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EDITORIAL

On the role of diplomatic missions

As essential actors in the intercountry adoption procedure, the embassies of receiving countries take on various technical tasks, whilst playing a nonetheless important political role, which is however not always easy to reconcile with the demands of their different counterparts.

Diplomatic missions have long been the key feature in domestic intercountry adoption systems, often as the only actors able to provide reliable information on the context prevailing in those countries of origin, which they found themselves in.

The Hague Convention 1993 completely changed the situation by establishing a network of Central Authorities, which are able to communicate among themselves directly, and to search together for solutions to those problems that may punctuate the adoption process. Embassies and consulates, however, continue to play an essential role in the intercountry adoption panorama, if only due to the fact that, at the end of the procedure, they grant the travel document, which will enable the child to leave his

country of origin and enter his receiving country.

Even though the role of the diplomatic network varies considerably from one country of origin to another, depending on the number of intercountry adoptions to be processed and the available resources to carry these out, on the relations between the receiving country and the country of origin, on the legal and ethical security conditions prevailing in the latter, sometimes important differences can be noticed between the views of the expatriate personnel and the perception of their respective States.

Neither a detective nor a social worker

The professionals of receiving countries are very often faced with countless questions in the management of intercountry adoption

procedures: what is the nature of such or such a document issued by the country of origin, is it possible to ascertain the child's background, are the invoiced costs reasonable, what is the reputation of such or such local actor, etc. And to answer these, the first reaction is often to 'ask the embassy'. And yet, in most cases, diplomatic services are simply not able to provide replies to these questions. Indeed, a diplomatic mission is not intended to enquire on the territory of the country hosting it and that it is, on the contrary, sensitive to the respect for that country's sovereignty. It may certainly search for information (laws, social and political context, etc.), but it cannot, in principle, send staff to the field in order to undertake criminal investigations (fraud in documents, corruption) or social inquiries (biological parents' consent, background of the child, etc.). If this type of activities is undertaken in some countries of origin, this is due to the fact that the embassy has been granted the agreement of the national authorities to do so, or because it takes advantage of a certain level of *laissez-faire* by the latter. Whatever it may be, it is important to remember that the diplomatic network often has neither the right, nor the capacity, to respond to the request for investigations that it receives from the receiving country.

A partial filter

Within the framework of the adoption process as such, the embassy will check the content of the adopted child's file, in order to issue his or her travel document. However, here too, its intervention has its own limits, beyond obvious abuse cases. For example, if the adoption process in a country of origin is known for not being very clear, but the children's files are compliant with this country's domestic law and complete from a formal point of view, the embassy will certainly be able to highlight the problems it observes, but will hardly be able to refuse to issue a visa, precisely because the formal domestic requirements are met. In this case, it is incumbent upon the receiving country to intervene, either by requesting additional information from the country of origin, or by limiting or prohibiting intercountry adoptions with the above-mentioned country, considering that the safeguards are not sufficient to authorise the adoption.

Field or politics?

The ISS/IRC's assessment missions have often shown that the reality experienced by diplomatic missions were sometimes very distant from the views of their respective countries. It is indeed not unusual for the diplomatic corps and its teams to adopt a critical view of intercountry adoption in 'their' country, whereas the receiving country, which they represent, appears to be more inclined to close an eye in order to maintain a certain number of adoptions per year.

Differences in views also naturally exist amongst diplomatic missions; this is not without consequences for the country of origin, which will hear different views depending on the counterpart expressing them. The ISS/IRC has highlighted several times that this lack of coordination has contributed to keeping the *status quo* in those situations, in which safeguards remain insufficient, thereby allowing abuses and bad practices to continue.

Better support

Intercountry adoption surely is not the diplomatic missions' first concern, even though the latter remain an essential actor. It is therefore important for their personnel to be better aware of, and better trained to, the delicate issues linked to adoption. In this respect, we suggest that the Monthly Review be more widely disseminated, in particular by the Central Authorities that finance the ISS/IRC.

Knowledge of the field, information networks and diplomatic status remain very useful tools in the positive development of intercountry adoption. It remains essential to ensure their incorporation into domestic adoption systems, in order for the latter to develop in the best possible conditions. Some receiving countries have already started to engage on this course, by inviting, for example, representatives of the diplomatic corps to national meetings on adoption, or by involving the embassies into the various assessment processes. These interesting initiatives prove the need to strengthen the relations and to ensure the best possible coordination amongst intercountry adoption actors.

