至德化县福利机构抚养。郭哲星、郭丽霞欲接收郭进来到家中寄养，于2017年6月2日与泉州市泉大社会组织促进中心签订《开展寄养人能力评估协议书》，对自身寄养能力进行评估，泉州市泉大社会组织促进中心于2017年6月10日出具《寄养人能力评估报告》，评估结论为：郭哲星、郭丽霞具备寄养人条件，建议给予寄养。2017年9月13日，德化县社会福利中心与郭炯清、林云英签订《家庭寄养协议书》，约定郭炯清、林云英同意接收寄养打拐解救儿童郭进来。2018年2月间，政府多部门联合执法，将郭进来解救至德化县福利机构抚养。2018年4月17日，德化县民政局经德化县政府研究决定，发布《关于开展公安打拐解救儿童申请收养报名的通告》，对拖某某等人拐卖儿童一案打拐解救儿童进行国内收养。2018年5月11日，德化县社会福利中心以邮寄方式向郭炯清、林云英送达《解除家庭寄养通知书》，通知书告知郭炯清、林云英：根据民政部、公安部《关于开展查找不到生父母的打拐解救儿童收养工作的通知》文件精神，要求本县开展公安打拐儿童解救收养工作，本单位寄养在你家庭的004号儿童将被依法开展国内送养。同时根据《家庭寄养管理办法》第二十一条第二、三款之规定，现正式通知你家庭的寄养关系已自动解除，原《家庭寄养协议书》自2018年1月11日起已自动废止。

诉讼中，本院欲追加林云英作为共同原告参加诉讼，林云英表示，该案由其丈夫郭炯清参加即可，其不同意作为共同原告参加诉讼。

本院认为，《家庭寄养管理办法》第八条第一款第（四）项、第二十一条第一款第（二）项规定，寄养家庭的家庭成员应无犯罪记录。寄养儿童有下列情形之一的，儿童福利机构应当解除寄养关系：（二）寄养儿童依法被收养、被亲生父母或者其他监护人认领的。民政部、公安部《(255339)>关于开展查找不到生父母的打拐解救儿童收养工作的通知》（民发〔2015〕159号）规定，公安机关解救被拐卖儿童后，对于查找不到生父母或其他监护人的，应当及时送还。对于暂时查找不到生父母及其他监护人

的，应当送交社会福利机构或者救助保护机构抚养，由社会福利机构或者救助保护机构承担临时监护责任。社会福利机构收到查找不到生父母或其他监护人的证明后，对于符合收养条件的儿童，应当及时进行国内送养，使儿童能够尽快回归正常的家庭生活。本案中，德化县社会福利中心按照上述规定的程序和条件，发布通告开展被拐卖儿童的送养工作系履行规定赋予的职责，并无不当。郭丽霞、郭哲星、郭炯清作为原收买人家庭均不符合上述规定的寄养条件。因此，德化县社会福利中心解除涉讼《家庭寄养协议书》并未违反上述规定。据此，郭哲星等人要求德化县社会福利中心继续履行《家庭寄养协议书》及确认德化县社会福利中心单方解除《家庭寄养协议书》行为无效的诉讼请求，理由不能成立，本院不予采纳。综上，郭哲星、郭丽霞、郭炯清的诉讼请求，缺乏依据，本院予以驳回。据此，依照《中华人民共和国民事诉讼法》第八十一条规定，判决如下：

