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# Monthly Review

## 1994-2014: 20<sup>th</sup> Anniversary of the International Year of the Family

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*We wish you Happy Holidays and look forward to pursuing our cooperation for the rights of children deprived of a family in 2015!*

### EDITORIAL

#### The concept of 'family': The challenge of protecting children in and out of families

*In the context of the 20<sup>th</sup> Anniversary of the International Year of the Family, ISS suggests reflecting on the family concept, its definition and meaning, and to address the complexities linked to this process through a series of articles on this issue. Undoubtedly, children's rights must be protected irrespective of the child's family situation and irrespective of the definition of 'family / families' that is adopted.*

The International Year of the Family 1994 was proclaimed by the United Nations General Assembly in its Resolution 44/82 of 9 December 1989. At the time, its proclamation built on the belief that the family was the basic unit of society and therefore warranted special attention<sup>1</sup>. Twenty years later, this belief remains strong but it also remains as complex as ever to define a family and to develop comprehensive legislation, policies and practices, which fully respect children's rights, whilst also strengthening the family unit. In no way should these ongoing debates fuel justifications and arguments for breaching children's rights in any potential environment, which they are cared for in.

#### Families, a variety of forms and concepts

When the word 'family' is mentioned, a wide range of forms and concepts come to mind, depending also from which perspective and part of the world every one relates to. These are linked to the various aspects in which the latter develops: the legal provisions that govern the creation and termination of a family, the policies that may strengthen or undermine the family, and the practices that are implemented at local, domestic, regional and international level. One aspect is certain: the concept of family is at the heart of ongoing and current debates, and remains an issue of controversy among legal, political, social, religious, cultural and other communities (see pp. 7, 8,

#### TABLE OF CONTENTS

##### EDITORIAL

The concept of 'family': The challenge of protecting children in and out of families 1

##### ACTORS 3

##### BRIEF NEWS

Kenya: Suspension of intercountry adoption 4

ISS cosponsors an event on the family at the United Nations 4

ISS supported the organisation of the conference for foster families in partnership with APFEL Network 4

##### LEGISLATION

Does International Law follow the development of new family models? 4

##### READERS' FORUM

Current debates on the family at the United Nations: Child Rights Connect shares the latest developments 7

Call for action: Recognising children as rights holders independent of family 8

How important is family? 9

##### PRACTICE

South Africa: How to foster and sustain family resilience to protect and develop all family members, including the adopted child 11

Lebanon: A global overview of the concept of alternative family care by ISS Correspondent *himaya* 13

Switzerland: Development of the family, separation and joint parental responsibility 14

##### INTERDISCIPLINARY RESOURCES

Preserving the bond or separating the child from his parents: Dilemma in relation to the concepts of risk and protection 16

International family mediation: A tool to prevent the breakdown of relationships between parents and children far away from each other 18

##### FORTHCOMING CONFERENCES AND TRAININGS 20



32 Quai du Seujet ■ 1201 Geneva ■ Switzerland  
irc-cir@iss-ssi.org ■ www.iss-ssi.org

9 and 14). Thus, this multiplicity has an important impact on alternative care and adoption, and is undoubtedly at the heart of the daily issues that ISS and most professionals in these fields face.

Indeed, ISS often encounters laws, policies, practices and debates that address the meaning of ‘parents’ and ‘families’, whether in the children’s environment of origin, which may indeed include biological parents and the extended family, but may also include the wider community, or in the alternative care context, such as foster families, a range of local family-type options, domestic and intercountry adoptive families, etc. Thus, ISS has had to face the ongoing tensions relating to reaching a definition of ‘family’ and, in general, the challenge of which families to support. Indeed, it is certain that all families need to be supported, but when financial, professional and other resources are limited, which ‘profiles of’ families provide the most suitable environment for children? How should informal care and extended families be supported in contexts in which adoption incentives may also develop? How should the limited resources be directed at biological whilst also at extended, foster and adoptive families?

The above-mentioned issues and the ramification and intricacy of the definition of the family were clearly reflected in the process of adoption of the 2014 Resolution on the protection of the family by the Human Rights Council<sup>2</sup>. Indeed, on the one hand, some speakers and views insisted on the States’ obligation to protect the family as a natural and fundamental unit of society, therefore challenging the UNCRC and advocating for parental rights over children’s rights. On the other hand, however, other civil society organisations fuelled the debates from the perspective that the said Resolution was strengthening the ‘family’, whilst undermining the individual rights of its members, in particular children, even though many violations of human rights continue to occur within the family. Furthermore, many organisations believed that the Resolution did not reflect the various forms and arrangements of family that exist nowadays and which are experienced by children worldwide. Finally, they felt that it should have emphasised more strongly the duty of States to protect children’s rights in all settings, including the family. These debates were reiterated at a Panel held in the framework of the Human Rights Council session in September 2014<sup>3</sup>, and are set to continue. The aim should therefore be to move beyond a consensual definition towards actions that protect families and children’s rights irrespective of the environment they grow in (see pp. 7 and 8).

### Families and children’s rights

In its Preamble, the Convention on the Rights of the Child clearly states that the family is ‘the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children’, which is intended to be respected at domestic level (see p. 4). No clear definition of the family is provided in the Convention – the arguments of which may also explain why the debate remains ongoing and is set to continue – but as mentioned in the *Implementation Handbook*<sup>4</sup>, ‘the broad definition of family (...) reflects the wide variety of kinship and community arrangements within which children are brought up around the world’. Thus, it would seem that any concept of the family would be based on the social development of the latter, with no unique nor exclusive definition. Could we therefore speak of ‘social’ families, which may differ from the ‘legally-recognised’ family, i.e. a *de facto* family in some circumstances? In particular, Article 5 recognises that the family also includes the extended family and community when recognised as such in accordance with local, cultural, legal and/or religious customs. As summarised in the *Implementation Handbook*, the Committee has recognised that ‘social trends have led to a range of family patterns’ and has acknowledged an increase in ‘child-headed and grandparent-headed households and families’. Thus, what the UNCRC seems to intend is a move away from a consensual – and perhaps controversial – definition in order to promote and focus on actions that protect families whilst also protecting children’s rights, as these are full right-holders irrespective of their situation.

### ISS’s role in protecting families whilst also protecting children’s rights

In this context, it remains essential for ISS to support families in order to ensure the rights of its members, in particular the children. Indeed, given the belief that families should be supported to prevent separation (see p. 16), to strengthen alternative forms of family care and to develop other forms of families that may



respond to the needs and rights of children, ISS is committed to considering the family as a wide and all-encompassing concept, that reflects the ways, forms and experiences that exist worldwide. The human rights of its members must guide all actions in this direction, efforts and initiatives (see p. 18) must address the variety of causes that may lead to human rights violations affecting the family members as well as the family as a unit, whether economic, social (see p. 11), political (see p. 9), cultural, religious, etc. The ISS will continue, in cooperation with its network and a wide range of interested partners, to work for families, whilst taking into account the rights of the children and other individuals, and whilst also believing strongly in the duty of States to protect them all against violations of their human rights.

**Thus, children’s rights and their best interests must remain a central objective of legislation, policies, programmes and practices that focus on families; therefore, should it not be the child, who should define and identify his family? A lack of consensus on a definition should never justify a breach of their rights based on the existence or lack of a family environment – a perspective shared with other organisations<sup>5</sup>. This year’s anniversary of the International Year of the Family should therefore be an opportunity to further reflect on the needs and rights of all forms of families, and on those of all its members. The resulting actions must therefore be undertaken to ensure that families indeed remain ‘the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children’.**

The ISS/IRC team,  
December 2014

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#### Sources:

<sup>1</sup> For further information on the 20th Anniversary of the International Year of the Family, see: <http://www.familyperspective.org/2014/home.php>.

