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EDITORIAL 

**Adoption and discrimination: Can applicants express all their wishes?**

*The issue of discrimination in adoption matters has been the subject of a significant judgment issued by the Italian High Court: the decision recalls that the matching is not on the basis of the selection of a child by the adoption applicants.*

**W**hat is the scope of the adoption applicants' choice in the adoption process? To what extent can (or must) their preferences, expressed during the assessment procedure, be taken into account when the matching takes place? When do they cease to be an argument in favour of the child's best interests and start to become discriminatory, when they are more or less an indication of the applicants' own limitations regarding their capacities to care for a child? The discrimination issue in adoption matters from the perspective of the adoption applicants has long been addressed (in

particular, in relation to singles and homosexuals). This subject is now dealt with from a different point of view in this article, giving rise to interesting as well as difficult questions.

**To express a racial preference is discriminatory**

The Italian High Court questioned the suitability certificate granted to a Sicilian couple as their wishes were considered racist. The organisation *Amici dei Bambini* lodged an appeal against the competent Children's Court decision authorising a couple to adopt despite having clearly mentioned that they were not willing to care

for 'children with dark skin or different from those who are typically European (...)'. According to the organisation, there was 'obvious racial discrimination'.

### **The adopters' wishes and the matching**

This decision is a renewed opportunity to recall the boundaries of the adoption applicants' freedom of choice. Their wishes may run counter to the fundamental principles of the matching process, which is a key stage in the adoption procedure. It is unanimously accepted that professional matching centres on reports of both the child and the adoption applicants. A final decision responding to the child's needs rather than on the applicant's selection of a child is then made. This simple principle is, however, complex to implement given that even though one must, of course, build the opinion on the needs and capacity of the child, it is also necessary that the matching sufficiently meets the parents' wishes, abilities and limitations.

In fact, the final decision rests on the adoption applicants, based on the child's report, which includes, among others, information on his physical appearance, background, ethnic group, etc. Furthermore, in some countries, the adoption applicants have the possibility to explicitly state their wishes with regards to the child's ethnic group or skin colour.

### **The fundamental role of the evaluator**

One may reasonably ask whether it was not too harsh to condemn adoption applicants, who clearly expressed their expectations, with the intention – one may imagine – of ensuring a better integration of their child in the receiving country?

According to the ISS/IRC, the professional in charge of the matching has a fundamental role in deciding the boundaries of the wishes expressed by the adoption applicants. In collaboration with the applicants, the professional will decide the profile of the child they are suitable to care for. Thus, it is essential that the professional questions the applicants on their motives for not wishing to care for a child with a different physical appearance in order to determine whether this is appropriate in their specific situation.

The adoption applicants should be able to justify their choice from the perspective of the child's best interests. In addition, the professional will have to consider such justifications in light of the applicants' environment, living surroundings, inherent qualities, etc.

However, it may occur that the professional himself expresses reservations in relation to the matching when the applicants' and the child's backgrounds are different. In Great Britain, for example, the practice of some adoption professionals, seeking the 'perfect match' (i.e. match the highest number of parents and children with close, or even similar, backgrounds), nowadays clashes with the political willingness of the Department for Children. The Department would like to promote 'interracial' adoptions, with a view of reducing the large number of children with backgrounds that are different to those of adoption applicants and waiting to be adopted.<sup>1</sup>

### **Where does discrimination start?**

The decision of the Italian High Court has prompted the question regarding the boundaries between the wishes expressed by adoption applicants and discrimination: where does discrimination – in its unanimously-accepted meaning – begin (see, *inter alia*, art. 14 ECHR)? For example, do we need to consider that choosing the child's country of origin already constitutes discrimination? Is a preference for a boy rather than a girl discriminatory? The reply obviously depends on each individual situation and the applicants' deeper motives. Factors such as the preparation and assessment stages will have to provide the means to determine whether there is a genuine concern for the child's integration into his new environment, or whether it is a way of concealing racial prejudice. Undoubtedly, this is the message that the Italian judges wished to recall, beyond the obvious but necessary condemnation of a racist position.

<sup>1</sup><http://www.guardian.co.uk/society/2010/nov/02/inter-racial-adoption-children-social-workers>.

## Nepal and Cambodia: Recalling the responsibilities of receiving States

*This short article seeks to explain why it is still premature to envisage intercountry adoptions in Nepal and Cambodia, with the hope of preventing hasty initiatives to the detriment not only of children but also their biological parents and prospective adoptive parents.*

**W**hilst there are advances in Nepal (e.g.: requirement that institutions must have existed for at least six years before they can process intercountry adoptions and five year waiting period before deregistered institutions can renew their applications) work remains. Similarly for Cambodia despite ratification of THC-93 and a new adoption law, progress is needed. By referring to objective and current realities in both countries, this article aims to assuage pressures to rashly recommence intercountry adoptions.

