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Religion and protection measures: More tolerance, less dogmatism

This Monthly Review dedicates its content to the various ways, in which religions – for good or for ill – influence the concept of child protection, and in particular adoption.

When one searches for a common denominator amongst great religions worldwide, it is often the precept ‘you shall love your neighbour as yourself’ that is quoted as a form of ‘universal reference’. Thus, how can one be surprised by the fact that religion has played – and still plays – a significant role in the manner in which societies address those issues linked to the protection of some of its most vulnerable members, the children? Whether he is the subject of compassion or good action, or the starting point of the development of a new family, the ‘orphan’ has had an important place in the religious speech.

From a historical perspective, issues relating to charity and support to others have remained the prerogative of members of religious orders, who have defined its scope and promoted its practice, on the basis of the reading of the sacred texts of each one. These same sources have also set the grounds for the various ways in which a family may be provided to those without it. Whilst the secularism of laws has gradually taken back its responsibility for the regulation of legal provisions relating to the family, at least in some countries, the influence of religious morals remains very present in many debates relating to family and childhood in general, and to adoption in particular.

Law and religion

The various articles in the present Monthly Review clearly show that the fields of adoption and child protection have maintained some important links with religious concepts: whether Christians (see pp. 7 and 9), Muslims (see p. 3) or Hindus (see p. 5), they have each codified, in their own way, the care of a child by a non-biological family, on the basis of religious precepts that are their very own. However, it is worth mentioning that, in general, these provisions consider situations, in which the child and the parents have the

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same religion, given that they are aimed at being applied within the same community. The difficulty that results from this is, of course, linked to the important migratory displacements that our societies have experienced since, and which cause a simultaneous confrontation amongst different religious values, but also amongst legal systems that address recognition in a different manner. Intercultural mediation therefore takes its full meaning here.

The 'religious motivation'

For many prospective adopters, faith may be a driving force in a process aimed at 'saving a child', a rescue that may be material, but also proselytist. Staying within the religious imagery, let us remember, however, that the road to hell is paved with good intentions, and that there are many examples of actions based mainly on religious grounds that have led to disastrous, and even illegal, outcomes (for example, one will remember the regrettable initiatives of religious movements following the earthquake in Haiti).

'... the child's ethnic, religious, cultural and linguistic background'

As emphasised in Article 20 of the UNCRC, the child's religious background must be taken into account when deciding an alternative care measure for a child. Similarly, the Guidelines remind us that '[a]ttention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including (...) freedom of religion or belief' (Para. 16). In practice, it should be noted that this principle is only applied to a limited extent, mainly to promote the child's integration in his new social environment. However, this practice deserves to be questioned, at a time when adopted children are, on average, older and when they may, at some point during their childhood, have gained some life habits, which they may suddenly be asked to get rid of. For example, children may have grown up in a religious setting and may subsequently be placed in an atheist family environment, in which they are no longer allowed to comply with some religious rituals, such as Ramadan or Christmas. Yet, whether in relation to praying, but also to diet, or to some taboos or prohibitions, the child, in accordance with his age, must have the opportunity to choose and be supported in this process. Of course, as highlighted by the Guidelines, the child's best interests must also be assessed in the framework of these various elements. This is also true for prospective adopters: do receiving countries nowadays offer an adoption procedure that takes into account the prospective adopters' religion? Is 'international *kafalah*', which has been possible thanks to the ratification of the 1996 Hague Convention¹, developing? Is it only known amongst professionals?

Whilst religious tensions continue to bring into opposition many communities worldwide, a mutual understanding and a constructive dialogue remain necessary in order to create the conditions that may ensure a better protection of children and the respect for their rights.

The ISS/IRC team,
July 2014

Reference:

¹ Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, http://www.hcch.net/index_en.php?act=conventions.text&cid=70.

ACTORS

- **New Zealand:** This country has updated the contact details of its Central Authority as well as its list of accredited adoption bodies.

Source: The Hague Conference on Private International Law, http://www.hcch.net/index_en.php?act=conventions.publications&dtid=43&cid=69.



BRIEF NEWS

Belgium: Amendments to the legislation on adoption on 1 July 2014

On 5 December 2013, the Parliament of the French Community approved a decree, which amended Decree of 31 March 2004 on Adoption and its implementation on the basis of an Order of 8 May 2014. The main amendments provided for by both instruments are the following:

- Accredited adoption bodies will no longer act in the stage of preparation of prospective adoptive parents for the adoption (first stage of the procedure);
- The certificate of preparation for the adoption will now have a validity period of 18 months and the application will have to be reviewed once a year by means of a psycho-social and medical interview by the accredited adoption body;
- The social study of the adoption applicants will be undertaken in two stages: (1) two interviews with the social worker of the Central Authority of the Community; and (2) three interviews with a psychologist of an accredited adoption body appointed by the Central Authority of the Community;
- The matching will be undertaken in two stages: (1) admissibility of the application; and (2) psycho-social and medical assessment of the application;
- A specific procedure has been created for the adoption of children with disabilities.

Transitory measures have been provided for in relation to those persons, who have initiated a process prior to 1 July. In most cases, the previous provisions are applicable.

