



**Monthly Review N° 11-12/2012  
November – December 2012**

**HAPPY HOLIDAYS!**

**HOPING FOR 2013 TO ALLOW US TO CONTINUE WORKING TOGETHER IN ORDER FOR THE RIGHTS OF  
CHILDREN TO BECOME A REALITY!**

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**EDITORIAL**

**The ISS/IRC in 2012: Achievements and the challenges ahead **

The ISS/IRC would like to end the year with an assessment of all the activities and projects carried out successfully in 2012 and to present its future plans for the protection of children deprived of their family.

**Progress and future plans relating to the 'Adoption and disability' project**

Since 2011 – which is the year the ISS/IRC, in collaboration with *Médecins du Monde*, launched the 'Helping children with disabilities to find a

family' project (see Monthly Review N°9/2011), much progress has been made to provide these children with a permanent family life plan. The first phase of this project is now coming to an end. The main achievements of this initial stage, which was

designed to identify the beneficiaries and also the mechanisms that might prevent their adoption, were essentially the following: the completion of a pilot version of a practical manual aimed at professionals, and the first version of a life book aimed at the children themselves.

Both tools, developed to train professionals and provide children in institutions with their own space in which they can write down their emotions and life events, will be tested in the first two pilot countries, Vietnam and Azerbaijan. The great success of the missions carried out in both countries and the fruitful collaboration with the competent authorities bode well for the adoption of these children soon being incorporated into their child protection system and for it to become a real life option for them.

In 2013, the ISS/IRC intends to work on the formalisation of an agreement with Senegal and Peru, aimed at continuing to roll out this valuable project.

### **The constant presence of the ISS/IRC in countries of origin**

The ISS/IRC's commitment and its experience in the field of protecting children deprived of their family were exceeded in 2012, especially in Vietnam and Africa. Regarding Vietnam, the "Study on the root causes of child abandonment in Vietnam" – a project launched in 2011 on the basis of a recommendation by UNICEF and the Vietnamese government, with the objective of carrying out an assessment mission on the main causes of abandonment, relinquishment and the separation of children from their families – is now in its final phase. Its conclusions will be presented in a Review in early 2013.

In terms of the ISS/IRC's involvement in its support to African countries, the latter has, at first, actively participated in the preparation of the conference organised by the African Child Policy Forum on the issue of intercountry adoption in Africa (see Monthly Review N°6/2012) and, above all, in the drafting of the final conclusions. Secondly, the ISS/IRC recently participated in the Francophone Workshop on the Hague Convention intended for all Western African Central Authorities with the dual purpose of reflecting on the stages prior to the ratification of the Convention in those countries that have not yet ratified it and to improve its implementation in those countries, which have indeed ratified it. The ISS/IRC, in addition to being involved in the current process of reflection, intends to pursue its cooperation on this issue throughout 2013.

### **ISS's constant commitment to the Guidelines for the Alternative Care of Children**

In 2012, the ISS has strengthened its leading role in the promotion and implementation of the Guidelines vis-à-vis the United Nations. Recently, the ISS, jointly with SOS Children's Villages, has been carrying out mainstreaming activities across the treaty bodies in order to raise their awareness of the Guidelines and, if necessary, make reference to them in their concluding observations to the States. To this day, the Guidelines have been presented before the Committee on the Rights of Persons with Disabilities - which finally incorporated ISS's recommendations into its concluding observations in relation to Argentina, Chile and Hungary; the Committee on the Elimination of Racial Discrimination, the Committee Against Torture and the Committee on Economic, Social and Cultural Rights.

Furthermore, ISS successfully carried out two planned phases of the development of the Guidelines' Implementation and Monitoring Handbook. Thanks to close collaboration with key allies (see p. 10), it was possible to conduct an analysis of 70 examples from the regions concerned with these issues and carry out a field evaluation in Argentina (RELAF) and Malawi (Everychild, BCN and UNICEF). The final phase, planned for the end of December, intends to present the final version of the Handbook and its French and Spanish translations.

### **The ISS/IRC addresses the new frontiers of International Private Law**

The ISS/IRC provided a detailed reflection on the new frontiers of intercountry adoption and its financial abuses. This reflection was conducted in two different, yet complementary, ways: the study 'Investigating the grey zones of intercountry adoption' – a tool that analyses the theoretical and technical obstacles that currently prevent the full protection of children against all forms of trade and also makes several recommendations in the fight against these abusive practices; and the participation in the Informal Group of Experts of the Hague Conference on the financial aspects of intercountry adoption and the reflection on good practices to combat abuse in this field.