### **Nepal: first steps but far from maturity**

The systemic problems linked with intercountry adoptions in Nepal are well documented, for example, in the Permanent Bureau's Report<sup>1</sup> and the comprehensive study by Terres des Hommes and UNICEF<sup>2</sup>. The issues raised in these reports have not been adequately resolved, including the transparent use of money, informed consent and determining the child's adoptability.

The revised amended terms and conditions, dated December 2010 provide one of the many indications that areas remain in need of urgent attention. For example, the matching process lacks professional resources and does not focus on meeting the needs of child but rather satisfying the requirements of prospective adoptive parents.

The provision allowing for a second path of adoption for celebrities, persons who have an income over three hundred thousand dollars etc turns adoption into a market for the richest, most powerful or most influential. This is to be avoided at all costs to protect the interests, especially of children and their biological parents.

### **Cambodia: on the right path but not yet home**

To implement the new adoption law passed at the end of 2009, which for the most part is Hague compliant, regulations are needed (referred to as Prakas) and these have not all been finalised let alone consistent with each

other (e.g.: Prakas for the authorisation of foreign adoption bodies, Prakas on administration of the child subject to intercountry adoption, Prakas on Alternative Care System etc).

The current framework has not sufficiently separated the link between humanitarian aid and intercountry adoptions. The regulations on the establishment and functions of the Central Authority (the Central Authority committee and ICA Administration) also still need to be strengthened.

As is the case for Nepal, inadequate measures are in place in Cambodia to ensure monitoring and supervision of orphanages, which is essential, given they are often at the source of intercountry adoption difficulties.

### **Call for a continued concerted approach**

In many ways the joint approach by receiving States to refrain from adoptions in both countries encouragingly sent the clear signal that safeguards were necessary before intercountry adoption could clearly be called a child protection measure. This common approach has helped with some of the improvements we see today. By working with key actors such as the Permanent Bureau (who has continued to offer its support via its technical assistance programme), we hope that Nepal and Cambodia will in due course have a reliable framework.

However until the time is ripe, we call on receiving States to act judiciously and together reach a common agreement to wait. Each receiving State *must* be satisfied that the State of origin is in a position to meet its obligations under article 4 THC-93 etc, which this article has plainly shown is not possible.

1. [http://www.hcch.net/index\\_en.php?act=publishations.details&pid=4958&dtid=28](http://www.hcch.net/index_en.php?act=publishations.details&pid=4958&dtid=28)
2. [http://www.childtrafficking.com/Docs/adopting\\_rights\\_child\\_unicef29\\_08.pdf](http://www.childtrafficking.com/Docs/adopting_rights_child_unicef29_08.pdf) and <http://www.crin.org/resources/InfoDetail.asp?ID=18292>

## Better Care Network Toolkit supporting the essential role of social workers in care provision

*This article has been kindly prepared by the BCN Secretariat introducing its new toolkit to support social workers in their daily work, which ISS/IRC believes is an accessible and useful resource.*

**C**hildren living in alternative care arrangements require deliberate and committed case management and planning to ensure their protection, development, and general well being. From prevention of family separation to the provision of alternative care arrangements and reunification of families, trained and capable child care professionals are the essential agents.

However, child care practitioners, particularly in low resource settings, face increasing challenges in providing appropriate care and protection services to children, youth, and families. The social workers and child care practitioners charged with the task of care provision are frequently overburdened, minimally resourced, and lack appropriate training and support. On the ground, they are often unable to access much-needed resources to assist them in their day-to-day work. In order to strengthen the social welfare workforce, efforts are necessary to disseminate clear, concise documents on how to assess and provide quality out-of-home care for children worldwide.

### Better Care Network Toolkit

To support the needs of child care practitioners, the Better Care Network (BCN) developed the *Better Care Network Toolkit* complete with practical tools on how to prevent unnecessary family separation and support families and communities to develop better care alternatives when separation is inevitable.

The *BCN Toolkit* is for social work and community professionals, paraprofessionals; trainers of staff and caregivers working with children; caregivers and those working in care settings; children and young people in care; and policy level staff in government or non-governmental organizations who are in a position to influence policy development and

resource allocation for children requiring alternative care.

The *BCN Toolkit* has been developed to support practitioners and policymakers around the world in planning for and delivering better care for children—including family strengthening and out-of-home placement. It contains a selection of practical guides and manuals, chosen as examples of good practices and for their global relevance particularly for low resource settings. They cover the types of policies required to support a quality care system, and practice guidance and tools for the delivery of alternative care.