驳回郭哲星、郭丽霞、郭炯清的诉讼请求。

案件受理费 100 元，由郭哲星、郭丽霞、郭炯清负担，限于本判决生效后七日内向本院缴纳。

如不服本判决，可在判决书送达之日起十五日内，向本院递交上诉状，并按对方当事人的人数提出副本，上诉于泉州市中级人民法院。

审 判 长 曾凯旋

人民陪审员 梁碧霞

人民陪审员 邓瑞明

二〇一八年十月十九日

书 记 员 尤珮灿

附：

判决书主要法律条文：

《中华人民共和国民法总则》第八条民事主体从事民事活动，不得违反法律，
不得违背公序良俗。

德化县人民法院官方微信、微博二维码

←官方微信官方微博→

一、About food 饮食方面

1. Main food 主食

米饭、面食类、肉类、蔬菜

2. Supplementary food 辅助性食物

牛奶、鸡蛋、水果、甜点儿

3. Feeding time 喂养时间及食物量

早上 07:30

中午 12:00

下午 17:00

加餐 (上午 10:00

下午 14:30

4. Method of feeding 进食方式

需大人辅助进食

二、About sleep 睡眠方面

1. Sleeping time 睡觉时间

午休时间 12:30 ~ 14:00

晚上 20:30 ~ 07:00

2. Pattern of sleep 睡觉形态 (仰、侧、趴) 及方式

正入着睡觉

3. Sleeping habit 睡觉习惯

一人一个床睡觉

三、About excretion 大、小便习惯

不知道大、小便, 白天、晚上用尿不湿, 回家坐小便盆。

四、About bath 洗澡习惯

每晚睡前洗澡

五、Special habits 特殊生活习惯

无特殊生活习惯

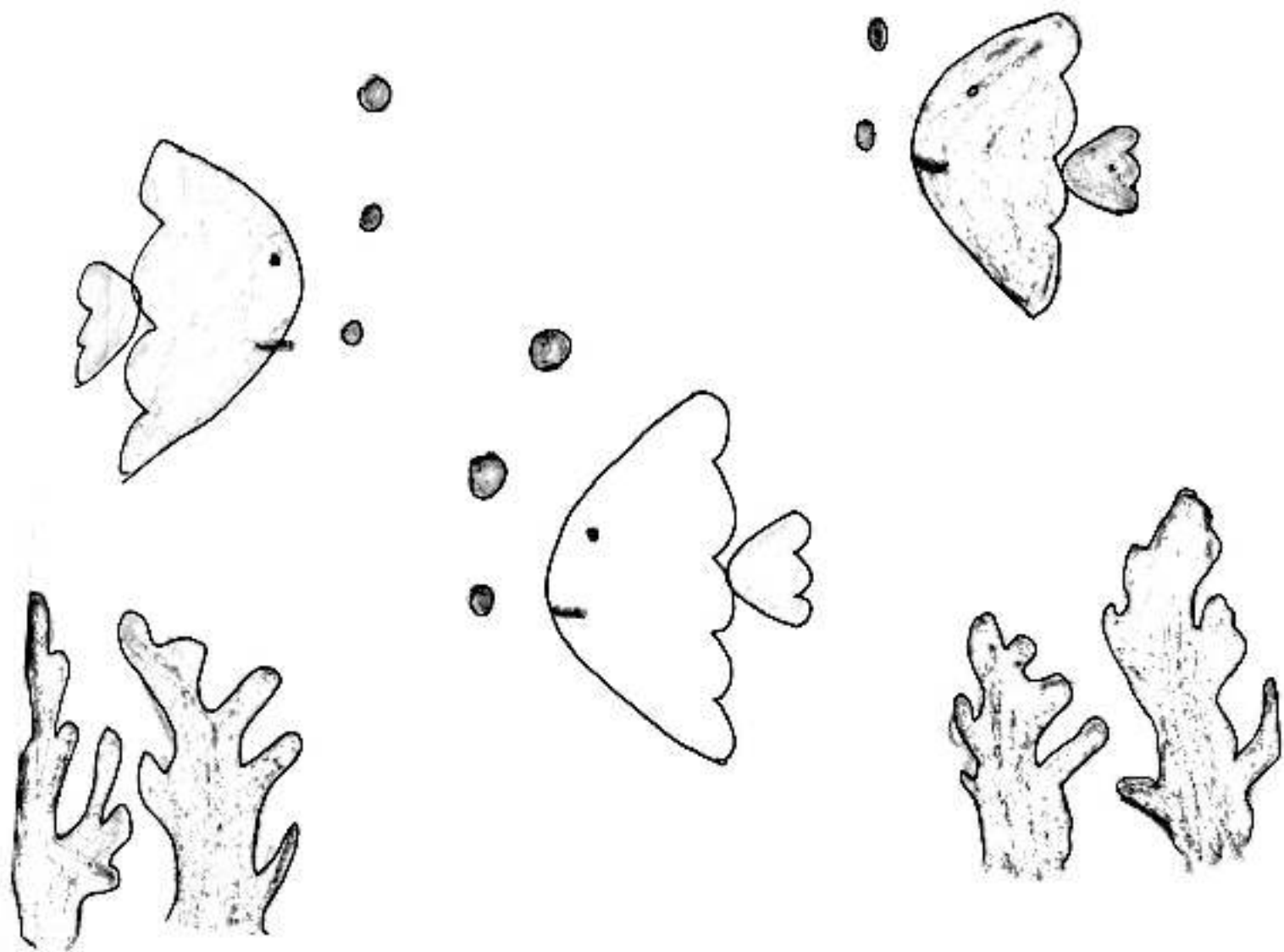
六、Likes or dislikes

特别喜欢或特别不喜欢（厌恶、害怕）的事情或东西（包括动物、玩具、食物等）

喜欢吃米饭、饺子、喝粥类；喜欢吃鱼、虾、鸡肉；喜欢吃牛肉烧土豆、西红柿炒鸡蛋，不喜欢吃青菜，喜欢较软的食物。每天早上要吃煮鸡蛋、喝牛奶。害怕狗猫

七、Description of child's character 性格描述

李学虎 性格开朗，爱模仿，语言表达能力较好。会说3-5个字的句子，会背儿歌，喜欢做游戏，喜欢大家表扬他。



宝贝：

希望你和妈妈身边，在我们这个大家庭里，
就象鱼儿在水中一样，自由自在的生活，健健康康
地成长！



拍照日期：2012年7月17日



这是2012年7月26日为 霍学亮 印下的手印



这是安 [redacted] 在2013年7月10日所留下的手印

2012年7月30日

是7月17日来到我身边的。第一次见到学虎时我吓了一跳，他是个唇裂的孩子，孩子又瘦又小，皮肤黑黄，长着一双大眼睛还是双眼皮。

2012年8月10日

最近喂奶很少，孩子老是睡觉，看着他没有什么精神。

2012年8月13日 — 2012年9月3日

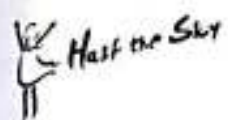
学虎住院



2012年9月20日

学虎出院了，他比之前稍微胖了些，也好看多了。吃饱后很乖，和他说话他会裂着嘴笑。





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西安市儿童福利院

2012年度第 3 季度

儿童姓名
(拼音):

安学虎
An XueHu

性别:

男

出生日期:

2012/5/25

祖母姓名:

刘艳

报告日期:

2012/9/30

健康状况:

唇腭裂



拍照日期: 2012/9/25

[照片备注]我们在做操!