For 2013, the ISS/IRC intends to carry out an investigation on the delicate issue of intercountry surrogacy and its implications in terms of child protection. This research will therefore focus on the rights of children, such as the right to access their origins, in the context of a potential international child protection instrument in this field.

The ISS/IRC's strong experience and its international commitment to the rights of the child will enable it to meet these considerable challenges and to play a leading role in all the

significant steps that will take place in the areas mentioned thus far.

The ISS/IRC Team  
November - December 2012

## ACTORS

Source: Hague Conference on Private International Law: [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

- **Canada:** This country has updated the contact details of its Federal Central Authority.
- **Ecuador and Lithuania:** These countries have updated the contact details of their Central Authorities.
- **Germany:** This country has updated the contact details of its Central Authority and its accredited bodies.

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## BRIEF NEWS

### Mali: Intercountry adoptions are open only to Malian nationals

Malian authorities have recently introduced Law N°2011-087 Code of Persons and the Family, adopted on 30 December 2011. This new Law includes numerous amendments, such as the possibility to declare a child 'abandoned' when the parents, tutors and guardians have not shown any interest for over a year, how to obtain the consent from a child who is 13 years old and above, as well as highlighting the irrevocable nature of the adoption. Moreover, the Law dictates that, from now on, only singles and couples who have Malian nationality, who are childless or without any legitimate descendant, and who are at least 30 years old, are authorised to adopt a Malian child. The Law also limits intercountry adoptions to Malian nationals. The ISS/IRC hopes that these amendments will truly help Malian children deprived of their family.

Sources: Malian Central Authority; Service de l'Adoption Internationale, France, <http://www.diplomatie.gouv.fr/fr/enjeux-internationaux/adoption-internationale-2605/actualites-21551/les-breves/2012-21561/article/communiqu-e-mali-25-10-2012>; U.S. Department of State, [http://adoption.state.gov/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=notices&alert\\_notice\\_file=mali\\_1](http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=mali_1).

### Morocco: A new circular from the Ministry of Justice puts an end to Kafalah Guardianship Decrees (i.e.: international *kafalah*)

In September 2012, El Mostapha Ramid, Morocco's Minister of Justice published a circular directed at General Prosecutors. The circular requested that they bring before the court all children, for which there had been a refusal for an international *kafalah*, i.e. foreigners, who are not habitually resident in Morocco. According to the Minister, this decision was necessary because Kafalah Guardianship Decrees did not facilitate the implementation of certain provisions of Law n°15-01 relating to abandoned children. For example, the Decrees did not allow the verification of the moral and social capacities of the *kafil* ('new' guardian) as well as their ability to raise a child according to Islamic precepts, the judge could not follow up on the situation of the child and there was no possibility to cancel the decision when the *kafil* had not met his obligations. The circular has limited *kafalah* only to Muslim applicants, who habitually reside within the national territory but does not address the measures that apply to Kafalah Guardianship Decrees which are already in the pipeline, which may cause some difficulties for children already matched with families.

Source: Circular N° 40 S/2, [www.ejpd.admin.ch/content/dam/data/gesellschaft/adoption/herkunftslander/ld-marokko-rundschreiben-justizminister-f.pdf](http://www.ejpd.admin.ch/content/dam/data/gesellschaft/adoption/herkunftslander/ld-marokko-rundschreiben-justizminister-f.pdf).

## The hyperactivity diagnosis among adopted children: Always an adequate diagnosis?

*For a few years only, we have often heard of hyperactivity or ADHD around us, either in our close environment or elsewhere. However, mistakes in the diagnosis in this regard are not rare, including in the case of adopted children.*

**W**e could assert that, with every new school year, we increasingly hear of the existence of cases of hyperactivity in schools. Are these genuine cases of ADHD or are we abusing its diagnosis? These mistakes are due to the fact that professionals base themselves on isolated behaviours and on a lack of neurological evidence. Furthermore, these errors in diagnosis may occur, above all, among children adopted internationally, who have arrived into their family after the ages of three or four. As professionals, we must be aware of the importance of our position, undertake an in-depth analysis of the causes that may confuse us, and train teachers, as one of the main filters of identification of ADHD, before referring the child to a neurologist and other specialists.

