



# Monthly Review

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## EDITORIAL

### When do the principles of human dignity trump those of nationality?

*Can returning to the fundamentals of human dignity help us navigate through the myriad of competing interests to ensure that we cultivate a child-rights approach to questions of nationality in alternative care, adoption and international surrogacy arrangements to prevent statelessness?*

Despite the right to nationality for everyone (Art. 15 of the Universal Declaration of Human Rights (UDHR)), 10 million people worldwide remain stateless<sup>1</sup>. Citizenship or nationality, as interchangeable terms, 'not only provides people with a sense of identity, it entitles individuals to the protection of a State and to many civil and political rights. Indeed, citizenship has been described as "the right to have rights"<sup>2</sup>.

At the very least, States are responsible for upholding the rights of its nationals (e.g. justice, social welfare, education, healthcare etc), but who is responsible for those who are stateless? When should principles of human dignity and brotherhood apply (Art. 1 UDHR), especially when statelessness would occur?

For children, this means that irrespective of the circumstances of their birth and costs to the State, they likewise have a right to a nationality, and States have an obligation to prevent statelessness. Yet, countless populations of children remain stateless in alternative care, adoption and surrogacy matters. What can be done to resolve such situations and prevent the emergence of new cases ?

#### Alternative care

International standards clearly require that a child must acquire a nationality at birth, or as soon as possible after birth (Arts. 3 and 7 of the United Nations Convention on the Rights of the Child (UNCRC)). The obligations of the UNCRC are not only directed to the State of birth of a child, but to all States, with which a child has a link, such as for example parentage. Yet, what happens when children are abandoned to unknown parents or to parents, who are stateless in countries where *ius sanguinis* [the right of blood] applies? What can be done to protect the status of stateless migrants, particularly children, and facilitate their naturalisation? Should principles of human dignity require the basic right to nationality, when the child would otherwise be stateless?

As a minimum, States must register the birth of all children born on their territory. The registration of birth should be free of charge and

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be performed without delay. The fulfilment of the right to be registered at birth is closely linked to the realisation of many other rights, *inter alia*, to a name, nationality and identity. However, in many countries, obstacles to birth registration may exist, such as a lack of awareness within communities, cumbersome administrative procedures, direct and indirect costs, or discrimination faced by ethnic minorities. Fortunately, bodies, such as the United Nations High Commissioner for Human Rights and the European Network on Statelessness, have been mandated to tackle such obstacles with promising results, with the Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child challenging States when breaches occur<sup>3</sup>.

ISS strongly advocates for the granting of nationality to all children born on their territory, who would otherwise be stateless, in a spirit of brotherhood.

### Intercountry adoption

In matters of intercountry adoption, *prima facie*, all children initially have the nationality of their State of origin. Questions then arise as to whether the child should lose the nationality of his or her State of origin when dual nationality is allowed, or which nationality is given in expatriate adoptions (see Monthly Review No. 210 of March 2017). What persuasive opinions prevail against the automatic granting of nationality of the receiving State to the adopted child? Arguably, given that adoptions are ‘full adoptions’ under the 1993 Hague Convention, where there is a termination of rights between the biological parents and the child as well as the creation of new parentage ties with the adopters, once adopted, the child should have the same rights as a biological child of the adopters. Would this not include the granting of the nationality of the adopters?

Moreover, Article 5.c of the 1993 Hague Convention imposes on the Central Authority the obligation of ensuring that ‘the child is or will be authorised to enter and reside permanently in that State’ (see also Articles 17.d and 18). This view regarding the acquisition of nationality is clearly supported by the Guide to Good Practice No. 1 (GGP1) of the Hague Conference on Private International Law, and also by a recommendation of automatic granting of nationality<sup>4</sup>. The 2005 Special Commission on the practical operation of the 1993 Hague Convention made a clear recommendation that the ‘child be accorded automatically the nationality of one of the adoptive parents or of the receiving State, without the need to rely on any action of the adoptive parents. Where this is not possible, the receiving States are encouraged to provide the necessary assistance to ensure the child obtains such citizenship’<sup>5</sup>.

Such a right should not be linked to revocation/termination mechanisms of adoption orders. This can prevent the risk of stateless adoptees, particularly risky for adoptees where there has been an adoption breakdown. For example, regrettably, situations have arisen where adoptees have never been granted the citizenship of the receiving State and can be deported to the State of origin despite having no ties. Countries, such as Germany, have established that even in sensitive situations such as an adoption breakdown, the child benefits from a valid legal status, which is established in conjunction with the immigration authorities.

ISS advocates for the automatic granting of nationality to adoptees of the Receiving State, to ensure that they are afforded the full protections in the country they have been adopted into, in a spirit of brotherhood.

