



# Monthly Review

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## EDITORIAL

### Responding to inherent risks linked to ‘expatriate adoptions’

Our globalised world has increasingly facilitated transnational mobility and free movement of workers. By 2017, global numbers are estimated to reach 56.8 million expatriates<sup>1</sup>. Expatriates are generally individuals living in a country other than their country of citizenship for various reasons (work, volunteering, education, etc.), often for a limited amount of time. Such work expatriations can create opportunities and challenges related to the private family sphere, including adoption issues. The ISS/IRC does not question the validity of every ‘expatriate adoption’, yet invites all actors to prevent and address the inherent risks linked to such adoptions when they arise.

#### What situations fall under ‘expatriate adoptions’?

The term ‘expatriate adoptions’ (EAs) can cover a variety of situations that occur in a given country with a transnational element due to the expatriate status of the prospective adoptive parents<sup>2</sup>. When identifying competent authorities and the applicable law in EAs, the determining factor is usually the habitual residence (see p. 6) and less frequently it can be the citizenship, of the expatriates as well as of the child, etc<sup>3</sup>.

- **Domestic expatriate adoptions (DEAs):** These are scenarios where prospective adoptive parents have their habitual residence in their country of expatriation, which is also the country of habitual residence of the child. Such cases should be handled according to the domestic adoption legislation of the country of expatriation. However, States are encouraged to incorporate international standards, such as the UNCRC, the 1993 Hague Convention and others, into their domestic legislation.
- **Intercountry expatriate adoptions (IEAs):** These are scenarios where the prospective adoptive parents’ country of habitual residence differs from their current country of expatriation. The child may be from: the country of expatriation or a third country. In addition to the UNCRC provisions, these IEAs fall within the scope of Article 2 of the 1993 Hague Convention. Even for non-Contracting countries, these international standards should always be considered to prevent the abduction, sale or trafficking in children.

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**Consistent criteria for the determination of habitual residence of prospective adoptive parents<sup>4</sup>:**

- *the length of time living in the State (appropriate immigration status or residence permit);*
- *reason(s) for moving to and living in the State;*
- *intention(s) concerning their residence (e.g. how long they expect to remain living there);*
- *centre of their professional activities and personal and social ties to the State (e.g. degree of integration);*
- *any ties with the State (e.g. business interests and personal property) and with any other relevant States.*

**Potential criteria for the determination of habitual residence of the child:**

- *the State where the child was born;*
- *the State of habitual residence of the child's parent(s);*
- *their level of integration and ties with significant persons.*

Yet, in practice, as raised during 2010 and 2015 Special Commissions<sup>5</sup>, and according to alarming information provided to the ISS/IRC, some DEAs and IEAs are occurring outside the protective framework of international and national standards.

**Inherent risks regarding the legal framework**

Operating outside of the above-mentioned protections can occur because the existing laws are not compliant with international standards or may be applied incorrectly. For example, an adoption is erroneously or voluntarily considered as a domestic one, when it should be intercountry according to the 1993 Hague Convention. Likewise, in DEAs, challenges arise when the country of expatriation is based on, or influenced by, *Sharia* Law<sup>6</sup>, or when the country does not have specific adoption legislation let alone tradition. Even when adoption legislation exists, in some cases, it is neither robust enough to

ensure that the best interests of the child are the primary consideration (e.g. appropriate consents, evaluation of the child's adoptability and of the prospective adopters' suitability, proper matching, etc.), nor is its implementation in practice adequately monitored (e.g. preventing private adoptions, illicit practices, undue compensation, etc.).

Such concerns can equally be observed in IEA cases, where the child originates from countries with well documented risks concerning intercountry adoption, where some receiving States have even imposed moratoriums. Despite the apparent risks, EAs might questionably be tolerated or legitimised by countries involved due to the adoptive parents' privileged immigration status (e.g. international organisations, NGOs, consular staff, expatriate volunteers working in residential care institutions<sup>7</sup>, etc.).

To address these risks, recently raised by the Special Rapporteur on the sale of children, child prostitution and child pornography<sup>8</sup>, and to avoid the deliberate or unconscious circumvention of existing domestic and intercountry adoption processes – often considered lengthy, costly and without a guaranteed success – prospective adoptive parents should inform themselves about the current adoption situation in the country, in which they want to adopt, prior to starting the procedure (see pp. 6 and 10). To support them, both prospective adopters and professionals in direct contact with expatriates (Embassies, migration authorities, accredited adoption bodies, etc.) should be adequately equipped with information, tools and resources – an element, which the ISS/IRC is currently working on.