### **'Normal' difficulties of the adopted child to focus his attention on school activities**

First, we must be clear as to what may be the reasons for the adopted child's difficulties in focusing his attention when going to school, before we immediately diagnose a case of ADHD:

- On the one hand, a child, who arrives into a new family, will not be able to give priority to his attention in activities, like at school, given that he has two main interests that he must first solve: the development of an emotional bond with his family, and assimilate all the new stimuli, which he has just started to experience.

- On the other hand, once he goes to school, one must be patient, help him and understand him, whilst still observing his adjustment, his relationship with peers and his motivation.

- Furthermore, there is usually also some educational delay when compared to his peers. Similarly to his restless and distracted behaviour when arriving into his adoptive family, the same will occur at school, until he gets used to and feels well in his new environment. He will express more interest and behave more calmly only after this period.

### **What causes may confuse us when faced with a diagnosis of ADHD?**

On the one hand, beyond the above-mentioned causes, it sometimes happens that, despite good intentions, the child does not manage to keep his attention focused on an activity. In this case, before considering ADHD, as professionals, we will assess whether this behaviour is due to a lack of habit. It is possible that the child has never been schooled before, and that he is therefore not used to remain seated, listening to instructions in order to subsequently undertake a task. Attention is a habit that must be taught to the child.

On the other hand, even when all of the above-mentioned have been overcome, the difficulty of the child's lack of attention may result from the fact that the child feels overwhelmed by work. Even though he now manages to remain focused and to behave at school, it is possible that this task feels difficult, that he does not feel able to do so, and that he ends up demotivated. Thus, the expectations of work that may be found in each pupil must be observed and the tasks must be adapted to him progressively.

Finally, another potential cause for confusion is the behaviour that may be expressed by the child once his adjustment period has been overcome successfully. He may react differently at school, given that he must comply with more norms and with tasks that he may not feel like undertaking, and that he must share a guiding adult with his peers. The child may also be concerned at some issue that prevents him from focusing, or because he needs to 'test' his teacher, as he has previously done with his parents. He will also need to create, in relation to his teacher, the same emotional bond that he has developed in relation to his parents. What remains essential in each case is to be in touch with the teacher.

### **Is it possible for potential symptoms of ADHD to appear when they did not exist before?**

One of the reasons may be the child's concern at personal issues; however, the main reason is usually a language problem. When going into primary education (between the ages of six and 12

in Spain), the child has not yet gained full language structures – in particular if he has had to integrate a new language – which prevent him from following the learning rhythm. This reason often surprises us, given that adopted children generally learn the language within a few weeks and are able to easily express themselves a few months later. However, the language not only consists in communicating. A child requires approximately a year and a half to integrate a new language and to use it proficiently. This difficulty will result in the child feeling frustrated and losing interest in improving. Sometimes, he will behave differently at school, in order to be paid attention to by the teacher and his peers. Furthermore, if we are not paying attention to this important transition, we may foster an unstable basis that may lead us to mistakenly diagnose ADHD, when it is rather a matter of demotivation, due to a lack of understanding of the task. It is logical for learning difficulties to result in behavioural problems, as these are the child's means of expressing his lack of understanding, his demotivation and his lack of self-esteem.

### **The position of the professional faced with this problem**

The problem that occurs lies in the adult, who ends up labelling the child as problematic and badly behaved, without understanding his difficulty – nearly inability – to plan and control his behaviour. Whether it is a correctly diagnosed ADHD, a language problem, or any other mentioned reason, professionals, teachers and parents must be aware of the effort required from the child, as well as the support he requires to prevent it from affecting his self-esteem. Teamwork must be undertaken in order for the child to manage to overcome these difficulties, including if he has been appropriately diagnosed as having ADHD. It is not a matter of alleging that no adopted child may be diagnosed with ADHD, but we cannot venture into hastily diagnosing it without taking account of and analysing the considerations detailed in this article.

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## **A valuable report explains why and how childhood disability should be at the heart of childcare reform**

*The latest working paper by the Better Care Network and EveryChild Enabling Reform for Children with Disabilities Living in Alternative Care details why children with disabilities need to be a major component of the dialogue to improve alternative care.*

**D**espite the increased attention given to the issue of deinstitutionalisation, there is one group of children that seems to have been disregarded in these efforts, those with disabilities. Previous reform efforts have not targeted these children. Therefore, the Better Care Network (BCN) and EveryChild argue that children with disabilities (CWD) need to be at the heart of the discussion on childcare reform for it to be successful. The report defines persons with disabilities as those with a long-term physical, mental, intellectual or sensory impairment that may hinder their full participation in society but also beyond that. Disability is not solely a consequence of impairments but reflects the reactions and attitudes to those with impairments.