### Surrogacy arrangements

Given birth through surrogacy arrangements is relatively recent, children born through these circumstances present an emerging set of cases of where statelessness can occur. Applicable nationality laws are being tested. How should *ius sanguinis* be applied, when there are potentially links to five persons in the conception of the child? How should *ius soli* [the right of the land] apply – *i.e.* the right of anyone born in the territory of a state to nationality or citizenship – in cases where neither the surrogate mother or intending parent have a link other than the birth?

Irrespective of how one answers such questions – discussions beyond the scope of this editorial<sup>6</sup> – do not questions of common humanity place an obligation on States to ensure that there is an adequate framework on nationality for all children conceived through surrogacy? States should be guided by the

overriding importance of avoiding a situation in which a child is stateless, as deemed by the European Court of Human Rights (see p. 6).

ISS advocates that States should apply its nationality laws under the same conditions as any other child born to that parent, if parentage is established or recognised by a State. Any other practice would be arguably discriminatory to children born through surrogacy arrangements.

**ISS encourages States to foster a human dignity approach to granting of nationality and development of concrete solutions, especially in cases where statelessness would occur. Surely, as we express our national identity through patriotism and love for one's country, should we not express our identity as human kind as our love for the world?**

The ISS/IRC team,  
August 2017

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## References:

<sup>1</sup> #IBelong Campaign to End Statelessness, <http://www.unhcr.org/ibelong-campaign-to-end-statelessness.html>.

<sup>2</sup> Inter-Parliamentary Union and UNCHR (2005). *Nationality and Statelessness: Handbook for Parliamentarians N° 11*; available at: [http://www.europarl.europa.eu/hearings/20070626/libe/leclerc\\_en.pdf](http://www.europarl.europa.eu/hearings/20070626/libe/leclerc_en.pdf). See also: UNHCR, *Nationality and Statelessness: Handbook for Parliamentarians N° 22*, July 2014; available at: <http://www.refworld.org/docid/53d0a0974.html>.

<sup>3</sup> Example: UNHCR Expert meeting, 'Interpreting the 1961 Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation', Tunisia, 31 October – 1 November 2013; <http://www.statelessness.eu/resources/no-child-should-be-stateless>; African Committee of Experts on the Rights and Welfare of the Child, Decision on the communication submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya), 22 March 2011; available at: <http://www.acerwc.org/download/decision-on-the-communication-against-the-republic-of-kenya/?wpdmdl=9747> ; UNHCR, *Good Practices Paper - Action 1: Resolving Existing Major Situations of Statelessness*, 23 February 2015; available at: <http://www.refworld.org/docid/54e75a244.html>.

<sup>4</sup> HCCH (2008), *The Implementation and Operation of the 1993 Inter-country Adoption Convention: Guide to Good Practice No. 1*, Section 8.4.5; available at: [http://www.hcch.net/upload/adoguide\\_e.pdf](http://www.hcch.net/upload/adoguide_e.pdf).

<sup>5</sup> HCCH, Conclusions and Recommendations of the Second Meeting of the Special Commission on the practical operation of the 1993 Hague Convention (17-23 September 2005); available at: [https://assets.hcch.net/upload/wop/concl33sc05\\_e.pdf](https://assets.hcch.net/upload/wop/concl33sc05_e.pdf).

<sup>6</sup> Wells-Greco, M (2015). *The Status of Children arising from Inter-Country Surrogacy Arrangements: the Past, the Present, the Future*. Université de Maastricht. La Haye, Pays Bas : Eleven International Publishing ; Chapter 5.

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## BRIEF NEWS

### Memorandum of Understanding signed between ISS and RELAF

In the framework of its shared values and longstanding cooperation on a variety of activities – in particular, advocacy, technical assistance and regional initiatives – ISS and the *Red Latinoamericana de Acogimiento Familiar* (RELAF) decided to sign a Memorandum of Understanding (MoU) aimed at further strengthening and consolidating this close partnership. The MoU focuses on training, research and publications, advocacy and technical assistance as well as the strengthening of its networks. This MoU has also been signed in the context of RELAF's recent establishment of the *Centro de Excelencia por la Niñez* [Centre of Excellence for Children] (CEN), together with Hope and Homes for Children, as a platform to support reform processes in alternative care and aimed at the deinstitutionalisation of children in Latin America and the Caribbean. It includes a web-based forum for the training, support and strengthening of human resources working in this field. ISS and RELAF are currently planning concrete actions to implement this MoU.

For further information, see: *Centro de Excelencia por la Niñez*, <https://centrodeexcelenciaporlaninez.org>.