The *BCN Toolkit* is now available as a 'Practitioner's Portal' on the BCN website: <http://bettercaretoolkit.org/bcn/toolkit/>. The website includes: toolkit guide, glossary of key terms, and advanced search function.

### For More Information

The Better Care Network (BCN), an interagency network facilitating global information exchange on the issue of children without adequate family care, was formed in 2003.

The BCN is guided by the BCN Steering Committee and administered by two-person Secretariat, housed at UNICEF Headquarters. As part of its core mandate to facilitate global information exchange, in 2006 the BCN launched its website ([www.bettercarenetwork.org](http://www.bettercarenetwork.org)). The website library contains over 700 research, theoretical, and policy documents directly related to the care and protection of vulnerable children. For information regarding BCN and the *BCN Toolkit* or to receive BCN's bi-monthly email newsletter, feel free to contact the BCN Secretariat, [gkeshavarzian@unicef.org](mailto:gkeshavarzian@unicef.org).

## Data relating to adoption in 195 countries under the magnifying glass of the United Nations Department of Economic and Social Affairs

*These 460 pages offer a comprehensive picture of intercountry adoption and a completely new tool.*

**T**he United Nations Department of Economic and Social Affairs has recently published a comprehensive study – in English – on the trends and policies in matters of adoption worldwide\*. In approximately 460 pages, the document examines the statistics of 195 countries, offering a comprehensive picture of the subject and a completely new tool, despite the fact that the most recent statistics date back to 2005 and that some of the highlighted trends no longer reflect today's reality.

The 195 country-factsheets are the publication's true richness. They are all divided into three parts. A first section briefly outlines the governmental policies in matters of adoption and points out the type of adoption authorised by the country (domestic/intercountry), conditions imposed on the applicants (status, age), minimum age for a child's consent to his or her adoption, year of ratification of relevant international legal instruments, domestic legislation governing adoption and governmental entity in charge of the issue. A second part provides the available statistics: number of children adopted domestically, internationally and in total, proportion of adoptions by spouses or other relatives, proportion of adoptions per 100,000 births, per 100,000 children under the age of 18 years and per 100,000 children under five. The final part addresses the country's main relevant demographic indicators: average marriage age of women, average age of women at first childbirth, fertility rate, proportion of women between the ages of 40 and 44 without children, and divorce rate.

### **Context and analysis of data**

The data is discussed in the context of a detailed historical account of the development of adoption-related laws as well as their link

with religious law and traditional societies. The main characteristics of modern adoption law are also outlined, as well as the principle international, regional and bilateral legal texts.

The study examines the data and highlights the main trends in matters of adoption as well as the fundamental characteristics of adopted children, adoptive parents and biological mothers worldwide. Furthermore, the document devotes a chapter to the supply and demand in adoption thus opening the way for additional studies.

Even though some conclusions sometime lack depth, they at least reflect the considerable diversity of adoption at all levels, and therefore make it possible to draw attention to some interesting numbers. For example it points out that some 260,000 adoptions are carried out each year worldwide, of which 85% are domestic adoptions. Over half of the latter are, nonetheless, adoptions by a spouse, even though this trend is on the decrease. With regards to adoption applicants, 81 countries impose a minimum age and 15 also impose a maximum age. Single persons may adopt in 100 countries, whereas in 15 countries, only married couples may adopt.

With a view to completing this picture of adoption, the study encourages the countries to further publish data on the issue. Importantly available data remain incomplete, given that merely 118 of the 195 reviewed States publish data on the total number of adoptions and a considerably lower proportion publishes data that is classified in accordance with the type and characteristics of the adoption actors.

\* *Child Adoption: Trends and Policies*, Department of Economic and Social Affairs, United Nations, 460 pp., 2009.

## **Interview with Gwendolyn Burchell MBE MSc, Director of United Aid for Azerbaijan (UAFA): de-institutionalisation of children with disabilities.**

*Gwendolyn Burchell has kindly agreed to provide this interview to the ISS/IRC outlining her pioneering work with children with disabilities, providing them with a brighter future.*

**Name:** Gwendolyn Burchell, MBE MSc

**Work place:** Azerbaijan

**Professional post/ responsibilities:**

Director of United Aid for Azerbaijan (UAFA)

### **Could you briefly present your organisation/work?**

United Aid for Azerbaijan was founded in 1998 with a mission to 'aid long-term development of life in Azerbaijan, with particular focus on children, health and education'. UAFA embeds best practices in child care, education and development in a framework of advocacy, civil society development and reform.

