



# Monthly Review

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The ISS/IRC wishes a Happy Birthday to the 1993 Hague Convention, which, on 29 May 2018, celebrated its 25 years of existence, and renews its daily commitment to ensuring its implementation, with all involved actors.

## EDITORIAL

### Agreement that the adoption may proceed: A simple formality or a true safeguard of ethical adoptions?

*Each of the procedural steps of the 1993 Hague Convention, including the agreement that the adoption may proceed as established in Article 17 c), has its importance in the implementation of adoptions, which respect the unique needs of children, and their rights, which, like those of the prospective adoptive parents, are recognised.*

The procedural steps, which lead to the agreement that the adoption may proceed (AAP), as established in Article 17 (c) of the 1993 Hague Convention (see attached box), is a major opportunity to ensure that the prospective adoption is in the best interests of the child<sup>1</sup>, that there has been no procedural irregularity, and that everything has been undertaken to ensure that the family project succeeds. Since the act is of prime importance, should we not pay close attention to its true meaning and its implementation?

#### A key act in the best interests of the child and in the fight to prevent procedural irregularities?

The AAP intervenes at a crucial moment in the adoption procedure, where a specific child is proposed to prospective adoptive parents (matching), who have been selected because of their capacity to respond to the emotional, psychic, physical and social needs of this child. This step therefore allows, at a fairly advanced but still sufficiently early stage in the procedure, to examine, in depth, the conditions, in which the adoptability of the child in all its facets has been pronounced, and the suitability of the prospective adoptive parents has been evaluated.

When the AAP is issued, the Central Authorities must be able to confirm that all domestic family solutions have been exhausted (see p. 8), that the procedures for obtaining consent comply with the requirements of the Convention, and that the proposal of a child is in accordance with the project as defined with the prospective adoptive parents and with its limits. Are these verifications carried out meticulously? In the absence of sufficient information to reach an enlightened decision, are additional requests made in a

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systematic and fruitful manner? As AAPs are rarely refused, the question arises as to whether the opportunities for checks and preventive measures offered by this act are truly taken into consideration.

### A key act in the hands of a key player?

The responsibility carried by the person, who issues the AAP, is heavy since they are going to decide to validate (or not) the matching, and confirm that the procedure established by the 1993 Hague Convention has been scrupulously complied with to this point. This responsibility extends to the potential suspension of the proceedings, if an irregularity has been observed, thus preventing the human tragedies caused by certain illegal adoptions (see pp. 5 and 6). The decision of this person is therefore crucial. The large majority of Central Authorities, which have recently been consulted on this issue, wish Article 17 (c) to be exclusively in the hands of the Central Authorities. The latter are, indeed, responsible for handling all the adoption procedures, and are independent as they have no interest – in particular financial interest – linked to the finalisation or not of the adoption. However, what happens when the Central Authority in question lacks the expertise and resources necessary for the successful implementation of the procedures?

In accordance with Article 22 (1) of the 1993 Hague Convention, this function is sometimes delegated to accredited adoption bodies, due to their greater knowledge of the case at stake, or because they have the

#### What is the agreement that the adoption may proceed?

It is an act delivered, in principle, by the Central Authorities in the receiving country and the country of origin, once the proposed matching has been undertaken. Through this agreement, both Central Authorities will recognise the appropriateness of the matching, and will ascertain that all the preliminary steps have been respected.

#### Article 17 of the 1993 Hague Convention

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if:

- a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c) the Central Authorities of both States have agreed that the adoption may proceed;** and
- d) if it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

ability to access additional information. Although the delegation to an accredited adoption body is rare in practice, it raises the question of the control and support of these bodies by the Central Authorities. Should entrusting this responsibility to the accredited adoption bodies not be conditional on effective support from the Central Authority, as well as strict supervision by the latter of the accredited body, including resorting to sanctions if necessary?

### A key act in spirit and in reality?

Although this procedure is of capital importance with regards to the aspects covered above, it is not always perceived as such by all the actors. In some countries, the AAP duplicates other national legislation, and becomes a mere administrative formality, in terms of meaning and impact. Furthermore, obstacles exist for its application at various levels: identification of the authority responsible for initiating the AAP, problems in obtaining additional information, the fixing of deadlines, which are too short for some and too long for others, etc.