## NOW AVAILABLE: Responding to illegal adoptions: A professional handbook - Publication of the French and Spanish versions

In March 2016, the ISS/IRC published *Responding to illegal adoptions: A professional handbook*. In light of the large demand for translation, this publication has now been translated into French and Spanish, and can be downloaded free-of-charge via the ISS/IRC website. As a reminder, this handbook is structured around four main chapters, each focusing on the potential responses available to a finding of an illegal adoption from a specific standpoint: legal, psychosocial, social and political. Personal testimonies and case studies are woven into the chapters, highlighting the harsh reality, challenges and achievements of those most affected.

The publication in all three languages is available at: [http://www.iss-ssi.org/venteonline/category.php?id\\_category=5&id\\_lang=1](http://www.iss-ssi.org/venteonline/category.php?id_category=5&id_lang=1).

## UNICEF is looking for a Child Protection Specialist (Social Welfare) at its headquarters in New York

For 70 years, UNICEF has worked in 190 countries and territories to protect the rights of every child. Defending children's rights throughout their lives requires a global presence, aiming to produce results and understand their effects. Along with partners, including governments, NGOs, civil society actors and the private sector, UNICEF promotes the strengthening of all components of child protection systems – human resources, finances, laws, standards, governance, monitoring and services. Depending on the country context, child protection systems may cut across part of the social welfare, education, health and security sectors. How can you make a difference?

The Child Protection Specialist (Social Welfare), P-4 develops and supports the work of the office around prevention and response to violence against children, social welfare systems' strengthening, including family support services, adoption, alternative care and social protection. The Specialist contributes to the achievement of concrete and sustainable programme/project results according to plans, allocation, results-based management approaches and methodology and UNICEF's Strategic Plans, standards of performance and accountability framework.

More detailed information about the job description and the application is available at: <https://www.impactpool.org/jobs/296737>.

## LEGISLATION

### Recognition of indigenous customary adoption by Quebec's lawmakers

*Luce de Bellefeuille, a Consultant and Author, as well as former Director of the Secrétariat à l'adoption internationale<sup>1</sup>, and Hugues Letourneau, a Lawyer specialising in children's rights, and former Deputy-Director of the litigation unit of the Youth Centres in Montreal, outline here the recent legal amendments introduced in Quebec with regards to customary adoption.*

For several years, the courts in Quebec have been studying the validity of indigenous customary adoption. For the biological parents, the adoptive parents and particularly for the child at the centre of a dispute, a threat always hangs over the stability of this figure, which is specific to indigenous peoples, but is not integrated into Quebec's Civil Law. This context motivated the National Assembly of Quebec to adopt, on 16 June 2017, a law amending the Civil Code and other laws relating to adoption and the disclosure of information [*Loi modifiant le Code civil et d'autres dispositions législatives en matière d'adoption et de communication de renseignements*]. This law recognises, among other issues, 'the effects of indigenous customary

adoption when it is carried out in accordance with a tradition, which is in harmony with the principle of the child's interests, is respectful of his or her rights and has the consent of the persons concerned'<sup>2</sup>. It should be noted that the lawmaker did not define indigenous adoption, allowing each community to do so. However, in accordance with a judgement of the Supreme Court in 2013, 'this practice requires that a parent having given birth to a child entrusts the child to someone, whom he trusts, to raise and assume parental responsibility for the child, when he or she feels capable of doing so. This occurs naturally after talks between the adults concerned'.

**Legal dualism<sup>3</sup>**

In Canada, the Inuits and First Nations are subject to two legal systems, one at federal level, and the other at provincial level, each having shared or exclusive authority. This dualism in legislation, in place since the end of the 19<sup>th</sup> century, has created conflicts of jurisdiction, which are then transferred to the courts. The courts are then required to untangle the confusion, contradictions and grey areas. However, the resulting rulings have given rise to amendments to laws and regulations, which take into account the reality of the indigenous population.

For several decades, the representatives of these communities have continued to claim recognition for their customs in the jurisprudence applied to adoption. In 2008, following the debate concerning the amendments to the Law on the protection of young people [*Loi sur la protection de la jeunesse*] (LPJ), a working group was granted the mandate 'to study customary adoption in Quebec and abroad, in order to offer different scenarios of recognition in comparison with Quebec's legislation'<sup>4</sup>. These efforts have borne fruit...

### The challenge involved: Differences in concepts

The improved awareness of the characteristics of customary adoption in accordance with the customs and traditions of the indigenous population indicates the importance of this recognition for the First Nations. The main differences are the following:

- **Family:** Nuclear family under Quebec law; extended family in accordance with the tradition of each indigenous community;
- **Confidentiality:** Protected secrecy under Quebec law; open truth for the indigenous population;
- **Parentage:** Severance of the parentage bond under Quebec law; sometimes, preservation of original parentage bond for the indigenous population;
- **Rights of the child:** Individual right under Quebec law; collective (communal) right for the indigenous population.