All staff started working voluntarily with UAFA, learning how to work with vulnerable and disabled children from both moral and technical perspectives. They develop as experts in child care, education and development, using their expertise to teach parents, volunteers, government staff and NGOs. Our practical skills and experience is used to advocate policy recommendations that suit the political, social and economic situation in Azerbaijan.

### **Could you please describe how you first started this work?**

I first visited an institution for children with disabilities in 1998. I was shocked at the conditions – despite my awareness of conditions in Romanian institutions which had been well-publicised in the UK – nothing prepares you for seeing it for yourself. After spending time with the children at this institution, I was interested to know what conditions were like in the other institutions around the country, so I used my research skills to design a survey and spent 7 months visiting all the institutions to learn more about this hidden welfare problem. The institutions which were the most heart-breaking were, of course, the institutions for children with disabilities (CWD) – all the children were kept in bed, following the medical model of care, displaying all the usual self-stimulating behaviours, grabbing you for hugs when you

passed by them. We followed the advice of an NGO working in Romania and brought a couple of occupational therapists to Azerbaijan, to teach us and some institutional care-givers how to work with disabled children, to improve their independent living skills. This was the most urgent priority because, with so many children dependent on too few staff, the more children that could learn to feed themselves, the more would survive. As our skills developed, we created child development programs in the one institution for disabled children aged 0-7 years, to which children came from the whole country, and the two institutions (again, for the whole country) to which the children moved at 7 years of age. We wanted to provide continuity in their care and development.

### **What kind of alternatives to institutionalisation for children with disabilities did you find?**

Disabled children experience much discrimination in Azerbaijan, and the stigma is so strong that many parents keep CWD isolated at home. Some families worry that the disability of one child will affect the marriage opportunities of siblings, hiding their child at home or abandoning them to institutions. This discrimination is embedded in legislation; CWD are referred to as 'children with limited health', a legacy of the former soviet medical model of care.

Provision of care by the State is limited, service-centered rather than needs-based. Institutions exist for children out-of-parental care; inclusion of CWD to mainstream education is recognized by law but rarely practiced due to lack of awareness and discrimination. Financial benefits are available but too low to adequately cover the extra needs of CWD, and families are often unaware of their entitlements or exploited by unscrupulous officials. State-run rehabilitation services are available in large cities only, Baku and Ganja, and provide mainly medical treatment.

UAFA has set up 3 community-based centres which provide rehabilitation and family support, and we have facilitated a network of 15 community-based NGO centres in an effort to raise quality and efficiency of services, and a consistent approach, following the internationally-recognised CBR philosophy.

These community-based services meet the needs of more than 3000 children with disabilities across the country. However, with more than 50,000 children registered with disabilities (and a real figure of maybe 3 times that, according to our experience), it is clear that much work needs to be done on developing welfare systems for CWD.

**Can you explain how children's rights are better protected as a result of your work?**

One of the main gaps that we have found, in a post-Soviet environment, is the lack of awareness in society about rights and entitlements, child development and disability, and modern approaches to rehabilitation. Alongside our service provision, we have made a concerted effort to raise awareness through many different channels of communication; trainings, leaflets and manuals, mass media, to reach thousands of people. We have also set up Parents' Unions in 7 regions of Azerbaijan, self-help groups of parents and family members of the children that use Centre services, and we have empowered them to advocate for their needs. Part of the advocacy process includes training in children's rights and entitlements; and as these Parents' Unions become more confident, they are meeting with their local authorities, national authorities and their Members of Parliament to lobby on behalf of their children. For example, we organised a program of visits by 15 MPs to their constituencies, to meet parents of children with disabilities. This has resulted in greater awareness amongst policy-makers about the needs of these most vulnerable of families, and this awareness is being translated into better policy-making.

**What resources are needed to establish such a work? How did you find resources to support this work?**

UAFA has built up a good body of long-term support amongst the expatriate community in Azerbaijan and has won grants from

international donor organisations, enabling us to further develop our work. We have worked towards the same objectives for over 10 years, building up a strong body of research, expertise and practical skills to make our team the leading child development specialists in the country. The challenge now, is to make this support sustainable through local funding – and we are now working closely with the NGO community to advocate government contracting of NGO service providers.

**What obstacles did you face in starting up this work? How did you overcome them?**

I think that the main obstacle in a post-Soviet environment is the lack of cooperation within the NGO community, due to competition for funds and a legacy from the Soviet era. A lack of cooperation can lead to duplication of activities, mixed messages being given to government and underlines the often negative perception of NGOs by the State authorities. To overcome this, UAFA facilitates networks and support all efforts in cooperation with the NGO community. This is evidenced the network of Parents' Unions that we have set up, the network of Community-Based Rehabilitation Centres we facilitate and the joint advocacy efforts we promote within the child protection NGO community.