**Inherent risks regarding authorities' responsibilities**

All involved countries (the child's country of origin, the country of expatriation, the country of habitual residence, etc.) are equally liable to protect their children and to assume responsibility of their nationals' actions. However, EAs raise legitimate questions about whether State control is being exercised early enough or with sufficient oversight. We observe, indeed, that most EAs are unregulated: either they escape completely the States' control, or show very little State involvement, especially in terms of evaluation, preparation, matching and follow-up (independent/private adoptions)<sup>9</sup>.

The starting point should be to determine the nature of the adoption (domestic or intercountry) according to the habitual residence of both, of the prospective adoptive parents and of the child. Consequently, competent authorities will be identified. However, the criteria of habitual residence being based on the interpretation of each State, conflicts may arise at this stage. In practice, when there is, for instance, no agreement on the habitual residence, regrettably some States continue to process the adoption ignoring the other State as the child is now with the expatriates – a pragmatic, yet highly risky, approach. In other cases, all States involved decline responsibility leaving the prospective adoptive parents in limbo with the risk of the latter going through irregular channels.

To ensure that adequate safeguards are in place prior to processing any adoption, States should cooperate, inspiring themselves of the guidance provided at international level regarding the determination of habitual residence (see attached box) and keeping in mind the best interests of the child.

## Expatriate adoptions: Are they in the best interests of the child?

When considering and assessing an EA, the crucial question remains: is this adoption in the best interests of the child? For a child declared adoptable, expatriate prospective adopters can potentially provide a suitable family environment, provided that they have gone through a formal assessment and adequate preparation process. The strong ties that the prospective adopters have developed with the child's country of origin can be a favorable element to better understand the child's origins. However, the expatriates' status can also have a harmful impact on the child's life: the changing nature of their residency leading to the child's emotional instability, problems related to the nationality and statelessness, as well as practical challenges with accessing the child's origins. Additionally, for many EAs, prospective adopters receive little, and sometimes no, education to equip them to raise an adopted child. In case they should move to another country with the adopted child, there is limited support and no monitoring by the competent authorities, who have never been involved in the process. These adoptions are then more exposed to breakdowns.

Furthermore, it is of most concern when the assessment of the best interests of the child is not undertaken by both States before the adoption is approved, but only after the adoption has been approved and the adoptive parents ask for its recognition in their State and for the nationality. Often, the concerned State may – at this point – tend to refer only to the immediate/short-term wellbeing of the child and recognise the adoption. Similarly, States frequently invoke their limited sphere of action and abdicate their responsibilities to duly assess and/or prohibit such complex transnational situations. As stated in the Hague Conference on Private International Law's Guide to Good Practice No. 1, it is comprehensible that the country, in which the adoptive family will finally be living, is faced with a delicate decision: *'on the one hand, if recognition is refused, the children may be left in limbo, but on the other hand such practices should not be encouraged'*<sup>10</sup>.

**Regardless of the diversity of EAs (domestic vs intercountry, relative vs non-relative, temporality of the expatriation, etc.), adoptions should only be processed when they are in the child's best interests, and when international standards have been adequately respected, which includes long-term future considerations about how the child might view his or her adoption. A part from the responses developed in certain countries and presented in this issue of the Monthly Review, the ISS/IRC would like to encourage professionals to share initiatives developed in their country to better frame these adoptions.**

The ISS/IRC team  
March 2017

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### References:

<sup>1</sup> Finaccord (2014). *Global Expatriates: Size, Segmentation and Forecast for the Worldwide Market*; available at: [http://finaccord.com/uk/report\\_global-expatriates\\_size-segmentation-and-forecast-for-the-worldwide-market.htm](http://finaccord.com/uk/report_global-expatriates_size-segmentation-and-forecast-for-the-worldwide-market.htm).

<sup>2</sup> Other adoption constellations that may raise difficulties and require strengthened cooperation include, for example, an prospective adopters' adoption application for a child resident of their country while he or she was born from expatriated biological parents.

<sup>3</sup> Hague Conference on Private International Law (2008). *The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No. 1*. Bristol, United Kingdom: Family Law – A publishing imprint of Jordan Publishing Limited, [https://assets.hcch.net/upload/adoguide\\_e.pdf](https://assets.hcch.net/upload/adoguide_e.pdf), Chapters 8.4 and 8.7.2; and Hague Conference on Private International Law (1994). *Explanatory Report on the 1993 Hague Intercountry Adoption Convention*, <https://assets.hcch.net/upload/exp133e.pdf>, pp. 49 ff.