<sup>2</sup> Human Rights Council, Resolution: Protection of the family, A/HRC/26/L.20/Rev.1, 25 June 2014, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ResDecStat.aspx>.

<sup>3</sup> ‘Human Rights Council holds panel discussion on the protection of the family and its members’, Office of the High Commissioner for Human Rights, 15 September 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15027&LangID=E>.

<sup>4</sup> *Implementation Handbook for the Convention on the Rights of the Child*, prepared for UNICEF by Hodgkin, R. and Newell, P., Full revised 3<sup>rd</sup> edition, [http://www.unicef.org/publications/index\\_43110.html](http://www.unicef.org/publications/index_43110.html).

<sup>5</sup> See, for example: Save the Children, Position statement: Families, February 2014, [http://resourcecentre.savethechildren.se/sites/default/files/documents/sc\\_position\\_statement\\_families.pdf](http://resourcecentre.savethechildren.se/sites/default/files/documents/sc_position_statement_families.pdf).

**Corrigendum:** In relation to the Editorial of our previous Monthly Review (N° 186 – October 2014) on the 2013 statistics, we have received further details relating to some numbers. In Switzerland, the number of adoptions in 2013 was 280 – and not 256, as stated. The total number of adoptions in receiving countries therefore amounts to 15,834 – instead of 15,810. The updated table is available at [irc-cir@iss-ssi.org](mailto:irc-cir@iss-ssi.org).

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## ACTORS

- **Burkina Faso, Ecuador and Madagascar:** These countries have updated the contact details of their Central Authorities.

**Source:** The Hague Conference on Private International Law, [http://www.hcch.net/index\\_en.php?act=conventions.publications&dtid=43&cid=69](http://www.hcch.net/index_en.php?act=conventions.publications&dtid=43&cid=69).



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## BRIEF NEWS

### Kenya: Suspension of intercountry adoption

The Government of Kenya seems to have suspended its intercountry adoptions and revoked any ongoing adoption procedure. There is no official statement to date on this issue; the ISS/IRC therefore carefully monitors the situation and will inform its readers of any reasons for and implications of this decision.

Source: U.S. Department of State, Alerts and Notices, 28 November 2014, <http://travel.state.gov/content/adoptionsabroad/en/country-information/alerts-and-notice/kenya-5.html>; 'Cabinet: No more foreign adoptions', *Daily Nation*, 27 November 2014: <http://www.nation.co.ke/news/Cabinet-No-more-foreign-adoptions/-/1056/2537564/-/feyt4qz/-/index.html>.

### ISS cosponsors an event on the family at the United Nations

On 17 September 2014, ISS sponsored, in partnership with Diplomatic missions and other actors, including UNICEF and ATD Fourth World, a parallel event on 'Prevention of Family Breakdown due to Poverty'. This event was organised in the framework of the 5th Anniversary of the Guidelines for the Alternative Care of Children and the 25th Anniversary of the Convention on the Rights of the Child at the Human Rights Council. It proved to be an excellent opportunity to promote good practices and to remind States of their obligations in order to strengthen and promote the family.

Source: For further information, see: <http://iss-ssi.org/2009/assets/files/news/Summary%20Conference%20Preventing%20Family%20Separation.pdf>.

### ISS supported the organisation of the conference for foster families in partnership with APFEL Network

From 12 to 14 November 2014, ISS supported two public events in Geneva in the framework of the Second Annual Meeting of the APFEL Network, which promotes foster care in Europe through the development of good practices. On this occasion, professionals, foster families and students, who may be able to promote the development of positive practices for the well-being of children placed by the child protection services, were able to attend a conference and a workshop of reflection on this topic.

Source: Pour plus d'information sur APFEL, see: <http://www.apfelnetwork.eu/> or contact Vincent Ramon, President of APFEL at [apfelnetwork@gmail.com](mailto:apfelnetwork@gmail.com).

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## LEGISLATION

### Does International Law follow the development of new family models?

*From a child-rights perspective, this article highlights the importance of adjusting the Law to contemporary social developments, in particular when reproduction, parentage and couple relationships do not necessarily overlap.*

The family, a social construction, which ideally allows for the positive development of the child, is protected by the law that is recognised for each of its members: the right to the respect for family life. Recognised at international, regional and domestic level<sup>1</sup>, it traditionally includes two aspects: first, it must be safeguarded by a public authority against all forms of arbitrary interference or illegal infringement, and secondly, it only allows for a State interference in the family sphere under certain strict conditions.

#### An incomplete definition

Although it is widely recognised, this right assumes the existence of a family; thus, a question arises: what is understood under 'family'? Most international and regional instruments defined the family as the 'fundamental unit/group of society' or the 'natural and fundamental group unit of society', which is responsible for the care and education of dependent children<sup>2</sup>. These definitions are based on the role of the family in society and on its responsibility towards the child. Nonetheless,



they do not include provisions on the construction of the latter, which therefore opens the door to interpretation. However, does the latter allow for an adjustment of the concept of family life to new forms of contemporary family life?

### **The reality of family pluralism**

Nowadays, society, cultural and political developments, including conflicts and crises, generate a plurality of forms of family life, amongst which nuclear, single-parent, extended, reconstituted, same-sex, adoptive or even child-headed families are to be found, and to which families built through surrogacy or other forms of medically assisted reproduction are now to be included.

Issues relating to the establishment of a parentage bond and to parenthood can, therefore, no longer be addressed in a single and unique manner, based on a couple's biological procreation.

From the perspective of the protection of the child's best interests, the adjustment of the Law to these new phenomena in society is all the more essential given that the States must meet their obligation to protect and assist the family<sup>3</sup>.

Furthermore, it is a matter of highlighting that the function of a family in relation to the child, irrespective of its form of construction, remains the same. The UNCRC therefore grants considerable importance to the family environment. However, there does not appear to exist any international legal instruments, which adequately addresses the diversification and complexity of family models.

### **The impartial recognition of the pluralism of the family at international level**

The United Nations bodies seem to have assimilated the plurality of family structures, such as the Committee on the Rights of the Child, which considers the term 'family' to include 'a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests'<sup>4</sup>.

Similarly, the United Nations Secretary-General, as well as the Director-General of the

International Labour Organisation, have underlines that a family may appear in 'different shapes and sizes'<sup>5</sup>. However, this is not explicitly recognised in international instruments. Indeed, other than members of the extended family, of the community, legal guardians and close friends known to the child, the UNCRC and the Guidelines for the Alternative Care of Children mention, in their provisions and paragraphs, 'individuals legally responsible' and 'others responsible for the child'<sup>6</sup>. This means that a legal relationship between the child and this person should exist. However, if this person does not fall within the definition of family, this relationship may not be established.

In addition, it is of concern to observe that the Human Rights Council has adopted a resolution on the protection of the family, which neglects the recognition of the diversity of forms of family life, thereby limiting the definition of the family to the traditional model by making a reference to '*the family*' (see pp. 7 and 8)<sup>7</sup>.

### **The concept of family life as discussed by supra-national judges**

Supra-national judges and some domestic law-makers seem to follow the contemporary developments of family models. Thus, the European Court of Human Rights understands the protection of the family to be very wide. For the Court, the effectiveness of family life (from simple *de facto* bonds that are sufficiently close) prevails over parentage. With regards to surrogacy, the European Court has sanctioned France, which had denied to resolve the situation of children born through international surrogacy. The Court considers that 'totally prohibiting the establishment of a relationship between a father and his biological children born following surrogacy arrangements abroad was in breach of the Convention'<sup>8</sup>.