拍照日期: 2012/9/27

[照片备注] []能靠着坐会!

[]来到我身边两个多月了,他饿时,会大声哭,吃饱后会很乖。和他说话时,他会紧紧盯着我的眼睛,嘴角一动一动发出“哦哦哦”的音。听到我叫他的名字,逗他玩,他会对着我笑,并且手舞足蹈。[]躺在U型垫子上,会两手抱握在一起玩。有时他也会把手指放在嘴里吸吮。靠着垫子,他也能坐一会,眼睛会四处张望那个。喜欢我抱着他,给他做操,他会把我的手指抓得紧紧的。

2012年9月30日

看见我会紧盯着我的眼睛。有时会把手指放进嘴里吸。他躺在U形垫上，两只手抱握在一起玩。

2012年10月10日

看见我，我叫他的名字，他就会高兴地对我笑。他的小手抓着我的手指，很有劲。

2012年10月20日

爬在U型垫上，我叫他的名字，他会抬起头寻找我。

2012年10月30日

最近能吃点米粉了。我站在身旁叫他的名字，他紧盯着我的眼睛，裂着嘴巴冲着我笑。

2012年11月10日

腿也有劲了，给他盖的被子，他能蹬下去。他很爱笑，我一叫他的名字，他就看着我笑。

2012年11月20日

现在能俯卧在靠枕上，可以抬起头来。仰卧在地垫上时，给他手里拿着小铃铛，他会抓的很紧，眼睛会盯着玩具看。



安学虎

An xue hu

第三页

2012年11月29日

学虎不高兴的时候，我轻轻地抚摸他的头和肚子和他小声的说话，很快他就不哭了，然后静静地看着我。



2012年12月10日

2012年11月30日 — 2012年12月10日 安学虎住院。

2012年12月20日

学虎，躺在玩具架前，他会伸手去抓玩具架子上的玩具。

2012年12月30日

给学虎洗澡时，他很乖，不哭闹，给他擦身，和他说话，他会裂着嘴巴给我笑。

Half the Sky

XXXXXXXX

XXXXXX

儿童姓名
(拼音):

徐学虎

性别:

男

出生日期:

2012/5/25

祖母姓名:

刘艳

报告日期:

2013/01/15

健康状况:

唇腭裂

西安市儿童福利院 2012年度第4季度



拍照日期: 2012/12/25

[照片备注]妈妈给徐虎说话!



拍照日期: 2012/12/28

[照片备注]自己靠着坐着玩!

能俯卧在靠枕上，可以抬起头来。仰卧在地垫上时，给他手里拿着小铃铛，他会抓得很紧，有时眼睛会盯着铃铛看。他不高兴的时候，我轻轻地抚摸着他的头和肚子跟他小声说话，很快他就不哭了，然后静静地看着我的脸。给他洗澡时，他很乖不哭闹，给他擦身和他说话，他会咧着嘴巴给我笑。叫他的名字时，他会马上转过头来看着我笑，还哦哦地跟我说话。现在他能靠着垫子坐着，拿着摇铃玩会。