*The ISS/IRC team
July 2011*

BRIEF

Haiti: The Haitian President wishes to ban private adoptions

At the conference that took place in Port-au-Prince from 22 to 24 June 2011, and which brought together nine Central Authorities, UNICEF, the Permanent Bureau of the Hague Conference and the Haitian authorities, the Haitian President, Michel Martelly, committed himself to completing the process of ratification of the 1993 Hague Convention during his term in office.

Pending the voting of the law, he will provide for a Presidential Decree, which would organise adoption requests only via accredited bodies, thus *de facto* prohibiting private adoptions.

Sources: French Central Authority (SAI): http://www.diplomatie.gouv.fr/fr/entrees-thematiques_830/adoption-internationale_2605/actualites_3230/2011_20577/conference-du-groupe-montreal-sur-adoption-internationale-haiti-22-24.06.11_93657.html

Kyrgyzstan: Towards the resumption of adoption in accordance with THC-1993 procedures

In April, amendments to the Family Code relating to domestic and intercountry adoption were approved by the Kyrgyz Parliament, and are aimed at the lifting of the moratorium on adoptions that has been in place since the end of 2009.

For this purpose, the Kyrgyz government is planning the forthcoming ratification of the 1993 Hague Convention and is now working on the finalisation of its new legal procedures, which are already fully compliant with the requirements of the Hague Conference.

However, even though considerable progress is noticeable, it is still too early to consider the effective resumption of intercountry adoptions.

Source: Radio Free Europe - Radio Liberty

http://www.rferl.org/content/kyrgyz_president_signs_law_allowing_foreign_adoptions/24093888.html

South Korea's new adoption law

This new bill which was drafted by a coalition of adoptees, single mothers and public interest groups has been adopted to amend the country's Special Act Relating to the Promotion and Procedure of Adoption. This is the first time adoptees and single mothers have been included in the process. Under the new bill, expected to be entitled « The Special Adoption Law », adoptees will gain greater access to birth records and women will have a seven-day period to deliberate on whether to keep or relinquish their child. The law also makes birth registration mandatory, to guard against secret adoptions. Last but not the least, under the new bill, the government will be responsible for reducing the number of babies and children adopted by parents abroad by drawing up measures necessary to make them remain on the care of a Korean family. It's assumed that the bill's passage puts Korea on a path to ratify the Hague Convention on intercountry adoption, which Korea has signed but not yet ratified.

Sources : <http://www.koreanfocus.org/2011/07/new-law-to-restrict-adoption-by-foreigners/>

Becoming 'good enough' adoptive parents: A topic that brought together over 200 adoption experts and actors at an international conference in Florence on 13 and 14 June.

Organised by the Italian Intercountry Adoption Commission and the *Innocenti* Institute, the conference specifically focused on adoptive parenthood, its evaluation and its interculturality. Italy's main adoption actors were present, as well as several international experts, including ISS, the Hague Conference on Private International Law, renowned professors as Jesús Palacios¹ and David Brodzinsky², as well as delegations from various countries of origin (Burkina Faso, Colombia, Russia, Vietnam).

The debates were very rich and instructive. They addressed, among others, the ethnical issue within the framework of the preparation and support offered to adoptive families, the implications of the assessment of the couple, the bond within couples who adopt, etc. The Italian translation

of the publication by David Brodzinsky and Jesus Palacios – *Psychological Issues in Adoption* – was also presented at a special event.

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LEGISLATION

The adoption of the third Optional Protocol to the Convention on the Rights of the Child

The new Optional Protocol establishes a communication procedure under the UNCRC, enabling children to seek remedies for violations of their rights

The third Optional Protocol to the Convention on the Rights of the Child has been adopted by the Human Rights Council in June. The OP establishes a complaint mechanism, under which the Committee of the Rights of the Child will be able to examine individual complaints on child rights violations. This represents a significant progress in tackling the gap between children's rights and their actual implementation worldwide.