In 2012, the Inter-American Court of Human Rights issued a judgement, which stated that the sexual orientation of a parent could not be a decisive factor to determine the child's care and guardianship<sup>9</sup>. In Europe, nine countries have amended their legislation and now recognise same-sex parenthood.

### **Negative implications for the rights of the child**



Whereas discrimination against the child based on the legal situation, ideas or opinions of his parents, legal representatives or a member of his family is explicitly prohibited in Article 2 of the UNCRC and in Para. 10 of the Guidelines, would the absence of recognition of some family models not be discriminatory? May one imagine that if the parentage is not recognised nor legally established, alternative care measures may be considered, despite the fact that it would rather be in the child's best interests for him to grow up with the person, whom he shares emotional bonds with?

Thus, in order to provide a better protection of the interests of the child, several draft and proposed laws are currently being discussed. According to the French Sociologist Irène Théry<sup>10</sup>, for example, the Law should recognise the various means of establishment of parentage, and also provide for a parentage that is shared by all. The

German Minister for Family also suggested a amendment to the Basic Law, in order to allow, amongst others, for a better consideration of the bonds developed over several years between the child and his foster family<sup>11</sup>. In Mexico, the Supreme Court of Justice of the Nation also provided for the establishment of parentage in cases of medically assisted reproduction, without the need for a genetic bond<sup>12</sup>.

### ISS/IRC's projects

ISS/IRC's research projects, which relate to the child and the family, focus on issues linked to a lack of legal frameworks and of precise procedures. For example, the responses to be provided to adoptees faced with illegal procedures, as well as the issue of the rights of children born through international surrogacy, are two projects that currently interest ISS and its network.

**Despite an incomplete and confusing concept at international level, which leaves a certain freedom of interpretation, the development of the family is a phenomenon that is fully natural, which is recognised in law, considering the tendencies of the various cultures and societies. This legal caution remains – more than ever – necessary, and must enable us to remember that, whilst all children have a right to be protected, irrespectively of the structure, within which they live, the right to a child is and must remain excluded. However, here is where the law must react, at domestic and international level, in order to prevent the wish for a child to transform him into an object of blind satisfaction.**

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### References:

<sup>1</sup> Internationally, it is worth mentioning art. 12 of the Universal Declaration of Human Rights, as well as art. 16 of the UNCRC; regionally, art. 8 of the European Convention on Human Rights, art. 10 of the African Charter on the Rights and Welfare of the Child and art. 11(2) of the American Convention on Human Rights mention these terms; finally, in most countries, the right to respect of family life holds constitutional recognition.

<sup>2</sup> See art. 16 of the European Social Charter, the Preamble of the UNCRC, art. 10(1) of the International Covenant on Economic, Social and Cultural Rights and art. 23(1) of the International Covenant on Civil and Political Rights.

<sup>3</sup> See art. 16(3) of the Universal Declaration on Human Rights, the Preamble, arts. 5 and 18 of the UNCRC, and art. 20 of the African Charter.

<sup>4</sup> See CRC/C/GC/7/Rev.1, 2006, para. 15, available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf>.

<sup>5</sup> See the statement of the UN Secretary-General Ban Ki-Moon, 15 May 2014, available at: <http://www.un.org/apps/news/story.asp?NewsID=47796#.VCwfiVffLVr>.

<sup>6</sup> See arts. 3(2), 5 of the UNCRC; 'legal responsibility' in paras. 101 and following, 'extended family' and 'close friends of the family' of the 2009 Guidelines for the Alternative Care of Children. See also art. 27(2) of the UNCRC.

<sup>7</sup> See Human Rights Council, Res. A/HRC/26/L.20/Rev.1 of 25 June 2014. For further debates in the framework of this resolution, positions and recommendations, see p. 7.

<sup>8</sup> Renucci, J.F., *Introduction générale à la Convention européenne des Droits de l'Homme, Droits garantis et mécanisme de protection*, 2005, [http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-FR-HRFILES-01\(2005\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-FR-HRFILES-01(2005).pdf); ECtHR, *X, Y and Z vs United Kingdom*, 22 April 1997; on the relationship between the adopter and the adoptee under art. 8 of the ECHR: *X vs France*, Decision of the Commission of 5 October 1982, N° 9993/82; *Mennesson vs France*, 26 June 2014.

<sup>9</sup> Inter-American Court of Human Rights, *Atala Riffo and daughters vs Chile*,



[http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_239_esp.pdf); 'The child's best interest cannot be used to justify discrimination against the parents based on their sexual orientation' (see para. 110).

<sup>10</sup> Théry, I., and Leroyer, A-M., *Filiation, origines, parentalité*, Ed. Odile Jacob, 2014, 384 pages.

<sup>11</sup> Article published in *Der Spiegel* 33/2014.

<sup>12</sup> See Suprema Corte de Justicia de la Nación, Thesis N° 2007455 of 19 September 2014, <http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?ID=2007455&Clase=DetalleTesisBL>.

## READERS' FORUM

### Current debates on the family at the United Nations: Child Rights Connect<sup>1</sup> shares the latest developments

*Child Rights Connect – which connects civil society organisations working on children's rights with the UN Human Rights system – has been following up and attending the debates held on the family at the United Nations during this year. It shares its views and experiences with us.*

#### 1. What debates have taken place on the family at the United Nations in 2014? What have been the results?

Different types of debates on the family took place at the UN Human Rights Council (HRC) in 2014. A formal panel discussion on 'the protection of the family and its members' took place during the 27<sup>th</sup> session of HRC in Geneva on 15 September 2014. It was requested in a controversial resolution presented by a core-group of States and adopted by vote during the 26<sup>th</sup> session of the HRC in June 2014. During the panel, experts, States and NGOs presented different perspectives on what 'protection of the family and its members' meant.

Since the resolution on the 'Protection of the family' did not explicitly recognise the existence of all forms of families and the right for children not to be discriminated because of their family status, Child Rights Connect, its members and partners were concerned about the negative impact this debate could have on children's rights. To ensure that a child rights perspective in accordance with the UNCRC was included in the debates, we coordinated our members and partners and submitted a joint written statement<sup>1</sup> in view of the panel (see attached box for an overview of the main recommendations), delivered two oral statements and organised a side-event on 'the rights of the child in family environments'.

**Names:** Laure Elmaleh and Anita Goh  
**Functions:** Child Rights Assistant and Advocacy Officer  
**Organisation:** Child Rights Connect

Parallel to the formal panel discussion, a number of NGO side events were organised throughout the HRC session. As is the case with the States, there were two groups of NGOs: the ones known

as the 'UN Family Rights Caucus', who strongly supported the resolution and panel on family and

organised a series of 3 parallel events, and the ones who felt that it undermined the rights of individual members of the family, of which we were a part. This group of NGOs advocated for more inclusive language in the resolution. It was composed of members and partners of Child Rights Connect and organised side-events stressing what 'family' meant from a human rights perspective, including an event on 'supporting parental care to keep families together', and on 'ending all violence against children in the family'.

#### 2. Could you briefly present the different views that have been present in these debates?

During the panel discussion, several panellists and groups of States recalled that families exist in diverse forms around the world and that States have the obligation to protect the rights of individual family members, including children, and to support parents to fulfil their responsibilities.