2013年元月10日

我手里拿着玩具，在老虎的眼前摇动，他的眼睛随着铃铛的^声音，头也来回的转动。

2013年元月20日

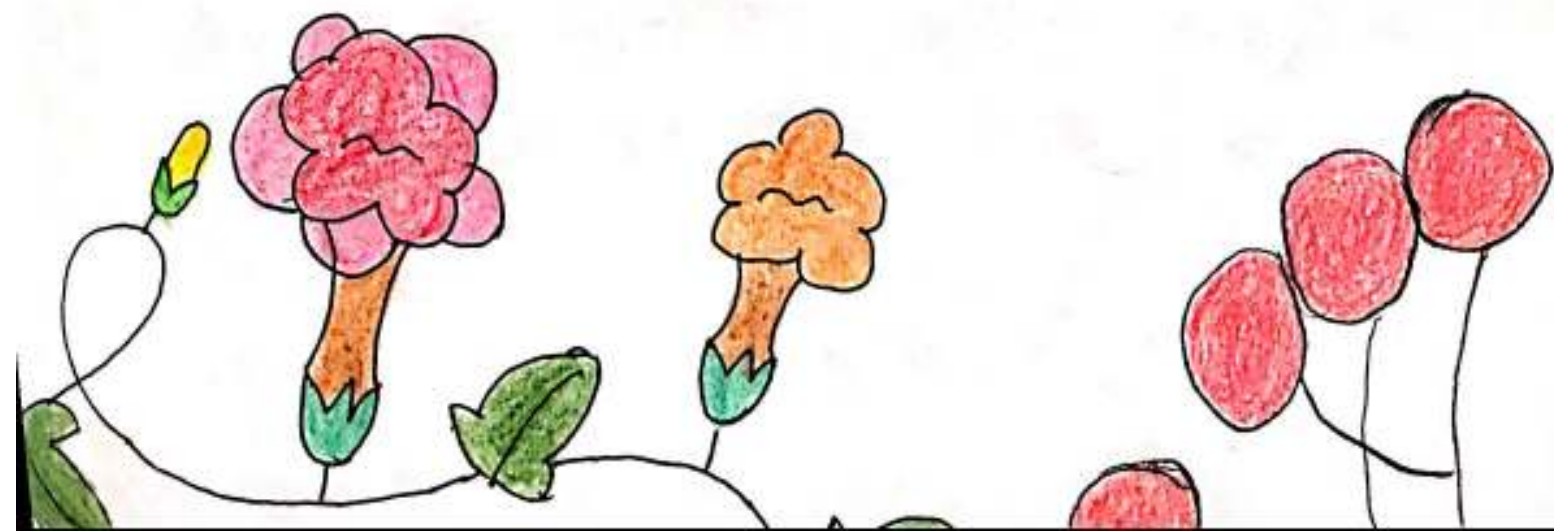
我抱着老虎，给他说话逗他玩，他的脸上露出微笑，嘴里发出噢.噢的音。

2013年元月30日

老虎 俯卧在靠枕上，头抬的高高的，还时时的左瞧瞧，右看看。


2013年2月10日

我给小虎个小铃铛，他抓的很紧，有时他会把铃铛放进嘴里吃。他洗澡时，很听话，手抓住^我的衣服不松。




2013年2月20日


第五页

让  爬在靠枕，他把头抬的很高，我逗他玩，他很高兴。

2013年2月28日

 2月21日——3月8日住院。


2013年3月10日

我给  喂奶，我拉着他的手，让他俩只手抱住奶瓶，他的手把奶瓶抱的很紧。


2013年3月20日

我抱着小虎躺在我的怀里我和他说话，他会伸出小手来抚摸我的脸。


2013年3月31日

 能自己从仰卧翻身至到俯卧，还能把头高高地抬起来。

2013年4月10日

 看见身边的玩具，他侧过身子看着玩，还伸出小手去摸玩具，手指拨动玩具玩了半天。

2013年4月20日

 是4月 日做的唇裂手术。他从医院回来，不太相原来的他了，变帅了。



2013年4月30日

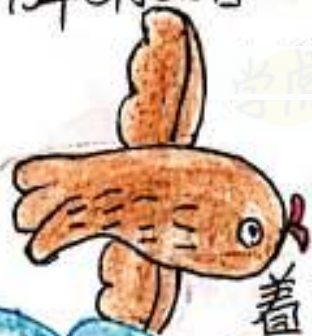
我去婴儿室接孩子，乐乐看见我走到他床边，他就会对着我笑，手脚不停的乱动，看着我笑咪咪的。

5月1日—5月20日

因孩子们患手足口病，在隔离期。



2013年5月30日



看见身边的玩具，他侧过身子伸手去拿玩具玩，用手指拨玩具能转动的地方，玩着还高兴地张着嘴巴，有时会把舌头伸到外边。



2013年6月10日

把奶瓶放在小虎的嘴里，让他自己双手抱着奶瓶。他会紧紧的抱着，至喝完奶。把奶瓶从他手里拿走他还不愿意哭呢。

2013年6月20日

现在能自如的从仰卧翻至俯卧，而且还能翻滚着去找玩具玩。发给他小食品时，他会伸手去接，拿着放到嘴里吃。

2013年6月30日

小朋友拿着饼干在 **小虎** 旁边吃，他伸出小手去抢饼干，抢到手放进嘴巴吃。 **小虎** 双手拿着玩具，互相敲打玩。

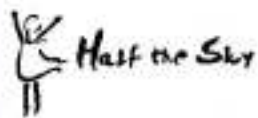
2013年7月10日

小虎 躺在地垫上，双脚蹬在镜子上，双脚来回不停一蹬一蹬，他玩的很开心。

2013年7月20日

现在能用腹部慢慢地一点一点往前爬行。他也放着坐在地垫上他能坐的稳。





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XXXXXX

西安市儿童福利院 2013年度第 2 季度

儿童姓名 (拼音): An XueHu

性别: 男

出生日期: 2012/5/25

祖母姓名: 刘艳

报告日期: 2013/7/15

健康状况: 唇裂术后 胫裂



拍照日期: 2013/06/25

[照片备注] 和妈妈敲打玩具!

拍照日期: 2013/06/1

[照片备注] 自己找玩具玩!