The novelty introduced by the Optional Protocol

From now on, violations related to children will be considered by the Committee with specific appropriate expertise and with the power of ruling on the whole range of unique children rights that could not be pursued under other human rights instruments. The new communication procedure will strengthen the status of children as rights holders, putting pressure on States to reinforce domestic legislation, notably by setting a model for child-sensitive procedures and by providing decisions similar to case-law for a better implementation of the CRC at the national level.

Regrettably, however, the OP doesn't make collective complaints compulsory. Mandatory in the first draft, in the final version of the OP the collective complaint has been diluted by a opt-in status (Art. 7): this means that at the time of the ratification States need a specific declaration recognizing the competence of the Committee to receive and consider

collective communications in respect of the rights set forth in some or all of the instruments related to children's rights.

What is a collective complaint?

A collective complaint is a mechanism that enables the Committee to address the rights violations without requiring any individual child victims to be identified. Collective complaints serve to provide concrete remedies to a number of victims. They already exist in legal frameworks like the European and the African human rights system. In the case of the OP to the UNCRC, collective communications would protect vulnerable children including those who are not in position to submit complaints and/or who cannot be identified, such as those appearing in child pornography, victims of forced marriage or female genital mutilation, children in forced labour, children living in residential institutions, immigrant children and children with disabilities.

Benefits of the collective communication procedure

States that will choose the opt-in clause for collective communications in respect with all UNCRC related instruments will provide children with the opportunity to seek remedy for widespread violations of their rights avoiding risks and potential protection issues that could arise from their individual identification. By allowing the Committee to receive accumulated victim evidence, the collective communication procedure will also enable the Committee to:

- prevent violations by challenging, for example, a particular law that can reasonably be expected to infringe on children's rights, without waiting that violations occur, that victims are identified and come forward;
- build valuable jurisprudence without being restricted to specific individual cases, ensuring a maximum impact on the effective implementation of children's rights;
- make better use of its resources by providing for one blanket solutions rather than focusing on multiple similar individual communications.

PRACTICE

Latin America: launch of a comprehensive study on the situation of institutionalised children and adolescents

The Inter-American Human Rights Commission and UNICEF are working on a new study aimed at improving the situation of children in institutions, by harmonising the responses offered for their care with international human rights standards.

This new large-scale research, suggested by the Commission and jointly undertaken with UNICEF and with the support of the Regional Office of the United Nations High Commissioner for Human Rights and the United Nations Special Representative on Violence against Children, is to place within the implementation process of the United Nations Guidelines for the Alternative Care of Children (hereafter, the Guidelines). It represents a valuable opportunity to clarify the conditions experienced by children in institutions and to identify concrete measures to ensure the full respect of their rights and needs.

Study methodology

This study envisages undertaking an analysis of the situation of children placed in various types of institutions, whether public, private or mixed institutions whether or not under the supervision of the State. The institutions considered are those responsible for the full-time care and protection of children, such as psychiatric institutions and hospitals, orphanages and children's homes, and migration centres. The objective of the research is to identify and analyze institutional practices and operational models and their compliance – or not – with applicable international standards. Different data collection tools will be used, such as: the elaboration of a questionnaire for

Looking ahead

Removing the mandatory status of collective complaints from the OP has certainly lessened the protection potential that many had hoped for. Notwithstanding this, the OP represents a huge step forward in promoting children's rights. Advocacy efforts are now required to disseminate and raise awareness on the new Optional Protocol, to ensure its endorsement and adoption by the UN General Assembly in December 2011.

States, UNICEF Offices and civil society; the organization of regional expert consultations; surveys and discussion groups with children placed in institutions, etc.

Expected results

The study will present a quantitative and qualitative overview of institutions in Latin America. It will also allow key information to be collected, such as the number of children deprived of their family environment, a list of the types of existing institutions and their method of functioning, the budget allocated by the States to this issue, etc. Based on these data, it will be possible to highlight the importance of establishing indicators to measure and assess the impact of institutional mechanisms, laws and policies on the sector. The study will draw a series of recommendations for the regulation of the institutions at stake as well as to improve the responses these institutions offer to children in their care.

How to contribute to the study?