Source: Fédération Wallonie-Bruxelles, Direction de l'Adoption – Autorité Centrale Communautaire: [http://www.adoptions.be/index.php?id=saac_detail&tx_ttnews\[backPid\]=753&tx_ttnews\[tt_news\]=611&cHash=e27559b937874ff508dc4d23a44f53e5](http://www.adoptions.be/index.php?id=saac_detail&tx_ttnews[backPid]=753&tx_ttnews[tt_news]=611&cHash=e27559b937874ff508dc4d23a44f53e5).

Haiti : Information Note on the management of the transition phase in adoption

In the context of the implementation of the Law of 29 August 2013 on the application of the HC-1993 (see Monthly Review N° 175 and 177 of 2013), the IBESR – the Haitian Central Adoption Authority – has published an Information Note on 9 June 2014. After having reaffirmed the prohibition of independent and private adoptions and the competence of the IBESR and the judicial authorities in decisions relating to adoptability and matching, this Note rules on several points relating to the treatment of ongoing adoption files:

- the means of consent to adoption by biological parents;
- the repeal of the presidential exemption for the authorisation to adopt for parents with biological children;
- the publication of a new scale of adoption costs (2 July 2014);
- the beginning of submission of files for the renewal of authorisations for accredited adoption bodies and children's homes, as well as the authorisation for the creation and operation of the latter.

The IBESR also states that the quotas of files per country remain those set in 2013, except for the adoption of children with special needs and relative adoption.

Source: Institut du Bien-Etre Social et de Recherches, *Note d'information relative à la gestion de la phase de transition de l'adoption*, <http://www.ibesr.com/fichier/Note%20d'information%20gestion%20transition%20d'adoption.pdf>.

LEGISLATION

Kafalah in Algeria: Between Sharia and legislation

Malika Ait si Ameur, National Advocacy Adviser at SOS Children's Villages Algeria, invites us to reflect on kafalah and its application in Algeria, in order to better understand the meaning it is given under Sharia and its interpretation in Algerian legislation.

First, it is important to distinguish between *kafalah* and adoption, as these are two very different concepts. Indeed, the verb *takafala*

means the commitment to voluntarily assume the responsibility for the support, education and protection of an underage child, as a father would do in relation to his child, as underlined by Article



116 of the Algerian Family Code. The child maintains his parentage of origin if he has two known parents. If this is not the case, two first names are chosen for him, of which the last one will act as the family name (Art. 64 of the Code on Civil Status). In cases of death, the right to legally care for the child is passed on to the successors if they commit to ensuring it. In the opposite case, the Judge assigns the child's guardianship to the competent assistance body. Adoption, on the other hand, means taking the child as one's own son or daughter. The latter will be granted the parents' surname, will be registered on their civil records and will become their successor.

The religious background of *kafalah*

The concept of *kafalah*, as provided for in Algerian civil law, results in no changes to the principles of Sharia. The verb *takafala* has been used by Prophet Muhammad with the meaning of 'taking into care', but only in relation to an orphaned child, and was based on several recommendations: the prohibition to touch the child's properties, to reject him or to mistreat him. Furthermore, a child abandoned by his parents or a child born out of wedlock has never been at stake in Islamic Law. Thus, the term *takafala* alludes to an act of generosity and charity towards an orphan; it is, by no means, a legal institution under Islamic Law for the care of a child born out of wedlock, nor a replacement for adoption.

Towards a legal concept

Across time, the concept of *kafalah* has become a legal concept that is recognised under International Law. Indeed, the UNCRC provides, in its Article 20, for the right of every child, who is temporarily or permanently deprived of his family environment, to the protection provided by the State, and *kafalah* is mentioned within the range of potential protection measures. The HC-1996 (Arts. 3 and 33) supplements this instrument, by providing for a mechanism of supervision of international placement measures – such as *kafalah* (in those cases, in which a country's competent authority considers the legal placement of a child through *kafalah* or a similar measure, for example in another Contracting State).

Kafalah, as transposed in Algerian Family Law, takes a particular meaning: the *kafil* has the main obligation towards the *makful* to support him, to protect him and to meet his needs. The *kafil* becomes the legal representative of the *makful* child and is responsible for his acts. The Algerian law-maker, drawing his imagination from Civil Law (Art. 145 of the Algerian Family Code), has therefore established *kafalah* as a voluntary and unilateral act of a person (the *kafil*) towards a child (the *makful*), in virtue of which the *kafil*, whether a man or a woman, commits to assuming responsibility for an underage child's support, education and protection free of charge, as a father would do for his son or daughter. By virtue of this interpretation, *kafalah* goes beyond the civil commitment to caring for a child, and is aimed at the support, education and protection of the latter, who, in addition, benefits, within the receiving family, from almost all the fundamental rights resulting from Family Law.

***Kafalah* nowadays: An institution of family care for children deprived of a family**

It results, from this evolution, that an abandoned child (whether a boy or a girl) may now be placed legally with a child-less couple, in accordance with Article 116 of the Algerian Family Code. Likewise, Article 119 states that 'the child being placed may have known or unknown parentage' (Law 84-11 of 9 June 1984, amended and supplemented by Order 05-02 of 27 February 2005). A request for a change of surname is possible, on behalf of and for the benefit of an underage child of unknown father and mother, by the holder of the right to legal care (*kafil*), thereby allowing the *makful* child to have the surname of the *kafil's* family registered on the records, certificates and copies of the Civil Registry, with the following quote in the margin: '*makful* child'. Thanks to these provisions, and based on the application of Article 64 of the Code on Civil Status (N° 70-20 of 19 February 1970: Order in force since 1 July 1972 by Decree N° 72-105 of 7 June 1972), an end has been legally set to the injustice that affected the child that was deprived of a family. Furthermore, the *kafil* may, within a third part of his properties, grant legacies or make donations for the benefit of the *makful* child. In those cases, in which this limit is being exceeded,



the provision of the will is null and has no effect, unless the successors consent.