However, other speakers insisted on States' obligation to protect the family as a natural and fundamental unit of society and on the importance of preserving traditional family structure and values, in light of the challenges faced by the family unit and on the negative



effects family instability has on family members, including children.

During the side events organised by the 'UN Family Rights Caucus', children's rights, as defined under the UNCRC, were challenged as well as the authority of the UNCRC and its interpretation by the Committee on the Rights of the Child. Some of the main advocacy messages of these NGOs included the recognition of parents' rights over children's rights, especially with regard to their child's freedom of thought and religion (guaranteed under articles 14 and 16 of the UNCRC) and right to privacy, which were said to challenge parents' authority over their children. These events also promoted the nuclear family based on marriage as the best family structure for the protection of children; pictured sexual and reproductive education for children as a danger and a concern; and called for the inclusion of the protection of the family as a Sustainable Development Goal in the post-2015 agenda.

On the other hand, during the side events organised by Child Rights Connect and partners that wanted to have more inclusive language in the resolution, the main messages were the necessity of recognising children as right-holders within and outside family environments; the States' legal obligations to protect and respect the human rights of all individuals in families including children, in particular in case of children's rights'

violations within families; the acknowledgement of the existence of all families; the non-discrimination of children on the basis of the family environment they live in; and the need to support families in their child-rearing role.

#### CALL FOR ACTION: RECOGNISING CHILDREN AS RIGHTS HOLDERS INDEPENDENT OF FAMILY

The adoption of Resolution 26/11 on protection of the family by the Human Rights Council on 26 June 2014 calls on the High Commissioner of Human Rights to draft a report on the status of the family and provides for a panel discussion between State members on the protection of family. Aiming to ensure the inclusion of a children's rights perspective into the panel discussion, Child Rights Connect led the submission of a joint written statement<sup>2</sup> by several child protection NGOs, including ISS.

At the occasion of this special Monthly Review, ISS would like to reiterate the recommendations issued by Child Rights Connect and its partners advocating for the guarantee of children's rights in all family settings as States' obligation verbatim:

- 1) Reaffirm that all children, whether they live in a family environment or not, remain rights-holders whose rights cannot be overlooked, limited or negated, because of the environment in which they live or the family they are a member of;
- 2) Explicitly recall States' legal obligation to protect and respect the human rights of all individuals in families, notably by taking action to prevent and respond to violations of children's rights occurring in family environments, including by family members, by prohibiting and working to eliminate all forms of violence, exploitation and neglect in families, by providing alternative care for children, where needed, in respect of their rights and best interest, and by implementing family laws and policies that do not exclude or discriminate against any child;
- 3) Explicitly acknowledge the existence of all forms of families by using the phrase 'all forms of families in different contexts' in any discussion or international document on 'family' and ensure that all legislation, policy and practice related to families is in compliance with the UNCRC, in particular with children's right to non-discrimination and identity rights;
- 4) Reaffirm that the 'protection of the family' means supporting and strengthening families to ensure the fulfilment of the rights of all their members, including by providing them appropriate assistance in the performance of their child-rearing responsibilities.

### 3. What are the main and controversial elements of the Resolution that was adopted and of other relevant documents?

HRC Resolution A/RES/26/11 on the 'Protection of the family' was presented as a procedural resolution to celebrate the anniversary of the International Year of the Family by organising a panel on family at the next session of the HRC.

Yet, instead of following a human rights perspective, according to which States must ensure and protect the rights of all individuals, it puts emphasis on the recognition of the

'family' as the natural and fundamental unit of society and on its entitlement to protection by the society and the State, implicitly saying that the 'family' has human rights and is in danger, without explaining what protection the family needed and from what/whom...

In fact, even if States sponsoring the resolution claimed it did not impose any specific concept of the 'family', their repeated rejection to include language recognising the existence of various forms of families – used in adopted resolutions of





the UN General Assembly – and the interventions made by some diplomats during the negotiations, made it clear that they use a narrow definition of a married heterosexual couple with children.

By refusing to cover all the different types of families that exist in all the countries of the world, the resolution promotes an understanding that could go against decades of advancements of women and children's rights and discriminate against children, who do not live in such families. It also advocates that the 'family' as a unit should be protected by States, potentially at the detriment of the rights of its individual members. It is worth noting in that regard that the resolution also failed to recognise that human rights violations and abuses can occur within families, something which is very well documented, despite numerous language suggestions to that end during the negotiations.

#### 4. What does your organisation consider the implications of the latter to be?

This resolution – the first resolution of the HRC on family – is a dangerous precedent for any future family-related discussion in a human rights context.

The lack of a human rights perspective in the resolution may set a problematic framework of

discussion if other similar initiatives were to result from it. In particular, the protection of children could be used as a justification to question their basic and fundamental rights, as set out in the UNCRC. Their status as right-holders and their right not to be discriminated against because of their family status or the environment in which they live could be particularly at risk.

#### 5. What is the next stage in these debates? What is now expected from States and civil society?

Although the resolution and panel were presented as a one-time initiative to mark the anniversary of the International Year of the Family, some of the States leading the resolution expressed their will to keep this matter on the agenda of the HRC during the panel discussion.

It is therefore expected that new initiatives and discussions on the family will happen at the HRC next year. When this happens, it will be essential that States ensure that any of these discussions and initiatives integrate a children's rights' perspective to guarantee the respect of the rights of children within and outside families. Child Rights Connect and its members and partners will continue to coordinate and work jointly to that aim.

#### References:

<sup>1</sup> For further information on Child Rights Connect, see: <http://www.childrightsconnect.org>.

<sup>2</sup> Document available at: <http://www.childrightsconnect.org/wp-content/uploads/2014/06/Joint-paper-Protection-of-FamilyEng.pdf>.

## How important is family?

*Dr Jagannath Pati, Joint Director at India's Central Adoption Resource Agency (CARA), shares with us his personal thoughts on the concept of family, in particular its modern challenges for India and other countries.*

Humanity cannot, and will not, progress if the state of childhood is left unaddressed. Our family life plays a major role in strengthening our development into the person we become, and gives us our basic strength as a person. When children do not get enough attention from the people they love – in particular their parents, their love-cup gets empty and they feel disconnected and unhappy. Childhood is lost in extreme conditions where the parents have adequate resources but do not have much time for children and the extended family is almost non-existent. In these days, less attachment of

children with their family members is a great challenge. The absence of the role of grandparents or relatives in such a family is very damaging. This also happens in institutions, where children are either separated from their family or have been abandoned or surrendered.

#### The importance of family

Family is the primary setting for children's development, and the importance of the early years of development for a person's adult life is increasingly recognised. With increasing diversity of family forms, and the changing roles and



pressures within families, understanding how family factors interact with the child's own characteristics and those of the family's wider social context, in determining the children's adjustment, is a complex task. Children formulate their personal identity on the basis of their interactions with the people caring for them. Children in the family learn how to interact socially and to express feelings and thoughts by watching family members. More importantly, they gain a sense of themselves by how parents act towards them. Families show children how to get along in the world. Every stimulus and response received in the family matters here. They gain a sense of self-confidence in their abilities; they develop identity and self-esteem. In terms of financial security, the family comes to the assistance of children to find a means of support and livelihood. No other social unit offers the hope and promise of a lifelong connection to others in the world that cares about them. In turn, children grow up and become adults, who wish to provide the same sense of safety and belonging to their own families.