Even though research has clearly shown that life in an institution is detrimental to any child – especially debilitating to CWD – the number of children in institutions remains high and in some cases, it is increasing. Among these children, those with disabilities represent a significant

portion, although numbers are not clear. According to the BCN and EveryChild, in some countries, over two thirds of children in residential care have disabilities, sometimes with most of these children placed in large-scale institutions. In this context, the deinstitutionalisation of CWD is an issue deserving to be at the heart of reform.

### **A position reaching ISS's current project for CWD**

The BCN and EveryChild's position is fully in line with ISS' current programme to improve opportunities for CWD to leave institutional care and integrate into a family. ISS' project is carried out through the drafting of a handbook for professionals as well as a life book for children. It includes training for professionals working in institutions to help them plan a family life project tailored to the individual needs of each child – in accordance with his best interests as well as in line with the subsidiarity principle (see Monthly Review N°9/2011 for further information).

## **Fighting against discrimination and strengthening political will**

The working paper outlines several policy recommendations to create an agenda to enable real change in the realm of care for CWD. The key proposals include the need for a united front between organisations that work on behalf of CWD and those who work towards the improvement of alternative care, in order to increase the visibility of the issue of discrimination against these children. Additionally, there should be a push for challenging governments and others, who fund and support the continued use of institutions as a valid form of alternative care.

## **Support to families and a community-based rehabilitation model should be encouraged**

The BCN and EveryChild also advocate dedicating more resources to strengthen systems to support families caring for CWD, in order to lessen the chance of family breakdown like practical assistance and psycho-social support. They recommend that child protection and care services be integrated with health and education support to make sure that the needs of CWD and their carers are met. This community-based rehabilitation model aims to meet the needs of CWD through existing service providers, like schools and clinics. The example of a concrete application of community-based rehabilitation approach in Nepal is provided in the document.

The document also underlines the need for proper care planning, gate-keeping and rehabilitation services, in order to limit the time spent in alternative care and make sure that CWD have their views taken into consideration. The gate-keeping project of United Aid for Azerbaijan is quite relevant in this context. In this programme, volunteer social workers evaluate the needs of CWD and their families, and then link them to support structures to prevent institutionalisation or ensure the reintegration of children already living in institutions. Overall, gate-keepers have had a success rate of over 80% in their efforts to keep children within families.

## **A wide range of family-based care options**

In order to increase the opportunities for CWD to successfully leave institutions and integrate into the community, a wide range of high quality family-based alternative care options should be

available. Different forms of domestic adoption and foster care, including respite care, should be invested. A helpful example in Russia is provided - respite care programmes offering short breaks from a few hours up to 15 days a year are offered to parents or other carers of CWD. Of the 60 CWD involved in the program, all have remained in the care of their families.

The report suggests that the development of foster care programmes may be a good starting point for ensuring that more permanent placements are available for CWD. It also proposes giving detailed guidance to foster care and adoption service providers to make these services more inclusive.

The paper notes that in some countries, intercountry adoption is more widely used for CWD as a mean of placing children, who cannot find adoptive parents in their own countries. The BCN and EveryChild acknowledge this may be an option when all realistic possibilities for domestic adoption have been exhausted. However, they quote Hervé Boéchat, Director of the ISS/IRC, and Nigel Cantwell, an International Consultant, who underline that it is important not to see intercountry adoption as a cure for the stigma and poor service provision that lead to so many CWD being placed in the care of the state<sup>1</sup>.

## **Careful preparation of the end of institutionalisation**

When institutions are eventually closed, it should be done carefully, ensuring children receive proper protection and preparation, especially if reintegration into their families is in their best interests.

The research and subsequent recommendations provided by the BCN and EveryChild highlight how critical the issues of CWD are in alternative care. In order to have a successful childcare reform, these children need to be a part of the conversation.

<sup>1</sup> Boéchat, H. and Cantwell, N., *Assessment of adoption systems in Azerbaijan*, ISS, Switzerland, 2007.

Source: Better Care Network and EveryChild *Enabling Reform: Why Supporting Children with Disabilities Must be at the Heart of Successful Child Care Reform*, 16 March 2012, available at [http://www.crin.org/docs/Enabling%20Reform\\_March2012.pdf](http://www.crin.org/docs/Enabling%20Reform_March2012.pdf).