现在能从仰卧翻至俯卧，而且能来回翻滚着身体，去寻找他喜欢的玩具玩。也能独自坐一会。给他放一些玩具，他就会自己一个一个拿起来看看，玩玩。发教他双手敲击玩具，他也会模仿我，尝试着去敲打。他自己也能抱着奶瓶喝奶。发给他饼干时，他会伸出小手去接，并能放进嘴里咬着吃。若有小朋友拿着饼干在他身旁时，他还会去抢饼干。每天去婴儿室接孩子，他看见我就手舞足蹈，还给我笑个不停。我拍手叫蛋蛋，他会看着我笑咪咪的。

半边天儿童成长报告非医学报告，不能作为判断儿童是否适合收养的依据

2013年7月30日

坐在我腿上，双手拿着玩具，互相敲打着，他边敲边高兴地啊、啊地叫。

2013年8月10日

我去婴儿室接孩子，听见我的声音就哭，当我走过去从床上抱起他，他马上就止哭了，还高兴地对着我笑。手把我的衣服抓得紧紧的。



2013年8月20日

我和他玩时，对他伸手说“握握手”他看着我的手，把手伸过来放在我手心里，我抓住他的手摇一摇，他也学我的样子，拉着我的手摇一摇。小虎还会摇摇头。



2013年8月30日

小虎拉着我的手能站立了。每次我拉着他的手时，他就能保持站立的姿势，还张着嘴巴高兴地啊啊地叫。

2013年9月10日

小虎现在也想吃饭了，看见我给楠楠喂饭他就往我跟前爬，爬到我身边。他看着碗张着嘴巴想吃。

2013年9月20日

我拉着小虎站立起，我教他叫“妈妈”，他很专注地看着我的嘴巴，也跟着我嘴巴一张一张的，偶而能发出一点音。

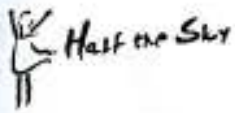
2013年9月30日

小虎爬在地上，拿起身边的小球，他把小球扔掉，球滚出好远，他很快爬到小球前，抓起来再扔出去，再继续爬着去拿球玩。

2013年10月10日

我把手伸给小虎，说：“虎宝宝握握手”，他会看看我的手，把手伸过来放在我手心，我抓住他的手摇摇，他也学我把我的手摇摇。





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西安市儿童福利院 2013年度第 3 季度

儿童姓名
(拼音):

安学虎
An XueHu

性别:

男

出生日期:

2012/5/25

祖母姓名:

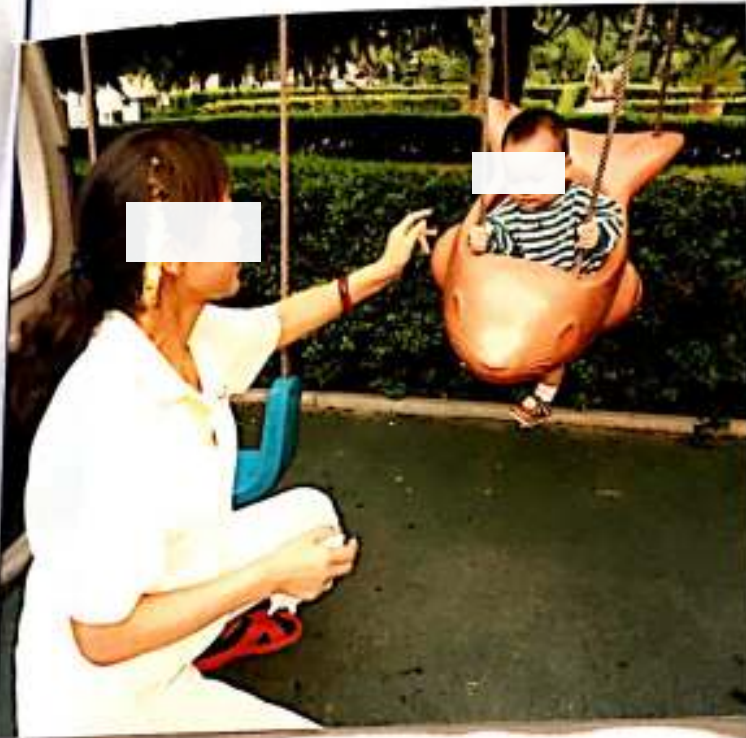
刘艳

报告日期:

2013/10/15

健康状况:

唇裂术后 腭裂



拍照日期: 2013/09/11

[照片备注] 和妈妈荡秋千!



拍照日期: 2013/09/10

[照片备注] 喜欢骑木马!

现在会腹部着地，两只胳膊交替着向前爬了，经常自己爬来爬去地到处找玩具玩。他玩玩具时会经常双手拿着玩具互相敲打着玩。我教他叫妈妈，他会盯着我的嘴巴看，嘴巴一张一张偶尔能发出一点音。他还会模仿我摇头；也能指出来鼻子在哪。每次看到我端着碗时，他都会往我的跟前爬。我去婴儿室接他们时，他听见我声音时就哭，当我走到床旁抱起他时，他马上就不哭了。在户外，能在秋千上玩一会，也会骑在木马上前后摇晃。现在他也学会了做再见的动作了。

半边天儿童成长报告非医学报告，不能作为判断儿童是否适合收养的依据

2013年10月20日

现在能自己支撑起身体坐起来,坐着时也能自己改变姿势成趴在地垫上。他还能听懂:“爬过来,坐起来”。

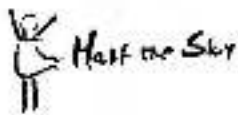
2013年10月30日

看到我坐在那里,他就会往我跟前爬,他爬到我身边就往我腿上躺,想让我抱他,把他若推开不抱,他会气的大声哭闹。



2013年11月10日

现在爬行时,能用手掌和膝盖支撑着身体往前爬了,爬行的速度很快。他手扶着玩具架能站立起来,然后一只手扶架子,用另一只手拿玩具架上面的玩具。



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西安市儿童福利院 2013年度第4季度

儿童姓名
(拼音):

安学虎
An XueHu

性别:

男

出生日期:

2012/5/25

祖母姓名:

刘艳

报告日期:

2014/01/15

健康状况:

唇裂术后 腭裂



拍照日期: 2013/12/20

[照片备注] 和妈妈玩套圈!