### **The situation and role of families in modern times and in the context of globalisation**

Every association of people – whether a state, a nation or a tribe – has its own distinctive culture, its modes of living and thought, which are developed as a response to the peculiar circumstances of the natural and ideological environment. Family is the agency, through which the impressionable rising generation is made familiar with such traditions. It teaches the individual what situations to anticipate, how to behave and what behaviour to expect, by giving one the gifts of language and dress, which integrate within one's cultural ethos. It facilitates adjustment to people and groups outside the family circle<sup>1</sup>.

Family occupies a predominant position in multiple countries' domestic laws as well as in various international treaties (see attached box). Public policies, governmental programmes, civil society and international NGOs grant the family an important position in their actions. For many religions or spiritual communities, family is sacred. However, what is a family? A husband and a wife with children born within the marriage? This casual and traditional model has been, for long, referred to as the definition of 'family' in almost all cultures. It still is today, but not the only one, as reality shows us various other profiles of what the term 'family' may encompass, due to: widowhood, separation, divorce, desertion, same-sex marriage, feminine emancipation, blended families, artificial conception, etc.

The UNCRC includes a series of articles of special relevance to children without parental care: Article 5 on parental guidance; Article 7 on the right, as far as possible, to know and be cared for by one's parents; Article 9 on the separation from parents; Article 18 on parental responsibility; Article 19 on the child's right to protection from all forms of violence; Article 20 on children deprived of their family environment; Article 21 on adoption; Article 25 on the child's right to periodic review of treatment; Article 27(4) on the State's duty to support parents in case of need; and Article 39 on the rehabilitation of child victims.

For further information on the international, regional and domestic framework, please see 'Does International Law follow the development of new family models?', p. 4.

We live in a world where the financial, economic, climatic and energetic crisis affects us globally. Yet, the effects of this crisis are felt more acutely in developing countries, thus directly affecting children. This situation directly impacts on children, on their life standards and on the enjoyment of their most basic rights. It also indirectly influences the conditions of childcare and faulty parenting: parents are being

forced to work harder, longer, and to venture on emigration as often as not. It also takes its toll on institutional structures, since States are short of the resources necessary to maintain protection services and promote education and training activities. In such contexts, there is no such thing as enjoyment of their rights for children.

### **Children and families in India**

Children below the age of 18 years account for nearly 40 per cent of India's population. It goes without saying that enabling all children to realise their full creative potential is critical for sustaining India's economic growth and accelerating human development. Not all children have benefited equitably from the remarkable progress and



transformation that the country has witnessed in recent years. Children in India are traditionally an essential part of the larger family unit. Kindness to the young ones is an essential element of childcare. Within the folds of large joint families, children grow under the charge of multiple caretakers. Family plays an important role in transmission of the cultural traditions from one generation to another. It acts as an educative unit and a socio-cultural agency. The biological, emotional and economic needs are the foundation of a family.

The Government of India has taken various measures to promote family-strengthening efforts, in particular the adoption of the Juvenile Justice Act in the year 2000 and the introduction

of the Integrated Child Protection Scheme (ICPS) in 2009 (for further information, see Monthly Review N<sup>o</sup> 183 of July 2014). The guiding principles of the ICPS include: child protection as a primary responsibility of the family, supported by the community, the government and civil society; a loving and caring family as the best place for a child; the prevention and reduction of vulnerabilities as central to child protection outcomes; institutionalisation of children as a last resort, among others. Although India has a strong informal kinship care programmes, various structures have been set up at state level under the ICPS to ensure that various child protection goals are achieved for bringing about a new child protection regime in the country.

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**Reference:**

<sup>1</sup> Information on the International Day of the Family: [http://www.rrtd.nic.in/international\\_day\\_of\\_the\\_family.htm](http://www.rrtd.nic.in/international_day_of_the_family.htm).

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## PRACTICE

### **South Africa: How to foster and sustain family resilience to protect and develop all family members, including the adopted child**

*Suzette Moss is a Social Worker at ISS South Africa, who specialises in working with families. She conducted a research on 'Family resilience amongst social work clients', and is in the process of developing 'Practice Guidelines for social workers to foster and sustain family resilience'.*

The inspiration for research on family resilience was born from the realisation that what life teaches us, in the end, is that family life is most important and that no family should 'Ever, ever, ever give up!'. This is applicable to all families, including families with adopted children.

#### **Family resilience**

Family resilience is defined as a family's ability to rebound from adversities, often stronger than before. However, these are not only adversities or a crisis that impact on a family, but any change that the family could be confronted with. Thus, the adoption of a child should not be viewed as creating adverse circumstances for the family, but as a blessing and a gift to a family. However, the adoption of the child brings change and requires the family to adapt to new circumstances. Any change in the circumstances of the family impacts on the resilience of the family and its adaptability for family well-being.

Through research and the exploration of family resilience literature, a conceptual framework on family resilience was developed. Five domains within the framework were identified as family developmental processes, which, in synergy with one another, render families resilient. These family processes are: (1) organisational processes, (2) adaptive processes, (3) protective processes, (4) communication processes, and (5) the family's belief systems that, together, render a family, at a given time, and within a specific family developmental phase, either more or less resilient.

The adoption of a child usually will not happen without notice and will impact on the family processes. Usually, the family is subjected to a preparatory phase prior the adoption. The placement of the child will require various changes, not only in the structure of the family, but also on the usual functioning of the family.

#### **Organisational processes**



As a practical illustration, we can take a family with one child that is in the process of adopting a child. Prior to the placement of the child, various factors should be taken into consideration. On a physical level, planning should take place regarding aspects such as where the child will sleep, will it be necessary to arrange for a school or nursery school and other matters that relate to the organisational processes of the family.

### Adaptive processes

The adoption of a child will impact on the only child as the structure of the family will now change to a family with two children. This will require adaptive processes not only for the child, but for all the family members. Consideration should be given to aspects such as the age of the adoptive child – would the child be younger or older than the child in the present family structure.

### Protective processes

It would be necessary to identify certain risk factors that could impact on the family, such as potential behavioural problems that the adoptive child could show, and which would require attention. In order to protect both, the adoptive child and the family, the strengths and protective factors within the family need to be identified, so as to effectively counteract risk factors for the protection of the newly-formed family and its striving to adapt to the new circumstances. The family's protective factors include family support systems, such as the extended family and the support they provide, and, if necessary, social work intervention.

### Communication processes

The communication processes within the family will assist in building strong relationships between all the family members. Effective communication between family members will also increase the resilience of the family.

### Belief systems

Walsh (2006:49)<sup>1</sup> states that family belief systems, 'as the heart and soul of resilience', are at the core of all family functioning, and are

powerful forces in resilience. Beliefs are the lenses, through which we view the world whilst moving through life, influencing what we see or do not see, and what we make of our perceptions. Beliefs define our reality. Belief systems will reinforce the belief that it was the right decision to adopt a child, and that the newly-formed family has a bright future ahead.

### Intervention to foster and sustain family resilience

It was found that although family resilience can be considered as a buzzword amongst the public and service providers, there is little understanding on how family resilience plays out in families. Furthermore, social workers rendering services to families often are, through the intervention process, in effect, strengthening family resilience without them knowing.

Through research, a better understanding of the manifestation of family resilience as part of a family's ability to adapt to changing circumstances and life in its dynamic form, was created. Family resilience, as an interactive process over time, normalises resilience as part of the day-to-day living of the family and its members, including the young and the old. Depending on the challenges families may face, all families are either more resilient or less resilient.

When the family is less resilient, additional support, such as social work intervention, is needed. A need was identified to develop practice guidelines for social workers. These would include interventive actions or elements, so to develop programmes that will foster and sustain family resilience. Such programmes should be family-focused and call for a strengths-based approach. Service providers need to give recognition to the fact that all families are, at times, confronted with risk factors or challenges, but that families also have strengths to draw upon to address and overcome these challenges. Taking the family processes that render families resilient into account, a holistic approach and integrated services should be rendered for families to sustain their level of resilience.