Over and above these distinctions, the challenge was to transcribe what is an unwritten tradition in a written code, which grants it legal status. There were intense debates on these issues in order to bring together two cultures – one civil, the other traditional.

### Elements for the recognition of customary adoption

This is a summary of the most important elements of this law:

- Each community or indigenous nation names a competent authority to deliver a customary adoption certificate, and the director of Quebec's Civil Registry will then be notified.
- The certificate, apart from information concerning the identity, mentions the names of the biological father and mother, and those of the adoptive parents, and the new name of the child, if necessary. It specifies that the adoption respects the indigenous custom and, if appropriate, the recognition of a parentage bond and the preservation of pre-existing rights and obligations between the child and the biological parents. The certificate confirms that: consent has been duly provided, that the child has been entrusted to the adoptive parent, and that his or her interests have been respected.
- If the indigenous child is subject to an intervention by the Director of Youth Protection, the Director must take into consideration the customary adoption if he or she considers that it safeguards the interests of the child and respects his or her rights.

### The practical impact

This historic recognition has been met with satisfaction from the indigenous peoples in Quebec. It allows them to live in harmony with their customs. When they follow their values and traditions, they will make decisions, which will both protect the interests and rights of their children and be recognised as legal by Quebec's society. It must be emphasised that the rules summarised above will enter into force on 16 June 2018.



The confirmation of this recognition of customary adoption is a guarantee of mutual respect, and therefore ensures that those people, who work on adoption files, are better informed and understand the complexity of the issues involved. It contributes to a reciprocal enrichment between indigenous and non-indigenous cultures. Enshrined in a law, this recognition reflects a change of mindset, which may, perhaps in the long term, open up a more comprehensive view of adoption.

#### References:

<sup>1</sup> *Secrétariat à l'adoption internationale* (Central Adoption Authority of Quebec, Canada): <http://adoption.gouv.qc.ca/>.

<sup>2</sup> Lavallée, C (2011). 'L'adoption coutumière et l'adoption québécoise : vers l'émergence d'une interface entre les deux cultures?'; in *Revue générale de droit*. Wilson et Lafleur, inc.

<sup>3</sup> *Projet de Loi 113 modifiant le Code civil et d'autres dispositions législatives en matière d'adoption et de communication de renseignements*. Explanatory notes. Éditeur officiel du Québec, 2016.

<sup>4</sup> Excerpts of the study: Picard, M (2017). *Étude décrivant l'historique de l'encadrement législatif et réglementaire des paliers fédéral et provincial régissant les activités des peuples autochtones au Québec et la situation actuelle*. Maryse Picard is an expert witness before the Commission of Inquiry on the relations between native peoples and some public services [Commission d'enquête sur les relations entre les Autochtones et certains services publics au Québec].

## European Court of Human Rights: Surrogacy and nationality

*On 26 June 2014, the European Court of Human Rights (ECtHR) decided that the refusal of the French authorities to recognise and establish, under domestic law, the right to nationality of children born through surrogacy violated the children's private life.*

In this case<sup>1</sup>, which is one of the first judgements of the ECtHR in relation to surrogacy<sup>2</sup>, a couple of French nationality resorted to a surrogate mother in California. After the children's birth in October 2000, their birth certificates were established in California through a judicial decision, mentioning the genetic and intending father as the 'legal father' and the intending mother as the 'legal mother'.

#### Reactions of the French authorities

After their arrival in France in November 2000, the French authorities stated that the Californian judgement was contrary to the French concept of international public policy and of French public policy – surrogacy being prohibited in France, and that the validity of the civil-status certificates drawn up on the basis of that judgement could not be recognised on the French territory. Without recognition of the birth certificates, and therefore of the legal parent-child relationship, the two children did not have French nationality, did not have a French passport, and had no valid residence permit. Indeed, the acquisition of the French nationality is guaranteed to children, of whom at least one parent has the French nationality. As a consequence, in order to carry out administrative tasks (social security, enrolling at the school canteen, or in an outdoor centre,

for instance), the intending parents had to produce the US birth certificates together with an officially sworn translation to prove that the children were theirs, and the success of their application depended on the good will of the person dealing with it.

This situation has nowadays changed, thanks to the judgements of the French Cour de Cassation of 2015 and 2017<sup>3</sup>, which allow for the biological father to be registered on the birth certificate as the child's legal father in all cases of surrogacy arrangements.

#### Decision of the ECtHR

The Court applies a distinction between the family life of the parents and the children, and the private life of the two children born through surrogacy. While it considers that the family life of the applicants has not been violated by the French authorities, the conclusion is not the same for the children's private life. The Court considers that the non-recognition of the birth certificates, and therefore of the parents' relationship undermines the children's identity within French society. It recalls that, whilst Article 8 of the European Convention of Human Rights does not guarantee a right to acquire a particular nationality, the fact remains that nationality is an element of a person's identity. Moreover,

biological parentage is a component of a person's identity, and depriving such recognition cannot be seen to be in the child's best interests. As a consequence, the Court concluded that the

French authorities had violated the children's private life in preventing both, the recognition and establishment, under domestic law of their legal relationship with their biological father.