拍照日期: 2013/11/10

[照片备注] 能扶着栅栏站!



现在能用手和膝盖支撑着身体爬行了。拉着镜子前的栏杆自己能站立起来，扶着栏杆也能走过来走过去。有时抓着栏杆还前后摇晃身体，还用手去拍打镜子，看着镜子里的人，高兴地笑。他现在会玩套圈了，他把套圈一个一个套上去，再一一拿下来，反复这样玩好久。我夸他真棒，他会开心地看着我笑。抱他坐在我腿上，他身体上下一蹲一蹲的，嘴里还会啊啊地说着什么。他还能用手指捏起小东西，有时正在爬，看见地上有什么，他就会停下来用手指捏起来看看。送他上床睡觉，把他放到床上他很乖不哭闹，然后他会给我不停地做飞吻，再见的动作，嘴里还妈妈地叫我。他能听懂一些简单的指令如：过来，拍手，再见。

半边天儿童成长报告非医学报告，不能作为判断儿童是否适合收养的依据

2013年11月20日

第十一页

送 老虎 上床睡觉，把他放到床上，他很乖不哭闹，然后他会给我不停地做“飞吻，再见”的动作。他偶尔能发出“妈.妈”的音。

2013年11月30日

老虎 抓着镜子前的栏杆能站起来，他站起来后，看着镜子里的人影高兴地“啊.啊”地喊叫，还用手拍打镜子玩。

2013年12月10日

老虎 爬到鞋柜前，用手把柜子门推过来，推过去地玩。抱他坐在我腿上，他身子摇啊摇，嘴里还“噢.噢”地说着什么。

2013年12月20日

老虎 趴着玩时，看见门开了，他爬到门口前，停在门口朝里看看，然后就准备往里爬，我叫虎蛋蛋，他停下看我，然后往另一个方向爬去玩。

2013年12月30日

老虎 现在会玩套圈了。他把套圈一个一个地套在杆子上，在-一个-一个地拿下来，我夸小虎真棒，他开心地歪着我笑。



2014年10月15日

宇凡爬在小房子里的窗台上，手里拿着一个小布娃娃逗晓佳玩。他伸出娃娃给晓佳，晓佳伸手去拿，他又把手缩回去，两个孩子玩的很开心。

2014年10月30日

宇凡和我玩做游戏活动，让他坐在我的对面，我摸着自己的头发给他说话。他也用小手摸自己的头，又指自己的鼻子在哪，他很快就学会了。



2014年2月15日

我拉着宇凡站起来，用一只手扶着他，用另一只手伸出十指给他说：“1”，他也手指捏住，用大拇指压中指伸出十指跟着我做。

2014年2月30日

能搭回块积木了。他把积木一个一个搭起来，边搭一边看着我笑。有时我正给他喂饭，他会用手指指躺在身边的月影，意思是让给月影也喂饭吧。

2014年3月15日

骑着三轮车在活动室能来回地走，遇到障碍物时还能退着走。每天给他洗耳朵时，他很乖不哭闹。我用揉他的耳朵周围时，他有时也来回的摇头配合我。

2014年3月30日

现在能自己站立了，扶他起来松手后他自己能稳稳地站立。给他洗澡时，他很喜欢玩水，他用手在池子里拍打水玩，他还用手去抓捏水管往下流的水柱玩。

2014年4月15日

我和他玩时，对他说“握手”，他就会将手伸到我手中。玩皮球时，他能双手抱着皮球扔出去。

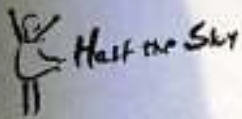
2014年4月30日

2014年4月15日—4月28日 去医院做裂手术。

2014年5月15日

现在能慢慢自己能走了，摔倒了他会自己站立起来继续走，找他喜欢的玩具。





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儿童姓名
(拼音):

性别: 男

出生日期: 2012/5/25

祖母姓名: 刘艳

报告日期: 2014/04/15

健康状况: 唇裂

西安市儿童福利院 2014年度第 1 季度



拍照日期: 2014/03/20

[照片备注]学虎和妈妈垒积木!

拍照日期: 2014/03/10

[照片备注]虎骑车子!