**In conclusion, a resilient family would be able to adapt and could even rebound stronger after the adoption of the child. Both, the family and the service provider, should have knowledge about family processes that, in synergy with one another, render families more or less resilient. In this way, special**



attention could be given to aspects that may negatively impact on the long-term well-being of both, the adoptive child and family.

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<sup>1</sup>Walsh, F., *Strengthening Family Resilience*, 2006, New York: The Guildford Press.

#### Reading suggestions:

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## Lebanon: A global overview of the concept of alternative family care by ISS Correspondent *himaya*

*In order to meet immediate priority requirements while dealing with child abuse in Lebanon, himaya was founded in 2009 to shed light on that matter and provide help for those in need. 'himaya' is the Arabic word for protection and, as per its name, himaya's mission is to promote a holistic approach to child protection within our society and to make sure every child's right is preserved (see attached box).*

As stated in a Lebanese Juvenile's Court decision issued in 2008, alternative family care has existed in Lebanon since long before the enactment of the Convention on the Rights of the Child and the 2002 Lebanese Law N° 422 on the Protection of At-Risk Children or Children Violating the Law. However, due to cultural reasons and to the lack of related scientific studies, the concept itself has not been commonly accepted and is therefore not widespread.

### Years of turmoil (1975-1990)

During the civil war in Lebanon, some NGOs initiated projects to help orphans or children, whose parents could not raise them, by allowing them to travel abroad to find alternative care families.

This was done on an individual basis, without any legal and clear guidelines defined by the Lebanese State. During that time, many Lebanese children found alternative families abroad. Unfortunately, statistics and scientific studies are still lacking to investigate these experiences.

### Legal provisions in Lebanon

Article 87 of the Lebanese Civil and Personal Status Law states that foster families or institutions shall undertake the normal duties of the natural family to ensure the well-being of the child (this article, which echoes Article 20 of the Convention on the Rights of the Child, defines the conditions of alternative care)

In 2002, Lebanese Law N° 422 was adopted, a text that specifically addresses measures and procedures for minors 'in danger'. Its article 9 foresees that 'it is possible to place a minor with a trusted alternative family'.

Accordingly, a child benefits from the right to grow and live with his natural family, but when necessary, for several serious reasons related to his own safety, Lebanese legislation stipulates the

possibility to protect him through a placement with a foster family.

This is reflected in a famous judicial decision issued on 12 August 2008, which was the third one of its kind during the same year, the Juvenile Judge granted a foster family the right to take care of a five-day-old baby abandoned by his

*himaya* is a Lebanese NGO based in Beirut. It aims to break the silence that contributes to hiding child abuse in society. *himaya* aims to offer as many children as possible the necessary life skills to protect themselves. All this began in September 2008 with one social worker. Today, *himaya* counts more than 80 professionals from different backgrounds and specialist areas, covering most of the Lebanese territory, through two supplementary programmes, the Resilience and Training programme and the Communication and Advocacy department. Children are also referred to *himaya's* resilience centre, which offers shelter and holistic services for teenagers facing imminent risks of abuse. Over the past few years, *himaya* has become a key actor in child protection in Lebanon.

For further information on *himaya*, see:  
<https://www.himaya.org/>.



natural parents, under the supervision of the court.

### Where do we stand today?

However, Lebanese law has not established guidelines concerning the form and the quality of care required from alternative care families, neither has it set a specific monitoring process for the care provided. Even if the Lebanese State contributes to the funding of alternative care institutions, there are no sufficient resources available to help families care for children and cover all their expenses. Additionally, Lebanese legislation continues to perceive such care as an act of charity that is not subject to firm questioning whenever the care provided is not sufficient. Furthermore, since the publication of Law N° 422/2002, the number of cases referred to alternative care families has not exceeded a dozen, and the decisions taken for referrals to alternative care families have not not been built on solid research and expertise, since no specific procedure has been considered nor tested. The only cases that have benefited from such measures have done so because of personal

efforts from the Juvenile Judges and the social workers mandated by the Ministry of Justice.

### Alternative family care as a complementary option for NGOs and institutions

Some NGOs and institutions sometimes ask alternative care families, identified by them, to shelter children during weekends and/or official holidays, as an internal procedure of their own.

Nonetheless, these internal procedures may also lack strict procedures and close follow-up, since they may sometimes be considered by NGOs as an important source of workload that is redistributed onto the community.

### More efforts to create an effective system in Lebanon

With the help of UNICEF, the Ministry of Social Affairs is currently seeking to create a system for alternative family care – a system Lebanon deeply needs.

But due to the many challenges set by communities and the lack of clear legal political decisions, the actual implementation of an effective alternative family care system could take many more years.

**For all those reasons, *himaya* thinks that a legislative review is extremely needed to define the criteria, conditions, guidelines and an accurate monitoring process for the development of foster care in Lebanon.**

## Switzerland: Development of the family, separation and joint parental responsibility

*The Swiss Foundation of the ISS has developed a new leaflet on the child at the heart of joint parental responsibility<sup>1</sup>, following the entry into force, in July 2014, of new regulations relating to the Swiss Civil Code, which automatically grant parental responsibility to both parents, whether they are married, not married, separated or divorced. This article offers global thoughts on this topic, which affects an increasing number of countries, thereby resulting in unavoidable transnational issues.*

**W**ithin the framework of its counselling, social intervention and legal practice, as well as mediation for children and families, ISS witnesses, on a daily basis, the profound changes that have taken place within the family over the last few decades. Indeed, in Western countries, the family model and the symbolic representation of the father and mother have considerably evolved. These changes entail both, a sociological and a legal element.

At sociological level, in the course of the displacements of societies and the scientific

research undertaken since the 1960s, the assignation of very different roles to men and women and to fathers and mothers has been questioned. Let us remember the feminist movement, the search on 'gender' or the movements related to the paternal condition. At the same time, society's vision on the child has changed profoundly, now considering him as a person in his own right, but in the making. From the parents' perspective, it is the idea of 'joint parenthood', which best reflects this trend that, nowadays, each of the parents has equal and shared responsibilities towards the child.



These sociological changes are reflected legally in the Convention on the Rights of the Child, in which the child holds full rights and the parents are, first of all, the holders of responsibilities in relation to their child. In most Western countries' domestic legislations, the concept of 'joint parental responsibility' is now established and highlights this idea of shared parenthood towards the child.

It is within this context that Switzerland also amended its legislation on 1 July, transforming joint parental responsibility into the new rule for all parents, whether they are single (living together or not), married, separated or divorced.

For ISS, this change is a step forward that is well in line with the UNCRC and the idea of joint parental responsibility. However, this new rule also raises some risks, in particular if it is considered from the aspect of 'finally equal arms for each parent' or as an instrument of control, or even victory, in particular in situations of conflict. Thus, ISS wished to edit a leaflet, which returns the child and his needs at the centre of the issue of joint parental responsibility. This leaflet intends to show, based on the new legal framework, how parents, whether or not separated or in conflict, may and must cooperate between themselves in their child's best interests.

### **What parental relationship after a separation?**

Although a separation that is well managed by adults is not necessarily detrimental to children, conflicts between parents may have an impact that may be more or less strong depending on their length and violence. Many parents manage to offer a stable and positive environment to their children after a separation, but separations may have a contentious character that may be extremely damaging for the parents and the children.