Kafalah may therefore, nowadays, occur as a social action that may respond to the difficulties of children, who have been abandoned by their parents. Sick, imprisoned, incapable parents or parents without resources, who are no longer able to meet the needs of their children, are those who abandon them. Abandonment may also occur after a divorce, when both parents relinquish the child's guardianship. Finally, children, whose parents are imprisoned or deprived of parental responsibility in accordance with Criminal Law, require a social intervention. In

Islam has never hidden the rights of the child deprived of a family; quite the opposite, it is the pioneer in the abolition of infanticides and has strongly disapproved with these practices. The contemporary Islamic law-maker has opened the way to some reforms, but remains timid, as demonstrated by the Algerian case. Thus, *kafalah*, as defined nowadays by the legislation in force, remains insufficient and does not provide the child with all the safeguards; in particular, it is not irrevocable. It must therefore be strengthened by protection mechanisms that respond to our times, and which give absolute priority to the child's best interests.

all these hypotheses, the child is faced with problems, which may jeopardise his health, safety, morality and education. In order to remedy these difficulties, the child is entrusted to the social action department, which will be responsible for placing him temporarily with a *kafil* family. In this case, *kafalah* is therefore defined as an abandoned child's protection measure and assumes the form of a private foster care placement. However, the family that cares for the child exercises parental responsibility in relation to the child, given that *kafalah* makes it possible to place the *makful* child under the responsibility of the *kafil*.

India: The *Juvenile Justice Act 2000*, progressive legislation for adoption in a pluri-religious context

Dr Jagannath Pati, Joint Director at India's Central Adoption Resource Agency (CARA) kindly agreed to introduce and share with us the legal developments that have taken place in relation to adoption in recent decades, and their impact on the adoption of children from different religions. This debate has also recently been at the centre of a relevant judgement issued by the Supreme Court of India.

As is well known, India has historically had a pluri-religious population, in particular Hindus, Muslims, Christians, Sikhs, and Buddhists, although other religions are also well represented amongst its inhabitants. Given that these different religions approach the care and adoption of children differently, the impact of religion on the adoption of children in India has been considerable. The present article intends to present recent legal developments aimed at providing an opportunity to all children, irrespective of their religion, to grow up and be cared for in a family environment, and to have their rights complied with, as enshrined in articles 20 and 21 of the UNCRC. A recent judgement by the Supreme Court of India also provides an updated stand on this issue.

The main legal framework

The rationale and norms of adoption of children were first laid down in the judgments of the country's highest court dated 6 February 1984 and 15 October 1985 in the case of *Lakshmikant Pandey vs. Union of India*. Subsequently, the Government of India has regularly issued guidelines on the adoption of children. Currently, adoptions in India are undertaken under the *Hindu Adoptions and Maintenance Act, 1956* (hereafter HAMA) and the *Juvenile Justice (Care and Protection of Children) Act 2000* (hereafter JJA). In the case of an adoption under the HAMA, the relinquisher, the adopter and the adoptable child must be Hindu. This Act applies to Hindus and all those considered under the umbrella term of Hindus¹, whereas persons, who are Muslims, Christians, Parsis or Jews are excluded from this definition. Accordingly, non-Hindus cannot resort to adoption under the HAMA. Thus, the HAMA



deals with adoptions of Hindus by Hindus and has also been rated as a parent-friendly legislation.

On the other hand, the JJA is considered a secular law in the country and a child-friendly legislation. The JJA provides that '[a]doption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed' (Art. 41(2)). The Act also stipulates that '[i]n keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by a court after satisfying itself regarding the investigations having been carried out as are required for giving such children in adoption'. However, this Act does not stipulate detailed procedures for adoption and is also silent on issues like direct adoption, confidentiality, unethical financial gains from adoption, etc.

The Guidelines Governing the Adoption of Children 2011

These Guidelines (see monthly review n°12/2011), on the other hand, lay down the principles, criteria and procedural safeguards for the adoption of orphaned, abandoned and surrendered children in the country. The fundamental principles governing adoption, as laid down in Para. 3 of the said Guidelines, are as follows: '(a) the child's best interest shall be of prime importance while deciding any placement; (b) preference shall be given to plac[ing] the child in adoption within the country; (c) adoption of children shall be guided by a set procedure and in a time-bound manner; and (d) no one shall derive any gain, whether financial or otherwise, through adoption'.

The implementation of the legislation in practice

Even before the judgement of the Supreme Court in February 2014 (see attached box), it had been observed that there were more adoptions under the JJA – it appears that even Hindus prefer

By way of conclusion, it is interesting to observe the ongoing debate that is taking place in India, aimed at respecting the religious freedom of its population whilst also trying to ensure the implementation of the rights of children, in particular those affected by abandonment or orphanhood, in alternative care, adopted domestically and internationally. It is indeed a complex reflection that must be undertaken in this regard.

to adopt under the JJA as it provides for the involvement of various recognised agencies and authorities to ensure that there is no wrong

Shabnam Hasmi v Union of India & Ors²

'The JJ Act, 2000, as amended, is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the Act, Rules and the CARA guidelines, as notified under the Act. The Act does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the Act, if he so desires. Such a person is always free to adopt or choose not to do so and, instead, follow what he comprehends to be the dictates of the personal law applicable to him. To us, the Act is a small step in reaching the goal enshrined by Article 44 of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute.'