## A new programme for communicating with children with disabilities

*'In My Shoes' is a new, interactive computer interview program designed to better communicate with children, who have a wide range of special needs. This is a pilot program, designed for social workers, and developed by the British Association for Adoption and Fostering.*

**A**n innovative pilot project, In My Shoes – reviewed in the *Adoption and Fostering Journal*<sup>1</sup> – uses accessible and child-friendly images to aid the communication between the professional and the child through an interactive computer programme. As part of the project, social workers from the United Kingdom explored the uses of this programme with promising results. The aim of the project was to facilitate the participation of children whose disabilities are thought to have a significant impact on their daily living or on finding a permanent family.

### Benefits of In My Shoes

The advantages of the In My Shoes project are that children are given their means of choice, as part of the programme, for communicating. It was found that the use of the computer reduces the intensity of the usual face-to-face interview scenario, helpful to some children with special needs. Additionally, the issues to be discussed can be set by the adult but the pace, if necessary, can be set by the child. Finally, the automatic recording of responses reduces the need for note taking and increases the reliability of the records. Overall, it was found that through computer-based interviews, children were better able to express their views and opinions on their alternative care placements.

### Obstacles of the study

There were, unfortunately, some severe limitations to the project. There was a problem in

locating children with disabilities, who were awaiting permanent families. Additionally, the staff, who were trained to carry out the interviews, were overburdened with other work and did not always have access to the necessary technology. Despite such obstacles, very valuable information was gained through this study, as discussed next.

### Findings and possibilities

The In My Shoes approach seems to offer an important creative tool for working with children based on the feedback from social workers in the pilot project. The ease, which children were able to communicate with, was outstanding and a great deal of new and significant information was gathered. However, when using a tool like this is not enforced by policy or regulation, it proves at times difficult to overcome the organisational, resource and practical barriers that arise. The project, overall, however, remains a thoughtful way of engaging children in complex and emotionally charged situations.

The ISS/IRC warmly welcomes this tool as a means of better including children with disabilities in their care decisions, thus respecting their right to be heard through a creative channel.

*Source:* Cousins, J and Simmonds, J, 'Investigating the involvement of disabled children in using In My Shoes as a family-finding tool: A Pilot Project', *Adoption & Fostering*. Vol. 35, N° 4/2011. See also: [http://www.inmyshoes.org.uk/In\\_My\\_Shoes/Introduction.html](http://www.inmyshoes.org.uk/In_My_Shoes/Introduction.html).

# Respecting the rights of children living in institutions: The results of a survey carried out by ENOC

*In 2011, the European Network of Ombudspersons for Children (ENOC) carried out a survey of its 39 members on the effectiveness of the rights of children living in institutions and has recently published the results presented in this article.*

**T**his questionnaire, based on the Convention of the Rights of the Child and the United Nations Guidelines on Alternative Care (hereafter, the Guidelines), received responses from 22 ENOC Member States<sup>1</sup>. Addressing, in the first instance, the child's right to be heard, the right to information, the right to a private and family life and the right to freedom of conscience and religion, ENOC's summary of responses then addresses the state of services offered by the States concerning children living in institutions as well as the legal protection available to them. Finally, the matter of maintaining links with the family of origin is addressed. This summary, to its credit, also highlights some good practices, which are described below.

## Mixed practices

Among the overall impressions provided by ENOC, it is clear, for example, that the systematic review of alternative care for children is far from universal in all the countries surveyed, while it is a fundamental principle (reiterated in paragraphs 57 and 67, amongst others, of the Guidelines). Similarly, ENOC has found that the notion of the best interests of the child, which is often referred to during the decision-making process that may or may not lead to the placement of the child in an institution, remains a very vague concept in a good number of countries. ENOC also draws the conclusion that children in institutions do not always have access to complaint procedures when they are victims of abuse or when their rights have been violated.

## Maintaining links with the family of origin

In accordance with, among others, paragraphs 11, 12 and 50 of the Guidelines, during a child's placement, maintaining links with his family must be a priority so as to facilitate potential reintegration and reduce the risk of a relationship breakdown. Some countries, like Norway and Portugal, have established ongoing contact between the child in an institution and his parents as an actual right, enshrined in their domestic law. Generally speaking, ENOC countries take all

measures necessary for the biological parents to continue being involved in the life of their child, as long as it is in the child's best interests. However, the results will depend largely on factors such as the distance between the family's home and the institution. Some countries, like France, Ireland and Poland, have taken measures so the child is placed as close as possible to his parents. Other States have developed an initiative that reimburses families for the transport costs to the institution, which encourages family links to be maintained.