<sup>4</sup> Extracts from Hague Conference on Private International Law. Preliminary Document No. 4 (April 2015), drawn up by the Permanent Bureau. Globalisation and international mobility: Habitual residence and the scope of the 1993 Convention, available at: <https://assets.hcch.net/docs/d10d006d-0f68-4246-94a4-9f1d1b9e88b1.pdf>.

<sup>5</sup> Hague Conference on Private International Law. Conclusions and Recommendations and Report of the Special Commission on the Practical Operation of the 1993 Hague Intercountry Adoption Convention (17-25 June 2010), No. 13. See also: Hague Conference on Private International Law. Conclusions and Recommendations adopted by

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the Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Inter-country Adoption Convention; available at: <https://assets.hcch.net/docs/858dd0aa-125b-4063-95f9-4e9b4afd3719.pdf>, No. 25.

<sup>6</sup> In such countries, adoption remains often a foreign concept or/and is even prohibited (Algeria, Morocco, etc.).

<sup>7</sup> Expatriates working in residential care institutions, can even create volunteer tourism: they might form an attachment with a child and then seek to adopt him or her. See Better Volunteering, Better Care, <http://www.bettercarenetwork.org/bcn-in-action/better-volunteering-better-care>.

<sup>8</sup> 'Prospective adoptive parents have, for example, resided temporarily in countries of origin long enough to be able to conclude a domestic adoption and then brought the adopted child back to their country, thus bypassing the inter-country adoption process'. See: Special Rapporteur on the sale of children, child prostitution and child pornography, Annual Report, A/HRC/34/55, 22 December 2016, available at: <http://www.ohchr.org/EN/Issues/Children/Pages/AnnualReports.aspx>, Para. 49.

<sup>9</sup> See ISS/IRC Monthly Review, No. 203, July 2016.

<sup>10</sup> *Supra* 3 Hague Conference on Private International Law (2008), pp. 106 ff.

**Erratum:** In the previous issue of the Monthly Review, No. 209 of February 2017, there was an error in the title of the article on p. 10, which should have been: '**Analysis of the nature and extent of institutionalisation of children in the Cooperative Republic of Guyana**', instead of Guyana.

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## BRIEF NEWS

### ISS Statement on the tragic events at Hogar Seguro in Guatemala

In addition to expressing its deep sorrow, sympathy and solidarity in the wake of the tragic events that have affected children and families at the Hogar Seguro Virgen de la Asunción in Guatemala, ISS also wishes to reiterate its concerns at the situation of children living in institutions, in particular in residential care institutions (RCIs), that do not comply with minimum quality standards embedded in international standards, that are not adequately and periodically supervised, and which therefore may entail serious risks of violations of the rights of children placed therein.

Indeed, this type of situations reflect the high risks and serious consequences that placements in RCIs – in particular in large ones – may have on children. Indeed, not only do these RCIs often not provide the quality care that is required to fully protect the welfare of children, but the latter cannot – despite the best intentions – receive individual and personalised care.

Thus, the efforts of all actors involved must be threefold: (1) they must be directed primarily at preventing separation; (2) at developing other forms of alternative care, specifically family-based care; and (3) at improving the quality of care in existing residential facilities so that it complies with international standards. Furthermore, the process must ensure child participation, including through the existence of an effective complaint mechanism. The process of deinstitutionalisation should be aimed at reducing the number of children's homes and orphanages, whilst actively promoting family and community-based solutions and ensuring support to families (of origin, extended, foster or adoptive). The priority should not be the opening of new homes, in order to ensure that their operation is truly a measure of last resort and a temporary option, and there should be a clear mechanism of periodic review of the children's placements by the competent authorities.

In this regard, ISS remains committed to supporting States and other actors in achieving this complex process of deinstitutionalisation, and in ensuring full compliance with international principles and standards relating to the rights of children in alternative care. Let us continue to work together to ensure that similar tragic events are not repeated elsewhere, and that the rights of children placed in alternative care, or at risk of so being, are fully respected and protected.

### **CRIN's new advocacy guide on accessing justice for violations of children's rights in care institutions**

CRIN released 'a new guide detailing the legal and practical tools available to get redress for violations of children's rights in care institutions in Eastern and South-eastern Europe and the Caucasus. This guide explains which options are available to those seeking justice for children in care institutions across 11 countries: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Moldova, Romania, Russia, Serbia and Ukraine. The guide analyses national, regional and international law and compiles the redress mechanisms available to victims of rights violations while they are in state care and after leaving these institutions'. A specific chapter is dedicated to the manner, by which a case can be brought domestically, and provides guidance for the choice of a particular proceeding depending on the nature of the case. At regional level, complaints brought to the European Court of Human Rights have already been successful in cases of neglect in care institutions, and this Court can be an interesting pathway to find children's rights violations. Finally, CRIN recalls the existence of the UN treaty bodies' complaints mechanisms, which represent opportunities for advocacy on the rights of children in institutions. As for domestic solutions, distinction is made between the international/regional options by mentioning the pros and cons of each of them. The ISS/IRC strongly recommends reading this tool, which guides us towards potential means of action to fight against violations of the rights of children placed in institutions.