The ISS/IRC commends the ECtHR for this judgement, which evidences the need to respect the children's right to nationality when involved in surrogacy. The Court specifically recalled that nationality is an essential part of one's identity, along with biological parentage and access to origins. The ISS/IRC strongly believes that children should not be discriminated against on grounds of their procreation and birth circumstances. Indeed, States should apply nationality rules irrespective of how children were born, in order to avoid statelessness.

Separately, the recognition of the legal parentage should be balanced and not necessarily automatically granted. An assessment of the surrogacy's arrangement should be conducted<sup>4</sup> to ensure its compliance with domestic laws, public order as well as human rights standards (human dignity, prevention of the sale of children and of the exploitation of surrogate mothers, and long-term considerations for the child), such as those currently worked on by the Group of Experts led by ISS. Indeed, the Committee on the Rights of the Child stated, while reviewing USA's report in 2017, that 'widespread commercial use of surrogacy in the State party may lead, under certain circumstances, to the sale of children'<sup>5</sup>. In those cases, should parentage be granted?

#### References:

<sup>1</sup> *Menesson v France*, Application No. 65192/11, 26 June 2014; available at: <https://www.google.ch/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwikma2fzOrVAhUmLsAKHaUADkMQFggyMAE&url=http%3A%2F%2Fhudoc.echr.coe.int%2Fwebsites%2Fcontent%2Fpdf%2F001-145389%3FTID%3Dthkbhnlzk&usg=AFQjCNH6ExRcwt0asHaCoUBlh32tn6G8dw>.

<sup>2</sup> See, in particular: *D. and others v Belgium*, Application No. 29176/13, 8 July 2014; *Foulon and Bouvet v France*, Applications Nos. 9063/14 and 10410/14, 21 July 2016; *Laborie v France*, Application No. 44024/13, 19 January 2017.

<sup>3</sup> See: Press releases and access to the four 2017 judgements, [https://www.courdecassation.fr/communiqués\\_4309/gpa\\_realisee\\_37266.html](https://www.courdecassation.fr/communiqués_4309/gpa_realisee_37266.html); as well as the press release and the two 2015 judgements, [https://www.courdecassation.fr/jurisprudence\\_2/communiqués\\_presse\\_8004/archives\\_6783/2015\\_8003/civil\\_enfants\\_32237.html](https://www.courdecassation.fr/jurisprudence_2/communiqués_presse_8004/archives_6783/2015_8003/civil_enfants_32237.html).

<sup>4</sup> See: *D. and others v Belgium*, Application No. 29176/13, 8 July 2014.

<sup>5</sup> Committee on the Rights of the Child, Concluding Observations (Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography): United States of America, CRC/C/OPSC/USA/CO/3-4, 12 July 2017, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fUSA%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fUSA%2fCO%2f3-4&Lang=en).

## PRACTICE

### South Africa: Paternity and family building

*In South Africa, more babies are orphaned or abandoned than they are adopted. The circumstances vary, but frequently, they feature absent fathers. Adoption is a means of rebuilding families (with fathers) in a fractured society. This article contextualises paternity in adoption through the personal stories of South African men.*

This article is based on the research undertaken by Deborah Minors<sup>1</sup> for her Master of Arts in Journalism degree (University of the Witwatersrand, 2015). The dissertation comprised a scholarly report and long-form journalism piece, entitled 'Who's your Daddy?

The untold adoption stories of South African men'.

#### Then: Apartheid South Africa 1948

The National Party came to power in South Africa in 1948. It implemented Apartheid and an ethos of Christian Nationalism. Extra-marital pregnancy was considered sinful. To avoid

'scandal', unmarried pregnant women were spirited away to give birth in secret. Some relinquished their babies to adoption. These birth mothers had to then simply resume their lives. Birth fathers barely featured, and if they did, they had no rights or responsibilities. Their paternity was only recorded if the birth mother supplied it.

Adoptions were arranged geographically. Under the auspices of the Dutch Reformed Church, the National Council of Women or the Christian Social Service arranged adoptions for Afrikaans-speaking white South Africans. Child Welfare, a networked national agency, arranged adoptions for English-speaking white South Africans. These birth mothers stayed at the Princess Alice Adoption Home in Johannesburg during their pregnancies. Black South African adoptions were community-based and largely unregulated because black South Africans were considered second-class citizens.