**What lessons have you learnt from this project?**

Balance. We must balance the needs of vulnerable children and families with the needs of our own families. Most of UAFA staff are working mothers, some with disabled children themselves – we have created a flexible environment so that we can support the most vulnerable without leaving our own children in a vulnerable position. This helps to keep a loyal and committed staff and allows our relationships in communities, institutions and with government to mature.

**What elements of your work do you think could be translated into other contexts/countries?**

I think that all UAFA's activities would fit into any post-Soviet, post-communist environment particularly, but the general philosophy of our work would suit any country.

**Is there any possibility for these children to be adopted either domestically or internationally? Why/why not?**

Many children were adopted internationally until 2006/7 when the program was closed. Since then, there have only been a few adoptions internationally but, domestically, the number of adoptions has significantly increased. Azerbaijan has a strong family culture which means that children tend to be taken in by extended family if parents have died or disappeared. It is rare for a child with disabilities to be adopted domestically and, as I understand, it is more common for these children to be adopted internationally.

**What does the future hold for your work with children with disabilities?**

One of the key factors in policy reform is the Ministry of Finance – the one who holds the purse-strings holds the power! We are strongly advocating that this Ministry invests in services for children with a disability. My personal opinion is positive; it takes time to transition from the Soviet attitude towards disability to one of inclusion, participation and equal opportunity and it is the work of UAFA and our partners that will help to shift this attitude.

#### FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Belgium:** Attachement et troubles de l'attachement, Pour construire la sécurité interne, L'indispensable alliance Parents/Professionnels (Attachment and its problems. How to build internal security etc), Pétales International, Dampremy (Charleroi), 6-7 May 2011. For more information: <http://www.petales.org/www/GL/colloque2011.php>
- **Czech Republic:** Quality in Alternative Care International Conference organised by SOS Children's Villages with the assistance of other organisations including ISS, Prague, 4-6 April 2011. For more information : <http://www.quality-care-conference.org/Programme/Pages/default.aspx>
- **France:** **a)** Parentalité et filiation selon des modes particuliers (biologie et psychologie): l'assistance médicale à la procréation, l'abandon et l'adoption (Parenthood and filiation according to various modes (biologic and psychologic) etc), Paris, 9-10 May 2011; **b)** L'accueil de l'enfant en adoption - soutien à la parentalité « De l'enfant dans la tête à l'enfant en chair et en os » (Caring for adopted children – supporting parents), Paris, 18-20 May 2011; **c)** L'adoption d'enfants venant de l'étranger : comment mieux contribuer à la protection des enfants et au soutien des familles? (Adoption of children from abroad: How best to protect children and support families), Paris, 26-27 May and 27-29 June 2011 and **d)** Approche transculturelle de l'enfant et de sa famille: soins psychiques, accompagnement et travail social (Transcultural approach towards children and their families etc) Paris, 23-25 May 2011. For more information: [www.lecopes.org](http://www.lecopes.org)
- **Spain:** El Niño adoptado: en la escuela y fuera de ella (The adopted child: in school and outside). 40 hour course on Friday and Saturday, Autónoma University of Madrid, 25 February - 16 April 2011. For more information: [posgrados@lasallecampus.es](mailto:posgrados@lasallecampus.es).
- **United Kingdom:** **a)** Matching for black, asian and minority ethnic children, An ongoing process?, London, 30 March 2011; **b)** Improving outcomes for young people in care, London, 5 April 2011; **c)** Planning for permanence, Holding child development in mind, London 5 May 2011 and **d)** Contact and identity in adoption (after adoption), Cardiff, 12 April 2011. For more information: [www.baaf.org](http://www.baaf.org)
- **USA:** Clinical practice in adoption: working with adoptees and mothers who lost children to adoption, One day adoption workshop, New York, 15 to 16 April 2011. For more information: <http://www.adoptionhealing.com/workshop/>

*As a reminder, this Monthly Review is distributed to a selected network of Authorities and professionals. It is not aimed at being posted on an internet website without the authorisation of ISS/IRC.*

*Table of contents of the Bulletins 1997 - 2009:*

[www.iss-ssi.org/Resource\\_Centre/Resource\\_Center\\_EN/About\\_ISS-IRC/about\\_iss-irc.html](http://www.iss-ssi.org/Resource_Centre/Resource_Center_EN/About_ISS-IRC/about_iss-irc.html). See Activities.

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