Other key issues addressed in the judgement include:

- A person may take a child into care through measures other than adoption, in accordance with the personal law applicable to him;
- The decision on the establishment of a right to adopt and to be adopted in the Constitution is left to a later stage as requested in the petition, in a context of harmonised Civil Code and reflection on religious differences.

sourcing of children, efforts are made for domestic adoption and other safeguards are applicable to adopted children.

Furthermore, in 2009, the Honourable Bombay High Court interpreted the HAMA and the JJA in the following terms: 'The *Hindu Adoptions and Maintenance Act, 1956* and the *Juvenile Justice Act, 2000* must be harmoniously construed. The *Hindu Adoptions and Maintenance Act, 1956* deals with conditions requisite for adoption by Hindus. *Juvenile Justice (Care and Protection of Children) Act of 2000* — a secular law enabling rehabilitation of orphan, abandoned and surrendered children through adoption — would prevail over the *Hindu Adoption and Maintenance Act (HAMA)*, a personal law that has placed certain restrictions on adoption'³.



References:

¹ The definition of Hindus includes: a Hindu by religion in any of its forms or development; a Buddhist, Jain or Sikh; a legitimate or illegitimate child, whose parents are Hindus, Buddhists, Jains or Sikhs; a legitimate or illegitimate child, one of whose parents is Hindu, Buddhist, Jain or Sikh, and has been so brought up; an legitimate or illegitimate abandoned child, of unknown parentage brought up as a Hindu, Buddhist, etc.; and a convert to the Hindu, Buddhist, Jain or Sikh religion.

² *Shabnam Hasmi v Union of India & Ors*, WP N° 470 of 2005, Supreme Court of India, New Delhi, 19 February 2014.

³ Indian Adoption petition N° 31 of 2009 with Judge's Order N° 298 of 2009, in the matter of adoption of Payal and Sharinee Vinay Pathak, 16 September 2009.

READERS' FORUM

Acts of Christian faith in child protection: For the benefit of whom?

This article, written by a member of the ISS team, examines, from a personal perspective, the Christian movement's zealous and sincere efforts to help children deprived of their family – with sometimes regrettable outcomes for the child and his family.

Calls to help people in need, especially orphans and the poor, are abundant in the Bible. Christians are therefore particularly inclined to do good works in this field, one means of showing obedience, love and faith. Yet, in practice many such works are counterproductive when undertaken blindly in alternative care and adoption. Even what might be deemed as 'well-intentioned' in Christian circles – saving souls – may be detrimental.

Providing institutional care for the benefit of whom

Whilst not all institutional care is linked to the religious movements, it cannot be denied that much is. One must only look at the names of many private care institutions to prove such a reality. Equally, initiatives such as the building of, volunteering to work in or the sponsoring of children in orphanages are extensively promoted in Christian groups with events such as "Orphan Sunday" and "Step forward for Orphans".

At first glance such initiatives appear noble as children are being provided shelter. However the term orphanage is often misused given that the great majority of children have a living parent – up to 97% in the CEE/CIS region – so that investing in such institutions as opposed to biological families results in a violation of rights (see p. 13). This can occur 'where the development of family-based alternative care settings currently meets a number of cultural and religious obstacles' (*Moving Forward*¹), contrary

to the principle that 'cultural and religious practices regarding the provision of alternative care, including those related to gender perspectives, should be respected and promoted to the extent that they can be shown to be consistent with the rights and best interests of the children' (Para. 75 of the Guidelines for the Alternative Care of Children).

Moreover, given that institutions can be a means of revenue from donors, several exist to attract numbers of children away from their families as opposed to meeting a real need. In such cases, the provision of shelter is primarily benefiting persons running them, often profiting from Christians.

Providing a family for the benefit of whom

Steering away then from institutions, Christians may opt to adopt a child providing a family imitating God, who adopts into His family. Yet, is every Christian called to or have the capacity adopt? To believe this can create false claims such as a right to 'a' or 'the' child. In receiving countries, the Evangelical lobbying movement may likewise be so powerful it can result in unwarranted pressure on countries of origin to send children overseas (see p. 7).

Adoption can further be damaging when undertaken uncritically. Spurred by calls from the pulpit or other Christian media to adopt – which are not necessarily well-informed about real needs – can generate acts based on myths. Christians may act naively believing what they are



told, in some circumstances not wanting to know the truth. This often occurs by ignoring suspicious signs and/or not cross-checking that the child truly is in need of such a lasting measure. It is then money-driven intermediaries in the adoption process behaving with little scruple that accrue benefits again profiting from Christians (see *Investigating the grey zones of intercountry adoptions*²).

Providing shelter and families for the benefit of souls

Whilst having inadvertent beneficiaries profiting from well-intentioned Christians is unfortunate, the intentions of the latter may itself be problematic. Whereas it is understandable that Christians aspire to see souls saved as part of their faith, providing shelter and families can be damaging when it becomes the primary and driving goal.