Several actors are actively contributing to this ambitious study. Amongst them, the Latin American Foster Care Network, RELAF (*Red Latinoamericana de Acogimiento Familiar*) is participating in the regional consultation meetings as well as in the application of questionnaires and surveys. The Sub-regional Consultation for

States in South America took place in Lima in June. Experts, representatives of human rights groups, organisations and State authorities participated in presentations, group workshops, in the development of documents and in the plenary discussion. Furthermore, RELAF provided a training to share knowledge, reflect and work for the application of the Guidelines, by using concrete tools, such as the child and adult-friendly versions. The next consultations and

training provided by RELAF will take place from 25 to 27 July in Guatemala.

As for yourself, you may also contribute, for example, by disseminating the launch of this project. Furthermore, should you have information relevant to the study, you may contact RELAF, ISS's counterpart in Latin America, at the following address: info@relaf.org.

For further information, please refer to RELAF's webpage: <http://www.relaf.org>

The Syrian alternative child care system: hopes and anxieties

In December 2010, an independent assessment was commissioned by UNICEF Damascus at the request of the Ministry of Social Affairs and Labour of Syria (MoSAL), and carried out on behalf of the International Social Service. This exercise revealed the particularities of the Syrian Child Care System.*

Being a former socialist regime, the Syrian republic has, since 2005, shifted the role of the State from one of direct service provider in many social protection spheres, including substitute care, into one of “managing” or, in practice, routinely controlling civil society organisations that have been invited to carry out direct service provision in its place. However, in the field of child protection and care, this shift has not taken place in the context of a coherent national vision, specifying responsibilities and cooperation requirements that would cover expected goals, interventions, data collection and quality standards. This is all the more surprising that formal alternative care in Syria was and still is predominately ensured by residential facilities. Such a situation called indeed for an assessment and a careful review of the role that the State should play, enabling civil society involvement in child care, while at the same time fulfilling its obligations of protection and care in line with the Convention on the Rights of the Child and the recently adopted UN Guidelines for the Alternative Care of Children.

Observations on alternative care

The assessment found that, overall, residential care as provided meets a number of basic international requirements, being organised so as to promote attachment with specific caregivers and to

prepare children for living independently in the community on reaching adulthood. The material conditions of children living in residential care and their financial support by private individuals (paying, for instance, fees for them to go to good private schools) are generally high, notably due to the strong religious tradition of donations to the orphaned, both among Muslim and other religious communities.

Like in other former socialist countries, the percentage of children found in residential care who are not orphans but in fact “social orphans” (i.e. children of parents unable or unfit to care for their children due to a variety of socio-economic and personal reasons) is high and increasing. Interestingly, these children usually also benefit from donations from individuals. Sadly, like others, once they are placed in residential care, they rarely come out before the age of 18, due to the fact that social services aiming at supporting vulnerable families and/or at reuniting children with them do not exist as such, or do not currently have such a role.

The role of communities in alternative care

Prevention services and identification of families and children at risk - as well as suggestions or “offers” of placement into care - are actually undertaken by communities themselves in relation with

their respective religious authorities and institutions. The fact that legal guardianship of the child usually remains with the father, or a male respondent of the mother's family, implies that no judiciary State intervention is required, unless a member of the family opposes a decision. Such a system leaves much room to strong and often positive community engagement, but also to unregulated social control and a total absence of common gate-keeping and care standards, of guarantees for the views of children and socially marginalised parents to be heard, and of relevant and independent monitoring and evaluation to intervene.

Conclusions on family substitute care

At the same time, family substitute care is extremely limited. Muslim traditions do not allow the possibility of full adoption on the ground that name and inheritance rights can only be transmitted by blood. Foster care traditions known as "Kafala" and developed in other Middle Eastern or North African countries are only limited in Syria to sponsorship of children still living with their families but in need of additional financial support, or living in residential care (i.e. donations and patronage referred to above). Foster care in the international acceptance of the term is mainly provided through "El Haq", a very stable form of State availed family placement close to adoption, which remains too limited quantitatively due to the fact that religious traditions only allow it for "foundlings": abandoned babies or young children, whose origins have been impossible to trace. Hence, the only option for children who have been relinquished by known parents (for instance, after re-marriage of a widower) or placed into formal care (for

instance, due to maltreatment or incapacity of the parents) remains the "orphanage" – with all the limitations and risks that this type of care entail worldwide.

Last but not least, children referred to as "homeless and beggars" are currently forcibly picked up by the police and held in protective custody under the juvenile justice law. Needless to say, such children would also benefit from being also addressed by a child protection system.