现在能骑着三轮小车在活动室来回地走，遇到障碍物时还能退着走。他也能独立站立一会。他还学会了模仿我做“1”的动作。经常还用手指点点我的手心，或是指一指其它的东西，也会把两根食指对这做“嘟嘟飞的动作”。和我玩积木，能连着垒四块，然后自己推倒。最近又学会指出自己的鼻子、头发和耳朵。每天给他洗耳朵时，他很乖，我用手指揉他耳朵周围时，他也会来回摇头配合我。每次给他来他会给我指指窗外。

半边天儿童成长报告非医学报告，不能作为判断儿童是否适合收养的依据



2014年5月30日

最近[]很喜欢拿着套碗玩，走到那都拿着，他还把小套碗套进大碗中，再把小碗拿出来，这样反复玩。

2014年6月15日

[]看到门外有爱心人士来看孩子们时，他会用手指给我，给发小食品时他走过去伸手去接。看到他们走时，还给他们再见、飞吻。

2014年6月30日

最近[]学坐盆尿尿，他很乖不哭闹。鼻涕流下来，我说虎蛋蛋擦鼻子，他捡起地上的小毛巾自己擦。



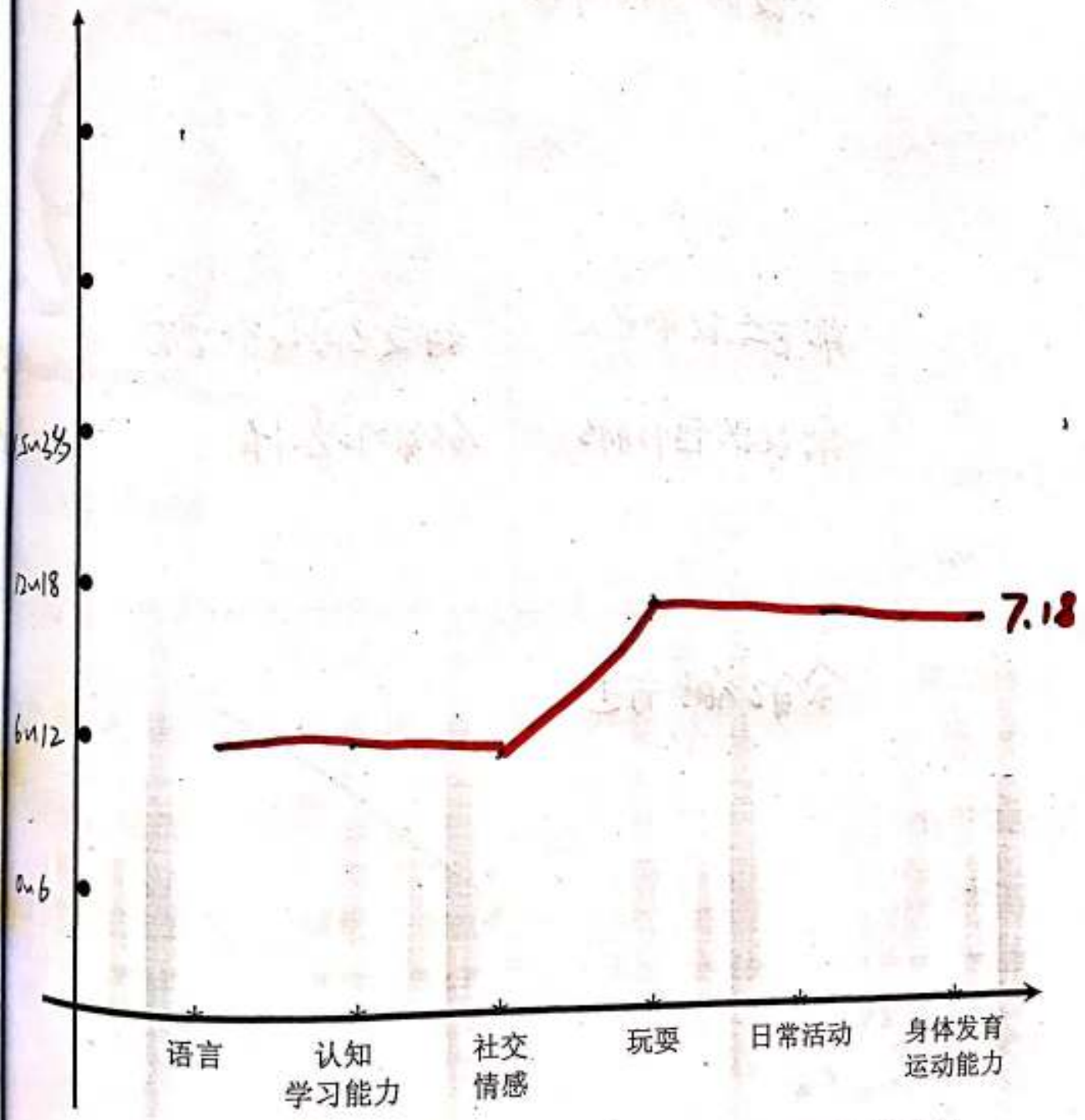
半边天儿童成长报告... 报告, 不能作为判断儿童是否适合收养的依据。

儿童评估表格




儿童姓名: 王雨

出生日期: 2012.5.25

填表人: 黄爽

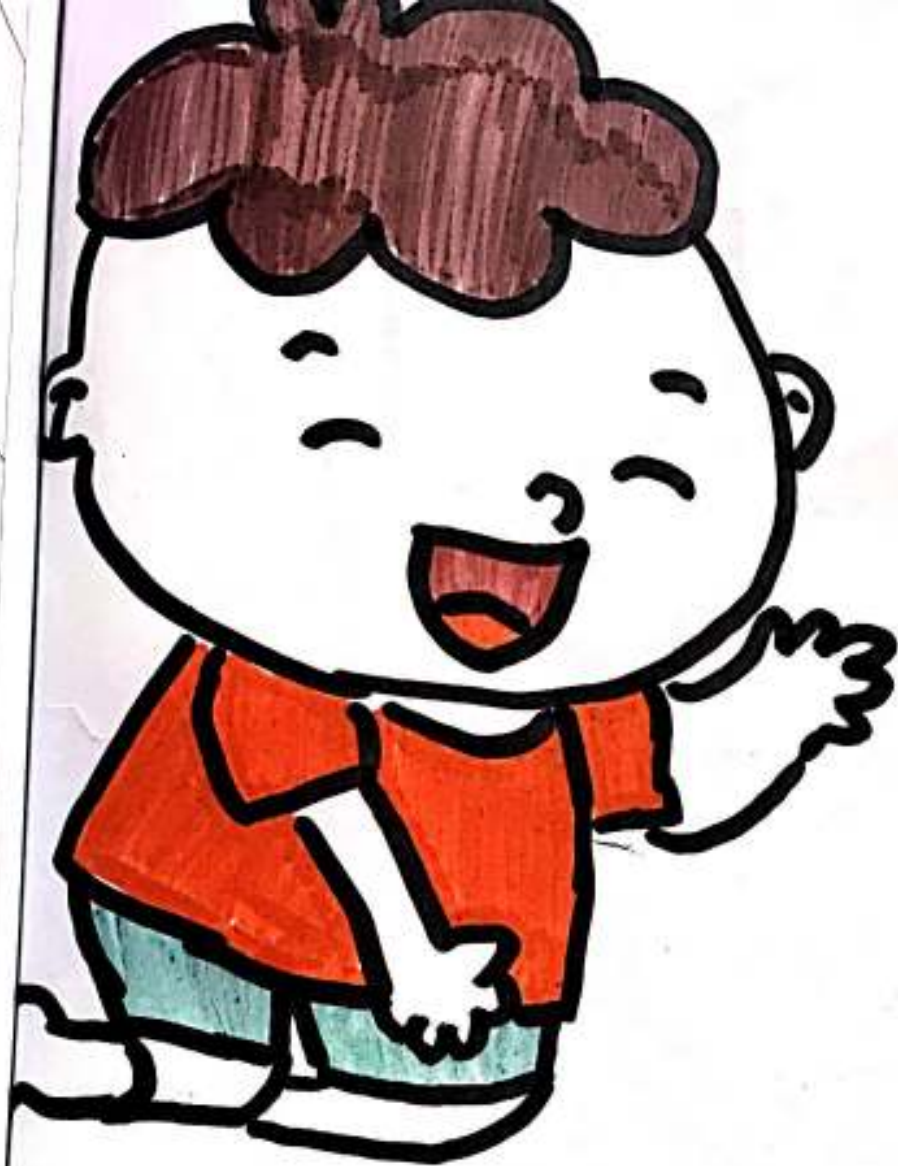


半边天儿童成长报告非医学报告, 不能作为判断儿童是否适合收养的依据。

项目	儿童现有水平	下季度计划
交流和语言表达 (P69)	不必说 想要什么用手指	
认知和学习能力 (P59)	会模仿老师的写字	