Such an objective can lead to recourse to illegal means to justify proselyting as many children as possible. At one extreme, this can result in brazen examples, such as when U.S. Christian missionaries attempted to escort 33 children after the 2010 Haitian earthquake across to the Dominican Republic without the necessary paperwork. Some of these children still had living parents, who had not given their consent for such a move, let alone an intercountry adoption³, contrary to international standards (see p. 11).

Regrettably, when soul saving becomes the all-encompassing end, there are a plethora of less extreme and nonetheless damaging outcomes. Should children be adopted simply so that they can grow up in Christian homes – even if domestic solutions, including living with their biological

families, exist? Is it sufficient to be Christian as a prospective adopter even though other criteria are not met? Answers are clearly found in the HC-1993, noting that in such cases there are higher risks of unnecessary separation and adoption breakdown, so that adoption becomes for the benefit of Christians.

A higher calling for the benefit of children

The question remains then whether children themselves are really benefiting from acts of faith. Arguably, not all care in institutions is detrimental – some children do benefit in special circumstances from this setting, at least for a certain period. Arguably, many adoptions by Christians are not detrimental – they enable children to live in a caring family.

To avoid situations where the child is not the primary beneficiary or not at a beneficiary at all, international standards are in place to safeguard their rights – applicable to all. Specifically, there is a strong recommendation that ‘the provision of alternative care should never be undertaken with a prime purpose of furthering the political, religious or economic goals of the providers’ (Para. 20 of the Guidelines for the Alternative Care of Children). As an aside, during the drafting process of the Guidelines, a couple of countries would only accept ‘prime purpose’ and for ‘consensual’ reasons, it was agreed to adopt that phrasing so as to avoid putting the whole drafting process into doubt.

Faith-based actors are called to seek counsel, which is not restricted to others with the same beliefs. Certainly, advice from child protection professionals about what conduct and which projects, should be encouraged.

Visibly acting in faith to help children in need must be framed within prevailing laws. Resources must be channelled into preserving and equipping families of origin to care for the children. When in the best interests of the child, re-integration efforts should equally be endorsed (see p. 12). In doing so, acts of faith are truly guaranteed to be for the benefit of the child.

References:

¹ See: ISS/IRC, Moving Forward: Implementing the Guidelines for the Alternative Care of Children, <http://iss-ssi.org/2009/index.php?id=196>.

² See: Boéchat, H. and Fuentes, F., *Investigating the grey zones of intercountry adoptions*, ISS/IRC, 2012, 142 pp., http://www.iss-ssi.org/venteonline/product.php?id_product=14.

³ See: Wikipedia: New Life Children's Refuge case, http://en.wikipedia.org/wiki/New_Life_Children's_Refuge_case.

For further information, see: Joyce, K., ‘The Problem With the Christian Adoption Movement’, *The Huffington Post*, 2 June 2013, http://www.huffingtonpost.com/kathryn-joyce/christian-adoption-movement-problems_b_3367223.html; Joyce, K., ‘Orphan Fever: The Evangelical Movement's Adoption Obsession’, *Mother*



Adoption, child rights, and religion

David M. Smolin, Professor of Law and Director of the Center for Children, Law, and Ethics¹, has prepared for our readers a short abstract of a very interesting article concerning a recent self-described Christian adoption and orphan care movement that is particularly prominent in the United States.

The Christian adoption and orphan care movement - subject of the article 'Of Orphans and Adoption' recently published by David Smolin² - has current significance, given the important role of the United States in intercountry adoption and also in governmental and private humanitarian programmes of international assistance, as well as the extensive links between the movement and Christian churches and organisations in other nations.

Religion and children's rights

The subject of religion, adoption, and children's rights is culturally and politically sensitive, and yet relevant. For example, the UNCRC specifically mentions '*kafalah* of Islamic law' as one possible option for children deprived of their family environment (Art. 20(3)). Similarly, the UNCRC's articulation of the subsidiarity principle includes the 'desirability of continuity in a child's upbringing and to the child's ethnic, *religious*, cultural and linguistic background'. Further, the UNCRC's Preamble presupposes that the family is 'the fundamental group of society and the natural environment for [...] children' and that children 'should grow up in a family environment'. In many cultures, religion plays a foundational and guiding role regarding the forms and practices of family life, therefore once again underscoring the relevance of religion to questions of children's rights. Further, religion commonly creates duties in respect to vulnerable persons and populations, such as the poor, or 'widows and orphans', with the result that religiously-motivated actors are frequently found engaged in trying to provide solutions to persons – including vulnerable children – experiencing severe deprivation of rights or discrimination. In this respect, it is inevitable that the child rights community will include and encounter persons of various religious faiths.

The Evangelical Christian adoption and orphan care movement

'Of Orphans and Adoption' is an 'inside critique' of the movement, in that it focuses on the theology and scriptural interpretations of the movement. This critique focuses on Christian (and Jewish) understandings of both 'orphans' and 'adoption'. The movement has, at times, viewed adoption, including intercountry adoption, as a primary and natural solution to the millions of 'orphans' in the world. The article, instead, argues that, in a scriptural context, the term 'orphans' is a part of a 'widow-orphan' couplet, which primarily references the family unit of a 'widow and orphan/fatherless' – basically, a family unit without an active husband and father. Further, the primary intervention portrayed in the scriptures is one that preserves or re-instates the widow-orphan family unit, assisting the family in surviving and staying together. In scriptural terms, transferring the child to another family, leaving the widow without assistance, family life, or future security, would be an act of exploitation rather than assistance.