*Source:* Child Rights International Network. *When the State doesn't care. A guide to accessing justice for violations of children's rights in institutions in Eastern and Southeastern Europe and the Caucasus*; available at: [https://www.crin.org/sites/default/files/guide\\_download/when\\_the\\_state\\_doesnt\\_care.pdf](https://www.crin.org/sites/default/files/guide_download/when_the_state_doesnt_care.pdf).

### **We Need to End the Era of Orphanages | Tara Winkler | TEDxSydney**

In this short presentation, Tara explains her journey as orphan volunteer to setting up her own orphanage in Cambodia – and why she was part of the problem in the growth of institutional care. She further explains how she learnt about the importance of funding family based care and prevention work, with discussions underway about streamlining the services of Cambodian Children's Trust nationwide. The ISS/IRC strongly recommends viewing this short presentation as an introduction to the need to end the 'Era of Orphanages', whilst providing quality care to the children deprived of their families. It is also particularly relevant in the context of the global campaign to end 'orphanage voluntourism'.

*Sources:* Tara's presentation is available at: <https://www.youtube.com/watch?v=L3nPMWkhhMI&app=desktop>. For further information on the Better Volunteering, Better Care initiative, see: <http://www.bettercarenetwork.org/bcn-in-action/better-volunteering-better-care>.

### **Phnom Penh, Cambodia – ISS presents report at consultation meeting to validate the common recommendations of the Study on family support, foster care and adoption**

Following from the joint mission of the Hague Conference on Private International Law and ISS in Cambodia in September 2016, Maria Herczog (ISS consultant) presented a draft capacity development plan to approximately 100 actors at a consultation meeting. The purpose of the meeting was twofold: firstly, to validate the common agreement of the recommendations of the Study on family support, foster care and adoption, and secondly, to develop a more detailed work plan for the short- and medium-term recommendations with clear indicators of partners to be involved in each action. The HCCH and ISS will now duly consider comments received to finalise the capacity development plan, in an effort to help the Cambodian authorities continue in their alternative care and adoption reforms. ISS looks forward to continuing to provide its technical assistance to Cambodia and other countries requiring such support.



## International Inter-agency MOOC offers free training

### Getting Care Right for All Children:

#### Implementing the UN Guidelines for the Alternative Care of Children

All around the world, for many different reasons, hundreds of thousands of children cannot live with their parents. The UN Guidelines for the Alternative Care of Children set out the principles for policy and practice that have been agreed upon globally, to help towards tackling this issue. Now it's your chance to take part in this free massive online open course (MOOC) which delves into what the UN Guidelines look like in practice. Available in English, French and Spanish. By the end of this six-week interactive course you'll better understand the key principals, pillars and implications of the UN Guidelines, taking in views from across the world. Open to all, the course is for everyone interested in or responsible for children's care.

The course starts on **15 May 2017** – Don't miss your chance to take part !

**BOOK NOW** at: <http://www.alternativecaremooc.com/index.php/en/>

The international inter-agency group commissioned CELCIS in the University of Strathclyde to develop the MOOC, which will be delivered through FutureLearn, the social learning platform.



## PRACTICE

### Quebec: The management of adoptions by expatriates

*In this article, the Secrétariat à l'adoption internationale (SAI), the Central Authority of Quebec, Canada, describes how it deals with adoption cases by expatriates.*

**W**hen an expatriate native of Quebec wishes to adopt in their expatriation country, or in another country, they must present their project to the SAI. The SAI then examines the project in two phases, in order to determine the usual residence of the expatriate, and therefore, the domestic or intercountry character of the adoption.

#### Intervention in two stages

Initially, the SAI collects information, which could include various documents, in order to determine where the expatriate's usual residence is located, in accordance with Quebec's legal framework. If the usual residence is in Quebec, the prospective adoptive parents must fulfil the conditions set by the law of Quebec on intercountry adoption. If it is not the case, a first 'letter of intent' is sent to the expatriate to inform them that the prospected adoption does not seem to be subject to the jurisdiction of the SAI. This letter also specifies that a letter of non-intervention will possibly be issued by the SAI if the adoptive parent transmits the adoption order pronounced in the expatriation country to the

SAI, and if the latter is coherent with the information regarding the usual residence previously given.