## Leaving care

Unsurprisingly, the results are rather mediocre in terms of the support the States offer to young people leaving care. According to the ENOC report, whether the child has come of age or not when they leave care, the monitoring and support offered is deficient, if it exists at all, in the majority of States surveyed. However, there are some exceptions, like Bosnia-Herzegovina, where support systems have been developed to help young people leaving an institution. In Portugal, the figures for 2009 are also encouraging: while 3,016 children left an institution that year, over a quarter of them have returned to their families of origin with the support from professionals. However, family problems – sometimes serious – can result in placing the child or young person in another form of alternative care, such as with a foster family or adoptive family.

The ISS/IRC gladly welcomes this survey, which clearly highlights the need for some European States to work on their legislation and improve their practices concerning the rights of children living in institutions, including when they leave these forms of alternative care.

<sup>1</sup> European Network of Ombudspersons for Children, *Respect of the rights of children & young people living in institutional care: state of play*, ENOC Survey 2011, [http://www.crin.org/docs/ENOC%20report%20on%20children%20in%20instit%20care\\_NOV11%20FV.pdf](http://www.crin.org/docs/ENOC%20report%20on%20children%20in%20instit%20care_NOV11%20FV.pdf).



# New assessment tool for the implementation of the UN Guidelines for the Alternative Care of Children

*ISS/IRC welcomes the innovative assessment tool by SOS Children's Villages, which gauges how countries comply with their obligations under the Guidelines, as described in this brief article by Emmanuel Sherwin, an Advocacy Advisor within the organisation.*

**S**OS Children's Villages has produced an assessment tool to benchmark the implementation of the UN Guidelines for the Alternative Care of Children. The tool was developed by Nigel Cantwell and SOS Children's Villages, with technical support from Professor June Thoburn (University of East Anglia, United Kingdom). It has been designed as the principal research tool of SOS Children's Villages to support advocacy activities.

## Objectives of the tool

The tool's main focus is to measure the States' obligations under the UNCRC, in providing quality care arrangements for all children who have lost parental care, and providing services to those families at risk of separation. It looks in depth at the mechanisms to support families and those gate-keeping arrangements to ensure that alternative care is only used when absolutely necessary. It also looks at the range of care options available within a State and questions the duty-bearers' responsibilities in terms of staffing, child protection, financial arrangements and standards of care.

## Implementing the tool

Each question in the tool is divided into three areas, the data set, the data source and the commentary around the data. The third area is designed to evoke the child rights violations, the causes behind the data and the discussion about possible solutions or recommendations for change.

By mid-2012, the tool had been tested in Uruguay, Hungary, Tanzania and Armenia. These field tests were undertaken with Professor

Thoburn and Nigel Cantwell and colleagues from SOS Children's Villages national offices. These field tests have allowed the team to refine the tool and provide much needed support and guidance to other SOS Children's Villages countries that may use the tool in the future.

## Preliminary findings

There is an overwhelming lack of data on children in alternative care in the majority of countries; more alarmingly, this is not limited to low or middle-income countries. Similarly, there are significant gaps in both data and services for arrangements intended to support families at risk, with many governments relying on NGOs, faith-based groups and UN agencies to deliver these services instead.

The principle aim of the tool is to identify the child rights violations in each country, and from the initial field tests, it has been seen, for example: the uses of degrading, violent and inhuman treatment for bad behavior, a lack of basic services, residential care and children placed intentionally out of reach of their families.

The tool is available on the SOS Children's Villages international website, the Better Care Network and Save the Children's Resource Centre.

For further information, or for versions in French, Spanish or Russian, please contact [lao@sos-kd.org](mailto:lao@sos-kd.org); SOS Children's Villages International, *Assessment tool for the implementation of the UN Guidelines for the Alternative Care of Children*, <http://www.sos-childrensvillages.org/What-we-do/Child-Care/Quality-in-Care/Advocating-Quality-Care/Pages/Quality-care-assessment.aspx>.

## Promoting ‘all’ the rights of children in alternative care at the United Nations

*Through this new series, we examine the comprehensive protections afforded by the United Nations, via its treaty bodies and other mechanisms, to children deprived of their family. The purpose of this series is to provide advocates on the ground with concrete lobbying tools for improvements.*

**T**he campaign to promote alternative care issues at the United Nations (UN) is running full steam ahead (see Monthly Review N°8/2012). ISS firmly believes that by raising awareness of children's rights in alternative care as especially outlined in the Guidelines for the Alternative Care of Children (hereafter, the Guidelines) at the UN, this will improve opportunities for children to fully access ‘all’ their rights. This campaign will also provide opportunities to showcase the ‘alternative care rights’ of children embedded in instruments in addition to the UN Convention on the Rights of the Child (UNCRC).