Similarly, the movement has wrongly assumed that the few scriptural references to adoption, or adoption-like practices, are an endorsement of adoption as envisioned in modern America. Adoption, under United States law is a form of full, 'as if' adoption, in which the adopted person is transferred for all purposes from his biological family to his adoptive family. The adopted person is provided a new birth certificate, which lists the adoptive parents as the 'birth' parents, 'as if' they had conceived and birthed the child. The original birth certificate is typically sealed, with even the adoptee not permitted, as an adult, to obtain the document and learn the identity of his original parents. Although recent tendencies toward open adoption and open records have complicated this



picture, nonetheless, it is central to the legal conception of adoption in the United States that the adopted child has no legal family relationship to their original family.

By contrast, there is no comparable law of 'adoption' in the Biblical Law of Moses, or in Jewish tradition. Instead, there seems to be an acknowledgement of practices, perhaps more akin to guardianship, simple adoption, or *kafalah* in Islam, in which the original family identity of the child is preserved even in circumstances, in which unrelated (or extended family) adults act as parents (mothers and fathers) to children. In addition, from a scriptural point of view, the few New Testament theological uses of a term that can be translated as either 'adoption' or 'sonship' – which address an alternative metaphor for a person's relationship with God – do not provide any foundation for a practice of relying primarily upon a full adoption solution for the problem of 'orphans'.

Subsidiarity principle: From religious perspectives to American culture

The significance of this theological critique, for the broader child rights community, is to suggest that the major outlines of the subsidiarity principle so central to the UNCRC and HC-1993, are in fact compatible with Christian (and presumably Jewish and Islamic) perspectives. The tendency of American Christians to over-prioritise intercountry adoption, and to under-prioritise family preservation and domestic solutions, is a temporary aberration. Rather than being deeply rooted in historic Christianity, these distortions are a product of American culture, and of a certain naïvety among some Americans

Put another way, the current Christian adoption and orphan care movement, which is only about 10 years old, did not create the flaws endemic to American approaches, which were already in existence. While the movement, as a whole, thus far has not ameliorated those flaws, there is hope that at least some actors in the movement, and perhaps even someday the movement as a whole, over time, will be a part of the solutions.

regarding the dilemmas of assisting vulnerable children and families in varied global contexts.

On the positive side, it should be noted that most Christian activism regarding child rights and orphans, even by Americans, precedes and exists largely apart from the distortions of the recent Christian adoption and orphan care movement. In addition, the movement itself, which is only about 10 years old, is already starting to absorb the critiques, by this author and others, as well as to respond to the hard realities experienced in practice, and hence to make corrections. One can hopefully anticipate that the recent American Christian adoption and orphan care movement will, over time, increasingly return to the historic Christian viewpoints, which on fundamental points, are in fact in accord with broader child and human rights viewpoints.

Further, the distorted approaches to intercountry adoption held by many Americans (as represented legislatively, for example, by CHIFF, the proposed *Children in Families First* bill), are often equally embraced by secular and varied kinds of religious persons in the United States. The naïve over-emphasis on intercountry adoption, the willingness to use intercountry adoption as a response to poverty, the minimisation of the reality of abusive adoption practices, the refusal to implement real financial limitations on intercountry adoption, the negative over-competition for adoptable children by multiple agencies, and the lack of an adequate system of accountability, which plague American approaches to intercountry adoption, are not religious in origin.

References:

¹ Cumberland Law School, Samford University, U.S.A. Comments can be addressed to: dmsmolin@samford.edu.

² 'Of Orphans and Adoption, Parents and the Poor, Exploitation and Rescue: A Scriptural and Theological Critique of the Evangelical Christian Adoption and Orphan Care Movement', *Regent Journal of International Law* 267, Vol. 8, N°2, Spring 2012; available for free download at: http://works.bepress.com/david_smolin/10/.



INTERDISCIPLINARY RESOURCES

Alternative Care in Emergencies – Consortium of organisations have developed ACE Toolkit to provide practical resources for professionals

Rebecca Smith, from Save the Children, provides a brief overview of this helpful toolkit¹, which seeks to provide workers in this difficult situation with accessible resources to better protect children.

The way in which alternative care and related supports are developed in an emergency can have significant long-term positive or negative consequences for children, families and communities. Yet, organisations often struggle with programming in emergencies for children, who could not return to their biological family. Drafting the Alternative Care in Emergencies toolkit was started almost four years ago as part of an interagency initiative by organisations in the Interagency Working Group on Unaccompanied and Separated Children, consisting of the International Committee of the Red Cross (ICRC), the International Rescue Committee (IRC), the United Nations Children’s Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR), World Vision, and Save the Children.

Toolkit objectives

The toolkit was designed to facilitate interagency planning and implementation and advocacy for children, who were separated from, or unable to live with, their biological family. The guidance and tools reflect experience and approaches recommended by the Interagency Working Group on Unaccompanied and Separated Children. With a focus on emergencies, it was designed to be as user-friendly and adaptable as possible. Many of the examples have come from

Save the Children’s humanitarian programming and was field tested in 2010 in Kenya (Dadaab), Haiti, Cote d’Ivoire and Liberia.

