INTERNATIONAL ADOPTION –
BHABA CLASS FALL 2010

TODAY:
- Background
- International Adoption

BACKGROUND FOR IA: TRA. ICWA

Strong tradition of treating kids as “belonging” to where came from:

- Parent
- & Group: group eg: race, religion, indian tribe, nation

“Belong” in 2 senses (BIC and Group Ownership)

Parallel thinking/politics/issues in IA, TRA, ICWA

But sigly different treatment by law/policy as of today:
- Domestic Race Issues: MEPA has banned same-race matching
- Heritage match/maintenance very alive in ICWA & IA

TRA & MEPA:
History: No TRA, to Some, to Rigid Race-Matching, to MEPA based on:
- BIC arguments (delays/denial of adoption harmful, TRA not a problem and way better than delay/denial)
- And better community arguments: wrong for State to promote same-race families

ICWA:
Passed as result of same 1972 push as with NABSW
Very powerful law giving Indian Tribes powerful ownership rights over kids

No good studies re BIC but serious questions given poverty of Indian community

- Are there enough good homes? Where are the kids & how doing? Standards for Removal (Cl & Conv), TPR (Bey Reas Doubt)
- Community?? Why does Congress give Indians their kids and not Emt, Sustainable Way of Life on Reservations?

INTERNATIONAL ADOPTION

HERE will talk about

- Facts
- Law & Policy
- My position & advocacy efforts
- The key issues

FACTS

- Chart: a Crisis for those who believe good option for kids
- Also kids now older, rarely infants

LAW/POLICY

- IA treated more like ICWA, but more absolute Nation rights of ownership; generally international law allows but does not require any IA, and insists that be last resort, that countries have preference for in-country placement
- 2 key Law documents: CRC and Hague (BIC supposed to be key in both)
Both endorse Countries absolute ownership rights: can keep kids in Institutions rather than place in IA; can shut down IA

Both tell countries to exercise Preference for in-country
  - CRC: foster care over IA and other “appropriate” care
  - Hague: appears to prefer IA over all but domestic Adoption
  - Both actively used by UNICEF etc to shut down/limit IA
    • EB on CRC & US: concern re ratification since would push us to yet more anti-IA and limit MEPA
    • Hague: used to shut down most of Latin/South America

EB POSITION & ADVOCACY EFFORTS

Position:
  ■ IA serves BIC existing kids;
  ■ Likely serves interests of larger community: bringing $ into countries, giving poor birth mothers better choices, increasing awareness/sympathy
  ■ Anti-IA arguments rooted in:
    o Using Kids as Political pawns;
    o Sovereignty Rights to control humans (rather than duties to serve)
    o Corruption: UNICEF and others see interests in working in-country; orphanage directors often paid per child kept

Advocacy Efforts:
  ■ Focus: Challenge to Human Rights Community;
reframing of Human Rights issues
  o Child Human Right should be at core, shld trump State Sovereignty and Adult Parent Right
  o That right at most basic is to Nurturing Family
  o If not Birth Family, best alternative usually Adoptive Family bc promise of true parenting

Specifics:
  o Articles with Human Rights in title
  o IA R&R mentioned at end of Global Policy article: signed by over 130 individuals & 6 orgs in child human rights; focuses on Key Issues in Debate

Nov, 2009 Hearing Inter-Amer Commission Human Rights: Guat, Honduras, Peru: less than 1% than at peak IA years; our side of human rights issue

KEY ISSUES – for policy makers, for discussion here

IA as Last Resort Only? Limit if possible so focus on addressing larger social injustice issues. IA as diversion from such efforts. EB position:
  a. IA as totally consistent, helpful: Costs no $, saves $, brings $ in
  b. They have BofP: given that BIC existing kids so obvious
  c. They provide no evidence that shutdowns helpful

Hierarchy Issues: How strong the Preference (given that law insists on pref)?
  o In-Country Foster Care over IA? Many argue Kinship Care in Foster or Guardianship form: If available wld have come forward; not good idea to bribe with payment if not willing to adopt – as genl rule at least; Foster care often slavery eg Haiti Restavik tradition
  o Holding Periods?
- No: instead should do Concurrent Planning

Abuse Issues: How to Address/Respond? Don’t do moratoria or elim of private intermediaries. Enforce/strengthen law vs abuses – what do in all other areas where law violated, e.g.:
  - CAN in US: don’t ban bio parenting
  - Adoption in US – no moratoria

Affirmative Reg for IA: ID kids in need; facilitate/coordinate/expedite; ASFA as model

CONCLUSION: Most say BIC shld govern. If we thought of kids as having Human Rights, if thought BIC shld actually govern, NO QUESTION would seek to place as many kids as possible asap in nurturing adoptive homes – most of those available in IA.