This special series records the work that is currently being undertaken advocating for the full implementation of the Guidelines. This first article focuses on the Convention on the Rights of Persons with Disabilities and its Committee (CRPD Committee).

### **Collaborative efforts to uphold ‘all’ rights**

ISS is undertaking treaty body mainstreaming activities in its capacity as Co-Convenor of the NGO Working Group on children without parental care, based in Geneva. The aim is to ensure that all the treaty bodies (in addition to the UNCRC Committee) are aware of the Guidelines and if relevant, refer to them in their discussion with States, as well as include them in their concluding observations.

This involves close collaboration with key stakeholders. Thus far, organisations such as the Better Care Network, Family for EveryChild, the Global Initiative to End Corporal Punishment, the International Disability Alliance, RELAF, SOS Children's Villages International (SOS-CVI), UNICEF and international child protection consultant Nigel Cantwell have provided important inputs for the briefing notes\* prepared by ISS for the various treaty bodies.

### **Preventing the need for alternative care for children with disabilities**

In September, ISS and SOS-CVI made a short presentation\* to the CRPD Committee, stressing that enhanced resorting to alternative care for children with disabilities stems from the parents’

felt-inability to cope – and lack of available support of all kinds to do so – and, in many societies, the prevailing stigma associated with having a child with disability.

The disability of a child can therefore be a factor leading to his abandonment or relinquishment. This was confirmed in a regional analysis in 2011 of the causes of separation in Latin America<sup>1</sup>. The International Disability Alliance has also noted that ‘the widespread stigma attached to persons with disabilities, combined with the strict family planning policy in China, renders children with disabilities at a high risk of being abandoned by parents and placed into institutions’<sup>2</sup>.

### **Range of options lacking for children with disabilities**

When children with disabilities are abandoned and/or separation from their families becomes necessary, there is an unequal provision of family and community-based options for them. For example, options such as foster care and adoption are less available, often due to a lack of resources being invested into training and preparation of potential families<sup>3</sup>. This is often exacerbated by the fact that the specific needs of children with disabilities in alternative care are not covered by national legislation, as is the case in Argentina.

### **Over-representation in institutions**

Scarce options often result in a significant over-representation of children with disabilities in institutions. Whilst limited statistics are available, a 2012 report documents ‘that in CEE/CIS States ... more than one third of children in residential care have disabilities, with most of these children placed in large-scale institutions... The rate of institutionalisation of children with disabilities has stayed the same over the past 15 years, even when the rate has fallen for other groups, suggesting that children with disabilities have largely been ignored in reform efforts (UNICEF 2010)...’<sup>4</sup>. In Hungary, there were 1,862 children with disabilities in residential care in 2010, representing 27% of the total number<sup>5</sup>. In China, ‘evidence also clearly suggests a high rate of institutionalisation for children with disabilities’<sup>6</sup>.

Research consistently shows that children are exposed to risks of abuse and violence in institutional settings<sup>7</sup>. Furthermore, 'institutional care is expensive, much more so than support to parents or family-based care. In the long run, if poor care exacerbates disability or provides inadequate opportunities for helping those with disabilities to learn to live independently, children with disabilities will continue to need the support of the State long into adulthood'<sup>8</sup>. For example, in countries such as Cote d'Ivoire and Vietnam, children with disabilities continue to live in State-run institutions well into adulthood.

**International Conventions provide protections for children with disabilities in alternative care**

The UNCRC, as well as other key international conventions including the CRPD, have provisions to address the above-mentioned situation. The CRPD affords children with special protections as explicit in article 14 (equal rights for children), article 19 (equal right to independent living) and article 23 (right to enjoy family life). Article 23 states that children with disabilities have equal rights to live within a family environment and should be afforded the means to do so. Article 23 specifically stipulates that 'to prevent concealment, abandonment and neglect of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families ... In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents'. Article 23 further states that 'where the

immediate family is unable to care for a child with disabilities, [States Parties shall] undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting'.