Toolkit content

The chapters are divided into three sections: Managing an interim care programme, Managing Individual Care, and Types of Alternative Care. There is also an extensive list of definitions often used in alternative care.

The majority of the 60 tools are in old versions of Word and can be opened, changed, adapted and saved. They include: joint advocacy messages; guidance on how to prevent separation (in particular during mass relocation, food distribution, and nutritional feeding); template job descriptions; simplified trainings for case workers and foster carers; guidance on minimum standards; and a large selection of other documents.

Toolkit practices

Rather than just including best practices, we have included many examples of materials used in previous emergencies knowing that practitioners will continue to adapt them to their own circumstances.

Reference:

¹ It can be accessed at <http://resourcecentre.savethechildren.se/news/new-resource-alternative-care>. If, in using the toolkit, you have any suggestions, changes or concerns, please do contact Rebecca Smith: R.Smith2@savethechildren.org.uk and we can include it in the next reprinting.



Reaching for Home: Interagency desk-based research on children's reintegration

Emily Delap, from Family for Every Child, provides a helpful overview of recent research on reintegration of children, who have been separated from their families – with helpful promising practices for professionals working in this challenging field.

This interagency desk-based research¹ aims to arrive at a clearer understanding of reintegration practices for separated children in low and lower-middle income countries. The research pulls together learning from practitioners and academics working with a range of separated children, such as those torn from their families by emergencies, children who have been trafficked or migrated for work, and children living in institutions or on the streets. This paper argues that reintegration is a process, which unfolds over months, if not years. Over that period, the ultimate goal of reintegration is not just the sustained placement of the child with family members, but instead concerns itself with the child being on a path to a happy, healthy adulthood.

Stages of reintegration

The stages of the reintegration process include:

1. Careful, rigorous and participatory decision-making about the suitability of family reintegration;
2. Preparing the child, family and community for reintegration;
3. Carefully planned reunification;
4. Extensive follow-up support.

Principles for promising practices

The paper provides several principles of promising practices for those attempting to ensure the successful reintegration of children. These include:

1. **Respecting the individual's journey:** A standardised approach to reintegration fails to make contact with the range of experiences, needs and situations that separated children face;
2. **Rights-based and inclusive programming:** There should be greater equity between the opportunities available to separated children with more attention paid to groups that are neglected and/or poorly understood in reintegration efforts, such as young offenders and children in residential care;

3. **Child participation:** Decisions about reintegration should be made with children, and not for children;

4. **Taking a holistic view of the child:** In developing reintegration programmes, it is important to consider the range of factors that affect child well-being;

5. **Standard operating procedures, national guidelines and Monitoring and Evaluation:** Individual agencies should have written standard operating procedures (SOPs) that fall within national and global guidance. Organisations should also have an effective system to track the impact of their programme activities;

6. **Coordination and collaboration between agencies:** This is essential in the context of low and lower-middle income countries where funding and resources will inevitably be in short supply;

7. **Cultural and family sensitivity and local ownership:** Respect for local ways of knowing and doing is important for devising strategies of support that will address relevant issues, and avoiding formulised programmes. Reintegration is primarily a social process and, thus, needs to be firmly understood and championed by local actors and the structures in which they operate;

8. **Long-term investment:** Reintegration support is not something that can be offered to children on a temporary basis, as it requires dedication, consistency and quality.

Recommendations for practitioners

Many of the principles of promising practice outlined above are not currently adhered to. In order to start to address these challenges, four broad recommendations can be made for those engaged in the design and development of reintegration programmes:

1. Create more opportunities for dialogue across settings;
2. Collectively strengthen the process of evaluating reintegration interventions;



3. Undertake key pieces of high-quality joint research, including more longitudinal research, and research on issues such as the role of transit

centres and economic strengthening in reintegration programmes;

4. Develop a toolkit to inform and strengthen emerging practices around the world.

Reference:

¹ To download this paper, please go to: Family for Every Child, *Reaching for Home*, 2013, <http://www.familyforeverychild.org/knowledge-centre/reaching-home>.

Voluntourism: Is it in the best interest of children?

In answer to the growing trend of voluntourism and concern for the quality of care for vulnerable children, the Better Care Network Netherlands (BCNN)'s working group Quality of Care¹ has developed its guidelines² for organisations recruiting volunteers to work with children in developing countries.

Background

In the Netherlands alone, there are over 100 organisations and travel agencies offering the possibility to spend some time in another, often poor, country working as a volunteer with children. The BCNN noticed this trend and the working group 'Quality of Care' discussed this in the light of the Guidelines for the Alternative Care of Children, in particular Para. 71: 'Special attention should be paid to the quality of alternative care provision, both in residential and in family-based care, in particular with regard to the professional skills, selection, training and supervision of carers. Their role and function should be clearly defined and clarified with respect to those of the child's parents or legal guardians'.

Research impetus and methodology

The rights and development needs of children and their best interests were initially looked at. Attachment to a limited number of permanent carers is one of the basic conditions for a healthy development of children. How can this need be fulfilled when volunteers come and go in their lives? Are these volunteers the people with professional skills these children deserve? How are they selected, trained and supervised?