In a second stage, if the information mentioned in the adoption order coincides, the SAI issues the non-intervention letter.

The expatriate adoptive parent may transmit this letter to the immigration services. The SAI is therefore the authority in charge of examining that the adoption procedure respects fundamental safeguards.

#### Nationality of the adopted child

A Canadian adoptive parent may ask the Canadian immigration authorities for permanent residence for the adopted child or, directly, for citizenship. When the adoptive parent is originally from Quebec, these authorities must ensure that the SAI has issued a non-opposition or non-intervention letter before granting the requested status.

The non-opposition letter is issued by the SAI when the adoptive parent's usual residence at the time of the adoption is Quebec, and when

the rules applicable to intercountry adoption were respected.

The non-intervention letter is issued by the SAI when it considers that the adoptive parent's

usual residence at the time of the adoption is not Quebec, and therefore, the pronounced adoption does not fall under its jurisdiction.

The procedure put in place in Quebec has the advantage of allowing the expatriation country to communicate with the SAI before the beginning of the procedure, in order to verify if, according to its analysis of the facts, the SAI considers that the adoptive parent's usual residence is in Quebec. It was elaborated in order to ensure a follow-up of the files, and to confirm the coherence of the facts transmitted by the expatriate to the SAI and to the competent authority of the country of expatriation.

## Parenting plan tool for special needs assessment: An innovative tool developed by New Zealand's Central Authority

*Victoria Musatova, from the Central Adoption Authority of New Zealand, presents an excellent and interactive tool developed to better evaluate and prepare prospective adoptive parents, particularly when considering an adoption of a child with special needs.*

Intercountry adoptive applicants will be expected to complete the Parenting Plan<sup>1</sup>, developed by New Zealand's Central Authority, as a part of their assessment and approval process, if they apply to adopt children with special needs: a child, who may have a physical or mental impairment/condition; a child over seven years of age; and a group of two or more siblings. The Parenting Plan will require the prospective adoptive parents to consider the unique needs of these children, and how they will be able to meet these needs. This process will also include an expectation of prospective adopters to use relevant resources, and seek specialist medical advice for a child or children with a special need, who they have identified and they are willing to accept. The following information has been provided to social workers in New Zealand with regards to the use of this tool.

*It can be hard to have a realistic view about an unknown child from another country. However, this Parenting Plan offers the opportunity to demonstrate the intentions and hopes for the adopted child, and consider the unique needs and wishes from the child's perspective. When a placement proposal via an intercountry adoption programme is received, this Parenting Plan can be re-visited and reviewed, with the specific child in mind.*

### What are the purposes of the Parenting Plan?

- To prompt the applicants to undertake research and informed reflection, prior to the completion of the assessment on how they plan to manage the practical aspects of becoming an adoptive parent of a child or children with special needs;

- To enhance the robust and comprehensive assessment of applicants applying to adopt special needs children<sup>2</sup> from another country;
- To ensure consistency across the regions and for different intercountry adoption programmes;
- To help consider the suitability of the matching proposal received for the applicants.

### How is the Parenting Plan incorporated in the current adoption practice ?

During the **applicants' assessment and approval** stage:

- The assessing Social Worker forwards the Parenting Plan template to the applicants electronically at the beginning of assessment, to be used as a preparation tool to prompt the applicants' thinking;
- At the end of the assessment, the applicants return the completed Parenting Plan to the Social Worker;
- The Social Worker reviews the plan and has a follow-up discussion with the applicants about how realistic, practical and child-focused the plan is; and how it may impact on the attachment and bonding with the child(ren). Following this discussion, the applicants may need to review and alter their Parenting Plan, if necessary.

- The final draft of the Parenting Plan is forwarded to the Central Authority, together with the draft Home Study for review, in order to inform the final approval of the applicants' suitability to adopt.
- If the prospective adopters apply for an intercountry adoption via an accredited placement agency, the Central Authority will forward a copy of the Parenting Plan to the placement agency for their reference.

At the **potential matching** stage:

When a match is received for the prospective adopters via an intercountry adoption programme, they can be asked to review their Parenting Plan, specifically with the child(ren) they have been matched with in mind, in order to consider the special needs of the child(ren) matched with them, and how they intend to meet the needs of this specific child(ren).