Three main parental figures are identified after a separation. Collaborative joint parental responsibility entails that parents manage to talk, make plans and decisions together, in order for the new living circumstances to suit all those affected. When parents find it difficult to cooperate, but each one agrees to assume his parental role by finding ways to organise himself and make decisions without stressing the children too much, it is called joint parenthood with

parallel streams. Contentious parenthood appears when parents are unable to communicate and to find a method of education in common.

### **Joint parental responsibility in Switzerland: Principles and implications**

As mentioned in the introduction, the regulation of joint parental responsibility is a step forward from a child-rights perspective, as it means that both parents hold the same responsibility in relation to their children throughout their childhood. It may and must encourage parents to cooperate and communicate better when their children are at stake. However, joint parental responsibility also raises some risks: it is not able to resolve interpersonal conflicts between parents.

In order to understand better the challenges and implications of this concept, it is important to distinguish the concept of shared custody from that of joint parental responsibility. Joint parental responsibility means, above all, to have a common responsibility in relation to the child, and to solve all that affects the child together, in particular, as stated in law, those 'important decisions', such as medical interventions, religious education, the choice of schools, but also decisions relating to the child's living circumstances. The term 'custody' relates to the main care of the child and may be assumed by one parent only (in this case, the other may benefit from a right to visit) or it may be shared. In any case, the child's legal domicile is set at only one of both places of life. In cases of shared custody, parents must therefore also agree on the issue of the child's domicile, and will have, it appears, to continue living close to each other in order for the child to remain at the same school and in the same social environment.

Joint parental responsibility knows no borders and may be exercised at a distance if both parents agree and are willing to cooperate with each other (it is, indeed, the parents' responsibility to ensure that the child's relationship with both parents is preserved despite the distance). However, considering the application of this principle, several difficulties may arise. Indeed, unlike what happened in Switzerland prior to 1 July 2014, the parent, who is the primary custody holder (*i.e.* the child's legal domicile) no longer



has a right to move away without the other parent's consent, if the new domicile is set abroad or even within Switzerland, if this has considerable implications for the exercise of parental responsibility and for the child's personal relationship with the other parent. In cases of disagreement, a judicial authority will have to make a decision.

### **A deliberately vague law**

In the present article, several potentially contentious issues have been identified. Indeed, even though the law is precise on a number of issues, it remains deliberately vague on other aspects, such as the 'important consequences in cases of move'.

In cases of dispute, mediation is a potential resort in order for the parents to be able to find a common ground and to help in the decision-

**Even though the idea of joint parental responsibility, which is at the heart of the new regulations in Switzerland, is a step forward in compliance with the UNCRC, it also raises several issues, which some couples faced with separation may not be prepared for. Thus, there is a real need to offer appropriate guidance and support to parents, in order for this new law not to result in detrimental implications that could jeopardise the rights of children torn between parents. In this sense, the leaflet that has been published by the Swiss Foundation of the ISS also offers practical tools and psychosocial information on the needs of children of separated parents.**

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### **Reference:**

<sup>1</sup> For further information, see: *L'enfant au cœur de l'autorité parentale conjointe: informations – conseils – aspects transnationaux*, Swiss Foundation of the International Social Service, 2014. Available in French and German at: [http://www.ssiss.ch/fr/lenfant\\_au\\_coeur\\_de\\_lautorite\\_parentale\\_conjointe](http://www.ssiss.ch/fr/lenfant_au_coeur_de_lautorite_parentale_conjointe).

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## **INTERDISCIPLINARY RESOURCES**

### **Preserving the bond or separating the child from his parents: Dilemma in relation to the concepts of risk and protection**

*Isabelle Lammerant (ssi-il@ssiss.ch), a Consultant on adoption at the Swiss Foundation of the International Social Service in Geneva, a Lecturer on European and Comparative Family Law at the University of Fribourg (Switzerland) and a Clinical Psychologist in France, offers a critical overview of the various legal systems in Western Europe.*

Some family situations, which are monitored periodically by the child protection authorities or are suddenly identified by the latter, raise particular complex issues for the professionals.

These are families in a great deal of suffering, in relation to whom the authorities question whether maintaining the child with his parent(s), including maintaining the personal relationships of a child placed out of the family, is beneficial or places him at physical or psychological risk.

making process. If one of the parents decided, nonetheless, to initiate a judicial procedure and to apply to the Tribunal or the child and adult protection authority, this judicial authority has two options: it may either directly issue a decision, or declare an exhortation to mediation and only issue a decision should the latter not result.

For example, in the case of a move, the authority will indeed be able to forbid the child's departure, if it considers the latter to be contrary to his interests, which means that the parent, who would go abroad despite this decision would become the author of a child's abduction. In order to prevent this, the authorities will therefore have to reach more consensual decisions with the parents beforehand.

Beyond the short term, does the relationship – even limited – with the parents enable him to develop physically and psychologically? Or, on the contrary, is it an obstacle to his integration in an alternative family, which may contribute to his development, whether it is a foster family or an adoptive family, in this case, after a declaration of the child's adoptability without his parents' consent?





## A panoply of practices

At the heart of a sub-continent of apparently compatible legal cultures, such as Western Europe, very different domestic trends appear to the watchful but schematic observer. In some countries, influenced by the concept of parentage based on blood relationships (Germany, Switzerland, Belgium...), it is difficult to separate a child from his parents; a known risk must be proven. Even in this case, the placed child is often encouraged – or even forced – to maintain a personal relationship with the parents, who are considered to be dangerous. The possibility of declaring the child legally adoptable without his parents' consent is legally restricted and is only put into practice in exceptional circumstances.

In other countries, in line with a concept of parentage based on the effectiveness of parental care (United Kingdom, Portugal...), a child may be separated from his parents when these are not considered to be sufficiently suitable to meet his physical and psychological developmental needs. This decision may even be made prior to the child's birth (United Kingdom). Legal adoptability may therefore be raised promptly, whether or not prospective adoptive parents may actually be identified.

Finally, other countries, try to bring together these two previously-described perspectives (France), thereby considering the separation of the child, including his legal adoptability, within a range of child protection measures, but the emphasis also placed on the rights of the family of origin, and of the child within the latter, causes important delays for permanent decisions. Thus, when the child is, for example, declared adoptable, he has usually already spent many years in temporary placements and has become older.

## Harmonisation through the case-law of the ECtHR?

The European Court of Human Rights (ECtHR), which works for the respect of the private and family life of each human being, has often sanctioned countries from the second category as a result of requests from parents deprived from their children – for example, foreign parents separated from their children due, in particular, to the instability of their illegal stay (Portugal, Italy).

Apparently, the ECtHR has not had to issue decisions on the legal systems of the first and third categories as much, as an application against these would need an intervention from a child or on behalf of the child, or even that of a family applying to care for him. However, it has already decided that the stability of a family placement may justify, in the child's best interests and even more so on his request, that the child is not returned to his family of origin.

## The opinion of Psychologists

Psychologists are divided on this issue, in particular depending on their theories of reference and their practice. The importance of the knowledge of one's true origins (*i.e.* not imaginary nor fantasy) is often mentioned to justify the preservation of the child's relationship with his parents, even if these are very inadequate. However, in this case, the child is called upon to periodically experience again the physical and psychological reality of bonds that are considered to be potentially dangerous, and from which the authorities decided to protect him against by placing him. Is this true parental presence in the life of the child rather more structuring for his development, or may it be a traumatic repetition? In each individual case, the reply depends on the frequency and quality of the relationship, and on the quality of the professional mediation that may be offered in these meetings (and whose qualitative requirements often go beyond those necessary in meetings between children and their separated or divorced parents).