Following discussions in the Netherlands and a study of some of the available research on this topic, the BCNN undertook a small study in Peru, Kenya and South Africa. We asked children, caregivers, young care leavers and care providers for their opinion on: 'what are the dos and don'ts for volunteers working in projects with vulnerable

children?' and 'how do volunteers impact on the care of these children?'.

Preliminary findings

All respondents answered that volunteers are valuable when they bring new skills, new ideas and new insights to the table that are appropriate to and can be applied in the culture and nature of the project. Teaching local professionals, bringing equipment and tools and training local staff to work with them are just some of the examples mentioned. Care providers mentioned that the funds volunteers bring help them sustain their organisation also for future fundraising in their home countries. Is this in the best interest of the children?

The negative remarks that stood out were the fact that volunteers choose their favorite among the children, that they bond too much with individual children without understanding the negative impact this has when they leave. Furthermore, inability to provide appropriate care giving and their interfering with rules, and, thus, negatively impacting on the bonding and educational approach of local staff. Really worrying was the mention by all respondents of volunteers drinking, smoking (even drugs), sexual relationships with beneficiaries, and lack of culturally appropriate behaviour and attitudes.

The Guidelines

This led us to developing Guidelines for voluntourism. A leaflet with dos and don'ts and explanation about the importance of attachment for volunteers was the first product. We provided



training in promoting attachment and children's rights, both to volunteers and to organisations organising volunteering.

Following this, we developed guidelines for sending and receiving organisations. These guidelines start with a clear statement: 'Sending volunteers to children's homes goes against the vision as laid down in international guidelines. Because the reality is that many volunteers without relevant education are working with vulnerable children for short periods of time, BCNN has developed guidelines. With this we hope to prevent unintentional damage to children and to encourage that only persons with adequate skills and knowledge, able to transfer their knowledge and skills to local professionals, will be accepted as volunteers'.

Following this statement come guidelines for the recruitment, selection, training, support and supervision of volunteers, both before, during and after the period of volunteering. Guidelines and examples of Codes of Conduct, child protection policies, complaint procedures and how to respect the privacy of children in multimedia. As many of these guidelines are also very useful for international internships, communication with teachers at higher educational institutes and universities has also started. In practice, the lack of understanding of the damaging effects of unprepared trainees is not always appropriately addressed. The Guidelines are written as a digital document. Each guideline links to underlying documents with explanation, and good examples of contracts, policies and procedures gathered

from existing organisations, government rules for volunteers, etc.

Follow up

The working group has mapped all key actors in the Netherlands and organises meetings and trainings. At the same time, workshops are provided for potential volunteers at recruitment markets, in order to direct them to better alternatives to working in children's homes. We have seen a small number of sending organisations reviewing their portfolio of projects. Projects with children's homes are replaced with more community-based projects. NGOs working not-for-profit are more open to change than is the growing number of travel agents and commercial providers of volunteer work.

Conclusion

The issue of volunteering related to care for children needs to be addressed. The rapidly growing market of commercial activities in this sphere is enormous. Not only is it damaging for the children the volunteers work with, the limited number of studies we identified on this issue also warn of the fact that volunteers encourage practices we do not want. Their funds contribute to the increase and enlargement of children's homes. Where governments try to close homes, the money that can be made via volunteers convinces owners to keep children in the homes instead of reintegrating them into society. That is why this topic deserves international attention and further study.

References:

¹ This article was prepared by BCNN's Carry van der Zon, Bep Van Sloten and Lotte Ghielen; enquiries may be submitted at info@bettercarenetwork.nl.

² The Guidelines are now available in English at the ISS/IRC.

For further information...

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Other:

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- Benkert, L., Chand, C. (2012), *No Greater Love*; Lévi Benkert reports on his journey to Ethiopia trying to support cursed children, qualified as *mingis* by the traditional belief of the Karo and Hamar tribes.

FORTHCOMING CONFERENCES AND TRAININGS

- **France:** **a)** *L'adoption: Entre l'agrément et l'arrivée de l'enfant: Quel soutien pour les futurs parents?*, COPES, Paris, 6 October 2014; duration: 3 days; **b)** *Les enfants à besoins spécifiques dans les adoptions tardives: Aspects actuels, psychologiques, juridiques et cliniques*, COPES, Paris, 6 October 2014; duration: 5 days; **c)** *L'adoption internationale aujourd'hui: Quels parents pour quels enfants? Réalités, éthique et vécu psychique*, COPES, Paris, 8 October 2014; duration: 3 days; **d)** *Les liens parents-enfant en famille d'accueil*, COPES, Paris, 22 September 2014; duration: 6 days. For further information, see: <http://www.copes.fr>.
- **United Kingdom:** **a)** *The neuroscience of adoption and fostering – A day with Dr Margot Sunderland*, BAAF, London, 18 September 2014. For further information, see: <http://www.baaf.org.uk/training/allevents/2014-09-18t000000>; **b)** *Achieving permanence through fostering*, BAAF, London, 22 October 2014. For further information, see: <http://www.baaf.org.uk/training/allevents/2014-10-22t000000-0>.
- **United States of America:** *Cooperation, Communication and Compassion: Developing Child-Centered Practice and Law, Social Work and Policy for Cross-Border Families (5th annual conference)*, ISS-USA, University of Maryland, Baltimore, 2 October 2014. For further information, see: <http://www.iss-usa.org/training-events/iss-usa-sponsored-events>.



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