Looking at the future

There is hope and apparent political will for change towards a more balanced, family-oriented and standardised system, building upon the positive practices, structures and traditions in place, while addressing protection gaps and the current absence of rights-based approach. In a recent seminar on the future of alternative child care in Syria, official commitments were made to develop and prioritise family-based options, residential care standards, coordinated interventions for neglected and abused children, social mobilisation, information systems, monitoring & evaluation, gradual phasing out of care, as well as engage in related legislative reform without, however, waiting for new legislation before acting in favour of all these children.

At the time of writing, it is difficult to assess whether recent broader commitments made by Syrian authorities, contradicted by acts of extreme State violence, will lead in the medium term to a more balanced system and society in which children, including those deprived of parental care, will see their rights better respected and promoted.

* [* The assessment report is not public]

INTERDISCIPLINARY RESOURCES

Latest EU resolution on adoption - missed opportunity for better safeguards



Whilst the 2011 resolution contains some advances, it sadly resembles more of a concoction of various notions, which are at times erroneous and could lead to fewer protections for children.

The EU resolution B7-0030/2011 on abandoned children and international adoption¹ makes some headway in reminding member States of their responsibilities in this field, by recalling the main

international and regional standards in place; it rightly gives primacy to THC-93, the best interests of the child and the need to provide more post-adoption support. Unfortunately the resolution

includes references to standards that are outdated (e.g.: UNICEF position on intercountry adoption 2004 instead of 2010), are missing altogether (e.g.: reference to UN Guidelines on the Alternative Care of Children 2009), and contains incorrect facts, which could create greater harm than benefits for children as discussed below.

Flawed facts could lead to breaches of rights

The Resolution states that “the number of international adoptions, globally, has nearly doubled each year”, whereas actually, since 2004, the figures have been declining (see Monthly Review 10/2010). Such statements can create confusion about the growing need for intercountry adoptions and why waiting times are so long.

As a second illustration, it requires that “all principles of the UN Convention on the Rights of the Child are upheld wherever possible”, which lowers the benchmark for its full application in all situations.

Another worrying case in point is the statement encouraging ‘Member States to act expeditiously in the processing of adoption applications, in furtherance of the Hague Convention in order that the child may enjoy the full rights and effects of their adoption without undue delay’. Without precise clarification that all procedures in THC-93 must be respected, this could be read to mean that certain essential safeguards may be skipped, in order that the child can be relocated as quickly as possible, as was the case in Haiti (e.g.: verification of adoptability and consent). Yet the ISS/IRC recalls that “to expedite” is “to act expeditiously” when undertaking a task or procedure, making it

as fast and efficient as possible, with no undue delay, while respecting the rules and process that the proper accomplishment of the task or procedure imply.”²

What could have been...

This Resolution could have been an innovative tool to challenge the 27 EU member States to better protect children deprived of their family, especially those, most in need of an adoption abroad. For instance, the resolution could have included a clause requiring the provision of resources for preventing the abandonment of children, implementation of more re-integration measures and national adoptions. Moreover, the resolution could have encouraged the adoption of children with special needs (e.g.: older, sibling groups and those with disabilities), the group for which it is most difficult to find national solutions.

The ISS/IRC believes that the resolution is a missed opportunity for advancing the rights of children. It does not appear that there was wide consultation during the drafting stages, with experts, such as, the Hague Conference, UNICEF and civil society, who ideally would have provided clearer direction. One can only hope that the aforementioned considerations will be taken on board in future resolutions.

¹<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0030&language=EN>

²<http://www.iss-ssi.org/2009/assets/files/Haiti%20ISS%20final-%20foreword.pdf>

CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Canada:** Assembly of the ISS Council, Banff, 23-25 May 2012, “The growing wave – Global Human Migration. Its impact on planning, design and delivery of our social programs”. For more info: <http://www.issbanff2012.com/>
- **France:** *L’adoption: entre l’agrément et l’arrivée de l’enfant : quel soutien pour les futures parents?* Paris, 3-5 October 2011. For more info: copes.formation@lecofes.org
- **United Kingdom:** *Good Practice in Parent and Child Fostering Placements*, BAAF, London, 13 September 2011. For more info: <http://www.baaf.org.uk/training/allevants/2011-09-13t000000>

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