**The Guidelines' protections for children with disabilities**  
 Para. 9: '[...] States should seek to ensure appropriate and culturally sensitive measures... [t]o support family caregiving environments whose capacities are limited by factors such as disability...'  
 Para. 10: 'Special efforts should be made to tackle discrimination on the basis of any status of the child or parents, including ... mental and physical disability.'  
 Para. 34 (b): 'Supportive social services ... and services for parents and children with disabilities. Such services, preferably of an integrated and non-intrusive nature, should be directly accessible at the community level and should actively involve the participation of families as partners, combining their resources with those of the community and the carer.'  
 Para. 38: 'States should ensure opportunities for day care, including all-day schooling, and respite care which would enable parents better to cope with their overall responsibilities towards the family, including additional responsibilities ... in caring for children with special needs.'  
 Para. 58: '[Assessment] should take into account the child's immediate safety and well-being, as well as his/her longer term care and development, and should cover the child's personal and developmental characteristics, [...] medical history and any special need.'  
 Para. 86: 'Carers should ensure that the right of every child, including children with disabilities [...] to develop through play and leisure activities is respected and that opportunities for such activities are created within and outside the care setting. Contact with the children and others in the local community should be encouraged and facilitated.'  
 Para. 87: 'The specific safety, health, nutritional, developmental and other needs of babies and young children, including those with special needs, should be catered for in all care settings [...].'  
 Para. 117: 'Agencies and facilities should ensure that, wherever appropriate, carers are prepared to respond to children with special needs [...] and children with physical or mental disabilities.'  
 Para. 132: 'Children with special needs, such as disabilities, should benefit from an appropriate support system [in relation to process of transition from care], ensuring, inter alia, avoidance of unnecessary institutionalization.'

**Early fruits – Progress for children with disabilities**

The CRPD Committee has already started taking note of the comprehensive protections afforded by the Guidelines for children with disabilities (see box above). For the first time, it has included specific recommendations (based directly on our briefing note\*) for the better protection of children with disabilities in alternative care. This can be seen in its concluding observations in relation to Argentina, Chile and Hungary. ISS is excited about these early fruits of the UN Campaign, a true success for children with disabilities, so often forgotten.

Notes:  
 \* ISS and SOS Children's Villages, Briefing notes, <http://iss->

[ssi.org/2009/assets/files/guidelines/ANG/2012-10-12\\_CRPD\\_Introduction%20to%20Guidelines\\_September%202012.pdf](http://ssi.org/2009/assets/files/guidelines/ANG/2012-10-12_CRPD_Introduction%20to%20Guidelines_September%202012.pdf).

<sup>1</sup> Red Latinoamericana de Acogimiento Familiar, *Informe Latinoamericano Situación de la niñez sin cuidado parental o en riesgo de perderlo en América Latina Contextos, Causas y Respuestas*, at p. 39, <http://www.relaf.org/Informe%20Latinoamericano.pdf>.

<sup>2</sup> International Disability Alliance, Submission to the CRPD, at p. 17, <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session7.aspx>.

<sup>3</sup> Better Care Network and EveryChild, *Enabling Reform: Why supporting children with disabilities must be at the heart of successful child care reform*, at p. 13, available at [http://www.crin.org/docs/Enabling%20Reform\\_March2012.pdf](http://www.crin.org/docs/Enabling%20Reform_March2012.pdf).

<sup>4</sup> *Idem*, at p. 12.

<sup>5</sup> TransMonEE statistics  
[http://www.transmonee.org/Gallery\\_en/7\\_Children\\_with\\_and\\_without\\_disabilities\\_in\\_residential\\_care.htm](http://www.transmonee.org/Gallery_en/7_Children_with_and_without_disabilities_in_residential_care.htm).

<sup>6</sup> See Endnote 3.

<sup>7</sup> <http://www2.ohchr.org/english/bodies/crc/study.htm>.

<sup>8</sup> See Endnote 3.

#### FORTHCOMING CONFERENCES, SEMINARS AND COURSES

- **France:** **a)** *Législation et procédure de l'adoption interne et internationale en France* [Legislation and procedure of domestic and intercountry adoption in France], COPES, Paris, 14 February 2013 (start of the training); **b)** *Les internats: placement d'enfants et d'adolescents en collectivité* [Boarding schools: The collective placement of children and adolescents], COPES, Paris, 13 February 2013 (start); **c)** *Formation permanente sur le placement en accueil familial* [Permanent training on foster care], COPES, Paris, 8 February 2013 (start). For further information: <http://www.copes.fr/Annexes/Formations>.
- **United Kingdom:** *Perspectives on adoption activity days*, BAAF, Birmingham, 28 February 2013. For further information: <http://www.baaf.org.uk/training/allevents/2013-02-28t000000>.



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