#### Now: The New South Africa 1994

In 1994, Apartheid was dismantled, and Nelson Mandela became South Africa's first democratically-elected President. In 1996, South Africa produced a Constitution and Bill of Rights among the most progressive in the world. In 1999, the new Department of Social Development (DSD), in charge of adoption, developed a 10-point strategic plan, the first of which was the 'rebuilding of family, community and social relations'.

Chapter 15 of the *Children's Act 38* of 2005 (as amended) governs adoption. Any individual – married couples, same-sex persons, single women, etc. – can adopt a child if they meet the DSD's stringent criteria.

Although the *Natural Fathers of Children Born out of Wedlock Act* of 1997 grants unmarried birth fathers rights (and responsibilities), these men seldom feature in adoption research in South Africa. This 'silence' may be because (a) the birth father was not informed of his paternity, (b) he was informed but was reluctant or not permitted to participate, or (c) he absconded. Regrettably, this is often the case. In 2006, South Africa had the second highest rate of absent fathers in Africa after Namibia.

#### Reckless abandonment

These men flout their paternal responsibilities, and the pregnant young women they abandon are often just teenagers. Usually impoverished and unsupported, these girls give birth alone and their circumstances dictate that abandoning their newborn is their only option. Child Welfare Johannesburg estimates that over 3,500 babies were abandoned in South Africa in 2010. Some infants are left in dumpsters or vacant fields to die; others in hospitals or public places to be found. The lucky ones survive and are adopted.

Johannesburg thespian Gerard (47) and his partner Robert adopted two children, Lerato and Thulani. Gerard read a play suggesting one is 'cursed' if one does not know who one's father is. *'How can you curse my children and so many children in South Africa? That's why it's taken so long for Black people to adopt; the father has to be known, otherwise you're "cursed"',* he says. Gerard's children will never know their birth parents. Abandonment for adoptees raises questions, for which there are no answers.

#### Remembering men in adoption

Although adoption is often represented as a 'happily ever after' scenario, the dynamics in adoptive families differ from traditional families. Adoption begins with loss, so it is located in a trauma framework. Psychologists identify seven issues in adoption that all members of the adoption 'triad' (adoptee, birth parents, adoptive parents) experience. These are: loss, grief, rejection, guilt, identity, intimacy, and control.

Feelings of rejection do not stem only from abandonment. Johannesburg resident Anton (43) was three when Child Welfare removed him from his negligent, alcoholic parents. *'I was in foster care a block away from my parents and they never visited',* he says. He felt rejected and undermined. Anton's sister adopted him when she was 21 and he was seven. Anton was bullied so his brother-in-law introduced him to boxing.

*'I had a blood nose every night but I had to prove that I was worthy',* he says. Anton became a World Champion and a father, and today he teaches street-children to box. *'I've always had low self-esteem because I was adopted but I've done a lot of good and realised, "you're worthy, Anton"'*.



### Add-Option to preserve and strengthen families

The Annual Report of the DSD, in 2006, mentioned 251 intercountry adoptions and 2,256 domestic adoptions. Similarly, a report based on the National Adoption Register indicated an average number of 2,416 court-ordered adoptions in South Africa between April 2004 and March 2009 – a shockingly low figure considering there are some 15,590 children in residential care.

Johannesburg resident Lyon (50), his wife and two teenagers chose to improve that number. Lyon moved from China to South Africa in 1990. They adopted Samuel at four days old. ‘South

*Africa is such a fractured society. We wanted to give one child a chance’,* he says. Lyon lauds the professionalism of the DSD. ‘*They’re careful not to place a child with just anyone’,* he says. Lyon has photographs of Samuel with his birth mother to share when he is older.

The DSD’s national *Add-Option* campaign in 2013 encouraged South Africans to consider adoption. Over four years, the number of orphans had increased 29 percent but the number of adoptions had decreased by 52 percent. The DSD encouraged adoption as a way of ‘preserving and strengthening families’.

**Increasingly, legislation holds men, who sire children, also responsible for their offspring. There is an African proverb: ‘It takes a village to raise a child’, and this includes fathers, just as forging families through adoption does. South Africa’s fatherless children and struggling single mothers deserve no less.**

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### References:

<sup>1</sup> The author was born in 1974 in a gold mining town in Gauteng. She is the daughter of a deceased adoptee father, an unmarried mother to a daughter, whose father is entirely present, and a foster aunt. She lives in Johannesburg and works in communications at the University of the Witwatersrand.

<sup>2</sup> Fictitious names.

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## INTERDISCIPLINARY RESOURCES

### The life book adapted to adoption: *Our Very First 1095 Steps*

*Katarina Tomsic, President of the Slovenia Adoptees' Society provides a detailed presentation of the life book she has designed for adoptees and adoptive parents, which aims to ensure that no questions remain ‘unanswered’.*

*Our Very First 1095 Steps* is a comprehensive adoption life story book, written based on my own experience of adoption. It supports prospective parents through their decision-making processes and their preparation for adoption, covering the first 1095 days of life together.