**The ISS/IRC welcomes such a tool, which allows to adapt the process of assessment of adoption applicants to the profile of adoptable children worldwide, i.e. children with special needs, searching for families with specific abilities.**

### References:

<sup>1</sup> Available at the ISS/IRC.

<sup>2</sup> The definition of 'special needs' in accordance with the Hague Conference on Private International Law: 'Children with special needs are those who may be suffering from a behaviour disorder or trauma, physically or mentally disabled, older children (usually above 7 years of age), or part of a sibling group'. Source : HCCH (2008). *The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No. 1*. Bristol, United Kingdom: Family Law – A publishing imprint of Jordan Publishing Limited. Para. 386; available at: [https://assets.hcch.net/upload/adoguide\\_e.pdf](https://assets.hcch.net/upload/adoguide_e.pdf).

## READERS' FORUM

### Play to grow up, play to think, play to learn: The role of play in the adoptive relationship (Part I)

*Sophie Marinopoulos, a Psychologist and Psychoanalyst<sup>1</sup>, with considerable experience in supporting adoptive families, explains, in this article in two parts, the fundamental dimension of the child's right to play, and calls upon the creativity of adoptive parents.*

'A baby on his or her own does not exist': the need to have parents to play one's life. This reply of the just-as-famous Pediatrician and Psychoanalyst Winnicott reminds us, indeed, that this small human being is born vulnerable, dependent, and that, even at full term, he or she is born premature, unable to take care of him or herself without the help of someone else. This is the human being speaking at the dawn of his or her birth, waiting to be fed, carried, talked to, recognised in his or her existence.

#### Playing from birth

And this mouth-baby, with an aching body when he or she feels hungry, receives the so-expected milk and calms down. Once the pain is gone, the experience gained, he or she is reassured and falls asleep. Then, when the tension comes back, he or she cries, hoping, and

receives, once again, the expected liquid provided by an enveloping body, which talks, vibrates, and which his or her awakened senses take in with joy. The experience is too enjoyable, the longing too strong, for him or her to limit him or herself to the feeding, and he or she will naturally start 'playing' with his or her mouth, a true activity gym with the tongue, the firm and delimiting gums, the liquid and tasting saliva, the lips that can close, bend, open, stretch, the breathing that comes in and out, the palate, with its vault and the muscles of its veil, the liquid that flows in and out; later, the teeth that appear like new objects to get hold of; besides the diversity of structures, with their smooth, ridged, soft or hard parts.

This is therefore how play comes about in a humanising encounter, where desire and pleasure prevail, and where the concept of being



fed goes far beyond the milk received. To play from birth will therefore become a state of being, which will structure the child, will open him or her to the world, and will allow him or her to grasp his or her environment. What about if the right to play belongs to human rights because it is inseparable from the small human being's other fundamental rights?

### **Play: A child's fundamental right**

These first autonomous games, which enable the child to delimit his or her body, to gain complex internal and external notions, to renew, on his or her own, or with his or her parents, experiences in order to achieve them, and therefore to overcome his or her weaknesses, to receive emotions and to send some back. This is how the child, in order to relive the feelings of pleasure that he or she feels, will always go further in his or her sensory experience. He or she becomes eager for it, curious, building his or her future motivation to move towards the unknown of sensations, then of emotions, and finally of the relationships that these playful moments create.

Thus, he or she will go from mouth games to motor games, where he or she will discover balance, will be able to handle objects, and then express him or herself on these experiences, and receive, in return, words from his or her parents. Encouraged and authorised, he or she will be increasingly audacious, and will learn to move away from his or her parents, whilst ensuring that they look at him or her and remain faithfully there, as witnesses of his or her progress. Then, there will be games where words will fully assume their role. He or she will tell stories that will enable him or her to say 'I' and to become the hero of his or her own life. He or she will build his or her origins, made up of gaps, confusions, and certainties.

His or her view will become critical, and from experience to experience, his or her curiosity will transform itself into motivation, leading the child always further in his or her wish to discover, which we will later call the wish to learn. For the

latter, he or she will have to feel, touch, see, try, fail, start again, many times, in a relational context, where there is quality parental concern.

### **The challenges of the adoptive relationship linked to the child's painful experiences**

Without this reassuring parental presence, the baby cannot be stimulated, too subject to internal tensions that place him or her in fear and chaos, and hinders any openness to the world and any understanding of his or her environment. There is deficiency in the use of energy, not to play to become stimulated, but to hang onto any hope of life, onto any brief presence, in order to not die psychologically.