社交和情感发展 (P66)	能区分人和物 能认识个别朋友	继续发展我和学虎 的亲昵感情。
身体发展和运动能力 (P55)	会自己独立行走	

儿童姓名：
 填表人：
 填表日期：2014.7.18

半边天儿童成长报告非医学报告，不能作为判断儿童是否适合收养的依据。



2014年7月28日(-)

一进教室就开始哭。我去抱他

他。他一屁股坐在了地上。哭的更

厉害了。我去拉他，对他说：“别

哭。妈去买菜了。下课了就来接学

习。”他看着我。哭声变小了。

(对教室环境不太适应。)

半边天儿童成长报告非医学报告，不能作为判断儿童是否适合收养的依据。



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西安市儿童福利院 2013年度第 1 季度

儿童姓名
(拼音):

安学虎

An XueHu

性别:

男

出生日期:

2012/5/25

祖母姓名:

刘艳

报告日期:

2013/04/15

健康状况:

唇腭裂



拍照日期: 2013/3/26

[照片备注] 抓玩具玩!

拍照日期: 2013/3/28

[照片备注] 会趴着抓玩具玩!

现在能从仰卧翻至俯卧，并且俯卧时能把头高高地抬起来。趴在地垫上，会抓前方的玩具。给他玩具也会伸手去拿，能短时间拿着一个摇铃玩。也经常把玩具塞进嘴巴里去咬。我抱着他躺在我的怀里，和他说话，他会伸出小手来抚摸我的脸，还对着我笑。我叫他名字，他会扭头看我。靠着垫子能自己坐着玩会。他现在学着自己抱奶瓶喝奶。

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