#### Background

The book is based on my own questions as an adoptive child, and on my work as President of the Slovenian Adoptees' Society in Slovenia, as Adoption Lecturer and as an Adviser. It aims to adapt the classic life book to the adoption experience – who was expecting us when we came home, when we took our first steps, how we celebrated our birthday, family holidays, etc. I still remember myself as a girl, wishing to have my own life book – in which questions about my life could be answered.

*I am not an adoptive daughter, I am a daughter. I have two mothers and I have the right to know my origins.*

During my childhood, being adopted was not so ‘modern’ as today. My classmate easily said, ‘*You do not have a mommy*’; and you could not answer that, actually, you had one more than she did: one that gave you life and another one that gives you love. I clearly remember the day when we had to make our life milestone strips. I think that was the first time I realised that I was adopted, and I did not feel self-confident about it. When my classmate’s life strips began with pictures of a pregnant mother and the first ultrasound, I felt empty. Mine began with a black and white image of an over-one-year-old baby. Years later, I still wanted such a booklet, but I could not fill anything as I did not know the answers. There was no space for a different life story. That is why I decided to write my own adoption life book – for me, for YOU, for all of us touched by adoption. I wanted to ensure that no

questions were left 'unanswered' and that no moment was lost.

### Objectives

The book is written with as many details as possible of the child's life story, so as to tell him or her how wished for and loved he or she is. It frames adoption positively and shows the child that he or she is not different from his or her classmates. Both were wished for, but each one of them has his or her own life story.

This book is also a great tool for prospective parents, who are preparing themselves for an adoption, in facilitating their communication with the child about his or her adoption. Through its completion, the child will see his or her adoption as a chapter of his or her life, which he can be proud of. The book will soon become his or her favorite fairytale about how he or she came into the family.

Once the life book is completed and examined, parents will lose their fear of how and when to talk to the child about his or her adoption. It will be a spontaneous process through the child's own life story, supported by Tody Bear. This bear, with a red heart-shaped nose and a belly with a map of the world, symbolises the love and equality of children from all over the world, and the importance of preserving the 'child's identity – a right of every child.

### The fundamental right to know his or her roots. That is part of us. That is us

Most people want to discover their identity and that of the woman, who gave birth to them. It is not only normal, but it is a fundamental human right that adoptees should be enabled to exercise. It has been proven that people adopted through an open adoption process experience fewer problems and are better able to avoid trauma.

Therefore, the book asks questions which could be of great help to the child in this regard – for example, who was the social worker who led his or her adoption. In my experience, professional social workers have a great deal of information

about the child's identity. The worker, who undertook my adoption, was an encyclopedia of information about who I am.

### Strengthening the child's confidence

The book strengthens the child's confidence and ensures that his or her biological mother is introduced in a positive way. Adoption is, and always will be, part of us. Sometimes, the stories of biological parents are extremely difficult. Some parents do not know how to explain to their child that his or her biological parents suffered from addictions or were offenders, etc. We should not hide things from the child, but try to present them in a positive way. Things may be heard differently: *'Your mother was an addict, so she put you up for adoption'*; or: *'Your mom had a hard life, but because she loved you and wanted the best for you, she gave you up for adoption. This made us happy, and we love you the most in the world'*.

I am pleased that the 'new-age' parents have generally changed their view of adoption – they are proud of it and feel gratitude towards the woman, who made them parents. However, adoption is still taboo in the social environment. Inappropriate questions arise – why have you adopted a black child, or are you expecting some gratitude for having 'saved' him or her – that put the adoptive child in a position of non-equivalency with a birth child. Therefore, there is still much awareness-raising to be undertaken in general. An adoptee should not have a classmate say to him or her that he or she does not have any parents.

Similarly, many countries have hypocritical legislation. On the one hand, it states that adoption creates the same ties as in a biological family; whereas, on the other hand, laws exist (often excepting those, which create the adoption), which create a distinction between a child and an adopted child. After his or her adoption, a child does not want to be called an adoptive child (adoptee), he just wants to be a child and his or her parents just parents.