His or her deprivation is, therefore, that of the absence of the experience of a humanising encounter, based on the certainty of its presence

in a rhythm and an infallible repetition, of the lack of a look, which builds this little internal flame that gives the child value, dignity, and therefore, the wish to grow up and to become. The weak child, whose trust in the other, in the relationship, is reduced, but which he or she will, one day, have to experience, if the life's conditions allow him or her to do so.

Here lies the challenge of the relationship in the context of the adoption of a child having experienced a painful and chaotic start in life. Indeed, whilst a malnourished child will soon put on weight thanks to a rich and balanced diet, this is not true for the psycho-emotional balance. To gain weight rapidly is one thing, to regain trust in life is another one.

### **Let the child play irrespective of his or her age**

Thus, when an older child participates in younger children's – or even baby – games, when he or she finds a reassuring parental source, it is important to support him or her in these playful experiences, through which he or she will finally allow him or herself to play early childhood games.

For example, adoptive parents – having welcomed their child at four or five years old, or even older – happen to complain about their



eating habits, and about the fact that they play with food. Whilst it is legitimate to try to teach manners to one's child, it is fundamental to take into account that what has not been played must be done. A child, who has had a chaotic early childhood, without any rhythm of reassuring presence, without any encouraging sight, is a child that has been malnourished from a relational point of view. It is therefore a child, who has a vital need for playful experiences, in order to feel his or her body, to explore it, and to better manage his or her environment. For the child to play at growing up, he or she must be encouraged to do so. It is when he or she finds a family and parents that he or she will allow him or herself to do so. The difficulty for the adoptive parents is then to find the right distance between

the needed education and the fundamental needs of the child to participate in bodily, sensory, emotional experiences that were on hold. It is fundamental to take into account that living, even at an older age, the experiences of a very young child, is not a waste of time, nor is it a gain of bad habits, but rather the experience, in the full safety of love, of what could not be undertaken earlier. Playing to grow up is a vital need, just like eating and sleeping.

This requires creativity from the parents, insofar as it consists of making up playful contexts, that authorise the child to live what he or she has not yet experienced. The child has a vital need to share with his or her parents those games, in which he or she experiences life. So get your ideas going.

**Thus, no matter the game, the rule is to convey to the child that one accepts that he or she discovers what he or she was not able to discover earlier, that by becoming his or her parents, we accept to be there to support him or her even in those out-of-sync moments of growth, which lead him or her on the path of childhood. It is this authorisation that involves the adoptive parents and the child in the development of a story, their story. The parent-child bond is therefore developing in the shared looks, that mean the wish to be together, the acceptance of leaving time to discover and grow together.**

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#### Reference:

<sup>1</sup> Also Director of the Psychological Health Prevention and Promotion Service in Nantes (France) and its reception centre *Les pâtes au beurre*.

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## ISS ACTION WORLDWIDE

### Tackling the risks and improving the support to expatriate adoptive families: the Australian experience

*Damon Martin, Social Worker and Manager of ISS Australia's Intercountry Adoption Service, and Melissa Hanning, Intercountry Adoption Caseworker, highlight the necessity to frame expatriate adoptions, and especially to provide pre- and post-adoption support to expatriate adoptive families.*

Expatriate adoptions (EAs) occur when an Australian citizen or permanent resident living abroad for 12 months or more adopts a child through an overseas agency or government authority. Australian authorities are not responsible for EAs, and do not assess or approve such applicants. For an EA to be recognised in Australia, it must be proven that the prospective adoptive parents were not living overseas to bypass the legal requirements for the entry of their adopted child into Australia, and that they have lawfully acquired full parental rights. The number of EAs in Australia has risen and recently

overtaken the number of intercountry adoptions (129 EAs vs 82 intercountry adoptions in 2015/2016), which is a cause for concern given the limited support and involvement from the State and Central Authorities.

## Potential risks of bypassing intercountry adoption processes

Concern has risen regarding the lack of education and assessment of prospective adoptive parents, who can be seen as circumnavigating the intercountry adoption process in place in Australia, which was put in place to protect the best interests of these children. Although there are families, who adopt for genuine reasons whilst living and working overseas, it is widely acknowledged that there are a number of Australians, who aim to bypass Australia's intercountry adoption process, for a variety of reasons, whether they are not prepared to undertake the often onerous, lengthy and intrusive assessment and education process, or prepared for the lengthy wait between assessment and placement, or quite simply they have the means to get the adopted child they want fast-tracked. This raises issues regarding the 1993 Hague Convention standards, such as the adoptability and future needs of the child. There have been a number of reported EA cases, which have occurred overseas only to find they do not meet the criteria for the child to enter Australia, which causes a number of social, emotional, financial and legal issues.