Other Psychologists emphasise the importance, for the child's development, of the security, continuity and foreseeable nature of the bonds with the parents, and therefore deduce the need for the legal parents to be those, who educate, care and provide love on a daily basis. Through a family placement with a severance of personal relationships, or an adoption even without the consent of the parents of origin, the children are nonetheless withdrawn from their origins, and may face experiences similar to abduction, for example, which may be potentially detrimental to the construction of their identity. On another side, some adolescents and young adults, who were placed, deplore not having been adopted by



their foster family, or even request it later in time. This underlines the diversity of experiences and needs.

### What impact on child protection policies?

Some precipitated options, aimed at separating the child rapidly from his family of origin, may be contrary to the positioning of the UNCRC, which promotes the primacy of maintaining the child in his family of origin and the subsidiarity of his placement, and therefore of an adoption – in particular if these practices do not ensure an

effective support for parenthood aimed at parents of origin before considering a decision of separation. The issue remains, however, to know for how long reasonable efforts of support to parents of origin must be undertaken, as the child also has a right to measures affecting him to be taken as soon as possible. Indeed, he experiences temporality very differently from adults, and the passage of time in a negative environment may have a considerable impact on his development.

**As may be seen, no simple response may be drawn on this very sensitive and complex issue. Quite the opposite, any unequivocal reply may be ideological, and may therefore not respond to the needs and the best interests of each single affected child. The challenge therefore truly seems to be that of the balance of practices, their permanent questioning, and their individualisation in accordance with a careful assessment of the situation of each child and each family, within the framework of the development of a life project for the child. In order to share you experiences and thoughts, please do not hesitate to send us information on the practices in your country.**

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## International family mediation: A tool to prevent the breakdown of relationships between parents and children far away from each other

*Transnational divorces, the exercise of the right to visit abroad, the fear of child abduction, parenthood at a distance: these are issues, which international family mediation may offer potential solutions to. Mediation, as supplementary to the judicial path, indeed allows for realistic agreements, which reflect the geographical and financial situation of families.*

Political speeches on the institutionalisation and professionalisation of the practice of family mediation in disputes of an international nature have been held for about a decade by organisations, such as the Hague Conference on Private International Law and the European Union. This effort reflects the importance of introducing family mediation – or, in general, friendly conflict-resolution methods – as a supplementary means to the Law in cross-border procedures, as well as in legal systems worldwide.

### Context and international implications

Binational, migrant and expatriated families are increasingly more numerous, in all parts of the world. When disputes or disagreements arise, children are the main issue. A strictly legal resolution often proves to be limited: cross-border separations of couples and the move abroad of one part of the family indeed create a complex legal situation, which must take into account the legal provisions of at least two countries, as well as the cultural interpretations of the family and the family reorganisation following



a parental break-up. Furthermore, approximately half of the world's States are not Contracting States to those conventions that regulate the right to cross-border visits (HC-1996) and the displacement or illegal non-return of children, better known as 'abduction' (HC-1980). Within the families, the geographical distance – often considerable – plays an important role and may make it difficult to exercise parenthood and to maintain the bond between the children and the parents. In the most extreme cases of abduction, children must live as constant run-aways, under a fake name and often believe that the other parent is dead.

### **What about international family mediation?**

It enables parents in a crisis to design an agreement, which takes into account the interests and needs of all the members of a family, and which meets their financial, geographical and emotional reality. This method, based on the need for a dialogue, helps the parents as well as the children, to find their place in a new family configuration, even in the context of a contentious separation: despite the geographical distance, it allows the parents to agree and to organise themselves together on all issues relating to the education, daily life, schooling or out-of-school activities of their children. Mediation has the great advantage of being able to address all those subjects of concern to the participants (not only parental responsibility and the right to visit) and to include, in the discussions, those persons, who are important in their children's lives. Even though it is not recommended in all situations, it allows, nonetheless, to anticipate the future with realism and to save a lot of money, when the participants are fully committed to the process.

Mediators in disputes with an international component are aware of, and even trained on, the specific legal features relating to the multilateral context; those agreements that result from a mediation may become mandatory and enforceable. Furthermore, these mediations place the needs of the children at the heart of the process, always with a view to finding solutions that comply with their rights, as enshrined in the UNCRC, *i.e.* in their best interests and ensuring their well-being and their development.

### **The institutionalisation of the practice**

This process of institutionalisation first appeared in the European Union's policy guidelines on mediation and in the various works of the Hague Conference on Private International Law (for example, on the recognition of agreements resulting from mediation, in order to become mandatory and enforceable in all countries concerned by the dispute). Furthermore, an increasing number of States promote the resort to international family mediation by cooperating, through their administrative and judicial authorities, with mediation services that are specialised in cross-border family disputes and child abduction. However, this institutionalisation is also reflected in the professionalisation of the practice, in particular thanks to the increase in the number of specialist trainings and the organisation of competent mediators in regional networks in various parts of the world.

This progress makes it increasingly easier for families to resort to mediation. These state that they are satisfied with the results and effects of mediation, even when they have not been able to solve all the problems they face. Indeed, international family mediation proves to be a valuable tool to prevent the painful implications faced by children affected by a cross-border family separation and by the risk of breakdown of the bond with one of the parents or the loss of their language.

### **ISS's commitment**

In 2010, ISS initiated a global project aimed at strengthening the process of institutionalisation in a practical manner. A pilot project is responding to the urgent need for the awareness-raising of families with regards to the benefits they may experience from mediation and to the 'official nature' of the practice within the framework of an international legal or judicial procedure. ISS has recently published a guide, which includes comprehensive information on the process of mediation and its link with the Law, as well as personal stories and very practical advice. This guide will also be used as a tool by professionals, from the legal and psychosocial sectors, who support families.

A multilingual website, with the content of the guide and a directory by country, will soon be able



to supplement the information with materials on the legal framework of mediation that is particular to each country. The second project will focus on supporting the professionals in the field

of mediation in all regions, with a view to harmonising skills in terms of cross-border family disputes worldwide.

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**Reference:**

For further information on this topic, please contact Cilgia Caratsch, Project Coordinator: [ciglia.caratsch@iss-ssi.org](mailto:ciglia.caratsch@iss-ssi.org), +41 22 906 77 00; guide on sale at: [http://www.iss-ssi.org/venteonline/product.php?id\\_product=27](http://www.iss-ssi.org/venteonline/product.php?id_product=27).

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## FORTHCOMING CONFERENCES AND TRAININGS

- **United Kingdom:** *Aiming higher: Improving educational outcomes for children and young people in care*, BAAF, London, 21 January 2015. For further information, see: <http://www.baaf.org.uk/training/allevnts/2015-01-21t000000>.
- **United States of America:** *29<sup>th</sup> Annual Conference on Treatment Foster Care*, Foster Family-based Treatment Association (FFTA), Denver, 2 – 5 August 2015. Deadline of the call for presentations: 31 December 2014. For further information, see: <https://www.imis100us2.com/FFTA/FFTA/Default.aspx?hkey=5f6d7036-4bae-4187-8abd-598420d96f8b&WebsiteKey=fe1f38b5-a601-4670-bea7-0fdd03ddd3f0>.
- **Online:** Course on ‘Child Safeguarding’, Human Rights Education Associates, 14 January - 24 February 2015. For further information, see: [http://www.hrea.org/index.php?base\\_id=1570&language\\_id=1](http://www.hrea.org/index.php?base_id=1570&language_id=1).

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