**I would like to end with thoughts on successful adoption. The recipe for successful adoption is the acceptance of a child with everything he or she is – including his or her past and identity. I believe there are no failed or successful adoptions. There are only failed or successful acts of parenting.**

## Group work with adopted children and young people

*This good practice guide, recently published by CoramBAAF<sup>1</sup>, provides essential advice to adoption agencies, which are considering setting up a group for adopted children or young people, or which already run such a group. This guide considers the practicalities of setting up a group, how to structure it, how to deal with the potential difficulties, and how to keep the group in the long term.*

This good practice guide reminds us that, every year, several thousands of children in the United Kingdom are adopted from care by people, who are not relatives, and that three quarters of these children are between one and four years old, and nearly 20% between nine and five. Considering the difficult experiences they have lived and the identity issues they will face, support will be essential. One form of support consists in group support, which, according to the guide, 'is one of the most powerful and impactful tools we have available'. The term 'group' covers a 'range of activities that bring together adopted children and young people – sometimes with, and sometimes without, their adoptive parents'. Five different groups have also been studied, and for each group, the structure, purpose, activities and funding are described.

### Purpose of group work

The guide insists on the fact that different types of group activities exist for adopted children, and that the people in charge of the groups are clear about the purpose of their work. According to the groups' respondents, the majority of the groups offer children an opportunity to socialise, have fun and develop a 'secure and healthy sense of identity'. A minority thought that groups offered children a possibility to share information and consult in order to improve professional practice.

The guide insists on the fact that it is essential, when starting a group, to define precisely its purpose, whether it will have a therapeutic role or will focus on offering activities and learning opportunities, or both.

### Indications of success or long-term benefits

There are a few ways for agencies to know that their groups were successful, in particular the following: children and young people continue to come, participants want to stay or become

volunteers once they have left the group, participants give positive feedback, there are noticeable improvements in a child or young person's confidence, children make friends, relationships with families are improved, and participants feel that sharing their experiences will make a difference to other adopted children. The guide also mentions that long-term benefits must also be kept in mind when creating a group. Long-term benefits may be the fact that children have built lasting friendships or the way they will parent their own children. The discussions within the groups may also influence young people, who intend to contact their birth families.

### Creating and sustaining the group

Many issues must be considered before setting up a group, such as whether to include or not the parents, the age limits, the size of the group, its goal, and how it will be publicised. The guide explains how to create a solid group framework. Support at senior level and supervision are important, as well as considering the funding and budgets, and the staffing issues: experienced workers are essential. The timing must be well defined and the quality of the venues is important.

How to run a group to create a safe and engaging environment is well explained, through detailed guidance on how to plan and run sessions, a list of possible activities, a policy regarding possible trips out and the way to start a session. The food is also a topic, which must be decided. Rules of engagement must be agreed on without creating conflicts.

### Involvement of children and young people

Three chapters focus on the importance of involving and including children and young people, of promoting positive behaviour and of

Legislation in England has recognised the importance of providing support to adopted children and young people, including group work:

*'Since January 2006, local authorities have been required under regulations to provide opportunities for adopted children to meet together. (...) The following services are prescribed as adoption support services (...): services to enable groups of children, adoptive parents and natural parents or former guardians of an adoptive child to discuss matters relating to adoptions'.*

HMSO, 2005, Adoption Support Services, Reg. 31a)



balance safety and opportunity. For example, the issue of tracing birth relatives is a sensitive subject: some parents remove their children from the groups because they feel their children start asking questions about their birth families as a result of the group discussions; and some parents think it is useful that children hear about experiences from other children.

Sustaining the group implies, among other criteria, to be responsive to reviews and to be supervised in order to be helped during difficult phases. The guide also explains the importance of being aware of the possibility of disruption and of thinking about how to handle it.

**In conclusion, this publication shows us, through research, that groups are a very useful and enjoyable tool for children and young persons, and clearly help children to develop a sense of identity and families to have better relationships. Moreover, this good practice guide gives very practical advice for the creation and sustainability of these groups.**

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#### Reference:

<sup>1</sup> Bond, H (2016). *Group work with adopted children and young people*. United Kingdom: CoramBAAF; on sale at: <https://corambaaf.org.uk/books/group-work-adopted-children-and-young-people>.

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## FORTHCOMING CONFERENCES AND TRAININGS

- **France:** **a)** *Accompagner l'enfant à vivre, formuler, comprendre ses émotions*, Pikler Lóczy, Paris, 11 – 13 October 2017. For further information, see: <http://www.pikler.fr>; **b)** *Les mineurs et jeunes majeurs isolés étrangers, Comprendre pour mieux accompagner*, COPES, Paris, 11 – 13 October 2017; **c)** *Internet et les réseaux sociaux*, COPES, Paris, 4 – 6 October 2017. For further information, see: <http://www.copes.fr>.
- **Switzerland:** *Mother and child*, Film, Espace A, Lausanne, 19 September 2017. For further information, see: <https://www.espace-a.org/>.
- **United Kingdom:** *Life story work: Enhancing confidence in direct work with children and the creation of good quality life books*, CoramBAAF, Leeds, 2 October 2017. For further information, see: <https://corambaaf.org.uk/training-events?page=1>.

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