## Lack of pre- and post-adoption support

Due to their lack of visibility, often, expatriate adoptive parents can feel isolated and overwhelmed, with little knowledge or awareness of available supports for parenting a child, who has been removed from their birth family and country of origin and suffered trauma or attachment issues. Their limited access to adoption specific information prior to the adoption can lead them to feel unprepared and set up unrealistic expectations, for both themselves and the child. Expatriate adoptive parents miss out on the opportunity to connect with a Social Worker, who conducts post-

placement visits, as well as the opportunity to be connected in to both professional (specific therapeutic support) and peer support.

Consequently, as a result of this limited information and support, adoptions through EA arrangements are more at risk of disruptions and breakdowns.

## Different levels of pre- and post-adoption support

The Australian Government has recognised that EAs require the same level of support offered to intercountry adoptive families, and the Australian Government (DSS) has funded two new services:

- The Intercountry Adoption Family Support Service<sup>1</sup>, delivered by ISS Australia with lead partner LifeWorks; this provides free, independent, nation-wide counselling services (LifeWorks) and information and support services (ISS Australia) to intercountry adoptees and their families, including EAs.

- The Intercountry Adoption Tracing and Reunification Service<sup>2</sup>, delivered by ISS Australia, which provides specialised search and reunion services for intercountry adoptees and their families, including EAs (see Monthly Review No. 207).

- Intercountry Adoption Australia (IAA) is an Australian Government initiative, which is a national service and central point for families at all stages of the intercountry process. IAA has established a website and a national telephone line, and assists with all enquiries, such as referrals to the Department of Immigration and Border Patrol regarding citizenship and visa issues, which can be particularly complex when EAs occur outside the official intercountry adoption process. The IAA team is aware that expatriate families are a more vulnerable group, as they are not generally connected to other services, and will support them to achieve desirable outcomes<sup>3</sup>.

**Given the increase of EA cases, the ISS/IRC welcomes the measures developed by the Australian government to better frame, monitor and support these 'at risk adoptions'.**

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## References:

<sup>1</sup> See: <http://www.lifeworks.com.au/icasupport.html>.

<sup>2</sup> See: <http://www.iss.org.au/ourservices/intercountry-adoption-tracing-and-reunification>.

<sup>3</sup> See: <http://www.intercountryadoption.gov.au/post-adoption-support/>.

## FORTHCOMING CONFERENCES AND TRAININGS

- **France:** **a)** *Accueillir et accompagner les enfants avec un handicap psychique*, COPES, Paris, 9 - 12 May 2017; **b)** *Troubles des conduites, troubles du comportement*, COPES, Paris, 15 – 16 and 30 – 31 May 2017; **c)** *Approche transculturelle de l'enfant et de sa famille*, COPES, Paris, 29-31 May 2017. For further information, see: <http://copes.fr/>.
- **Germany:** *Global conference on children on the move*, Initiative for Child Rights in the Global Compacts, Berlin, 12 and 13 June 2017. For further information, see: <http://www.childrenonthemove.org/global-conference-on-children-on-the-move/>.
- **Greece:** *Experience's from the adoption triad and how to support children in need with alternative solutions*, Adoption-Family Search and Alternative Care, International Conference of Roots Research Center NGO, Marathon Bay, 25 – 26 May 2017. For further information, see: <http://www.roots-research-center.gr>.
- **Switzerland:** *Les droits de l'enfant en situations de migration en Suisse: Protection, prestations, participation*, CIDE, UNIGE, IDE and other partners, Bern, 4 – 5 May 2017. For further information, see: <https://www.unige.ch/cide/fr/actualites/colloque-international-les-droits-de-lenfant-en-situations-de-migration-en-suisse-protection-prestations-participation/>.
- **United Kingdom:** **a)** *Fostering for Adoption: providing and managing a service*, Workshop, CoramBAAF, London, 10 May 2017; **b)** *Ensuring good transitions into adoption – Preparing and supporting children, their foster carers and prospective adopters*, Conference, CoramBAAF, Leeds, 23 May 2017. For further information, see: <http://www.corambaaf.org.uk/training>.
- **United States of America:** **a)** *Shared Parenting*, International Conference, National Parents organisation, International Council on Shared Parenting, Boston (MA), 29 – 31 May 2017. For further information, see: <https://conference.twohomes.org/Home>; **b)** *Annual Global Social Service Workforce Alliance Symposium*, Case management, Washington DC and webcast, 24 May 2017. For further information, see: <http://www.socialserviceworkforce.org/symposium>.

EDITORIAL COORDINATION: Cécile Jeannin

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