Given these difficulties, it is important to ensure that the agreement fully fulfils its role, and guarantees that the adoption respects scrupulously the interests of the child concerned. This should lead to a greater harmonisation in practice, for example through the elaboration of a standard model of AAP, which the Permanent Bureau of the Hague Conference on Private International Law is currently working on, or a template for a report on the child, as proposed by the ISS<sup>2</sup>. The impact of the AAP also depends on the cooperation between the countries and all the actors involved: the closer this cooperation, the easier it will be for the AAP to prevent illicit practices as well as potential adoption

breakdowns.

**Article 17 (c) ‘provides one of the most important procedural safeguards in the Convention’, according to the Guide to Good Practice No. 1. All actors must be made aware, and cooperate to ensure its successful implementation. Let us strive together to render this tool to prevent illegal adoption and adoption breakdown truly efficient, in the interests of all, and primarily of the children.**

The ISS/IRC team, May 2018

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## References:

<sup>1</sup> Cantwell, N (2014). *The Best Interests of the Child in Intercountry Adoption*. Innocenti Insight, Florence: UNICEF Office of Research. Available at: [https://www.unicef-irc.org/publications/pdf/unicef%20best%20interest%20document\\_web\\_re-supply.pdf](https://www.unicef-irc.org/publications/pdf/unicef%20best%20interest%20document_web_re-supply.pdf).

<sup>2</sup> International Social Service (2016). *A better future is possible. Promoting family life for children with disabilities in residential care. Manual for professionals*. Available at: <http://www.iss-ssi.org/images/practices/ISS-ManualEnglish.pdf>.

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## ACTORS

- **Belgium – Flemish Community:** This country has updated the contact details of its Central Authority and the list of its accredited adoption bodies.
- **Bulgaria and United States of America:** These countries have updated their lists of accredited adoption bodies.
- **Dominican Republic, Peru, Scotland and Serbia:** These countries have updated the contact details of their Central Authorities and contact persons.

*Source:* Hague Conference on Private International Law, May 2018.

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## ISS/IRC NEWS

### ISS at 13<sup>th</sup> EurAdopt International Conference in Milan

ISS had the honour to partner with EurAdopt in the organisation of their bi-annual meeting with 300 adoption stakeholders, primarily from Europe but also Africa and the Americas. ISS presented on the importance of gathering as much information as possible about the life of the child before his or her adoption (alternative care) as one way to facilitate more robust adoptions as well as uphold the right of the child to identity and access to his or her origins. ISS likewise presented its innovative work on adoption breakdowns (see below).

For further information, see: <http://www.euradopt2018.org/>.

### Publication on breakdowns in intercountry adoption: Now available in English, French and Spanish!

The new publication of the ISS/IRC on breakdowns in intercountry adoption is now available in English, French and Spanish. This new tool was officially launched at the above-mentioned EurAdopt International Conference. The ISS/IRC invites all intercountry adoption and child protection actors to discover it, in order to benefit from existing promising practices, in terms of prevention and management of these delicate situations. Through this publication, the ISS/IRC intends to strengthen the skills of professionals at various levels – legal, cooperation, research, psychomedical and social support, etc. – in order to ensure that adoptive families and adoptees are offered quality support.

The publication is available at: <http://www.iss-ssi.org/index.php/en/resources/publications-iss>.

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## BRIEF NEWS

### Leaflet of the Permanent Bureau of the Hague Conference on Private International Law to celebrate the 1993 Hague Convention's 25<sup>th</sup> anniversary

As the 1993 Hague Convention celebrates its 25<sup>th</sup> anniversary, the Permanent Bureau of the HCCH published, together with the ISS/IRC, a leaflet, which reminds the basic principles of the Convention, and offers an overview of the progress achieved, as well as of the remaining challenges. The leaflet also mentions the numerous tools and publications developed by the Permanent Bureau as well as by the ISS/IRC in order to ensure the effective

implementation of the Convention. It is thanks to the cooperation and trust of the Permanent Bureau, of Central Authorities and other governmental bodies, that the ISS/IRC is able to comply with and pursue its daily mission to share information and promising practices, in order to support child protection professionals worldwide.

The leaflet *1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. 25 Years of Protecting Children in Intercountry Adoption 1993 - 2018* is available at: [http://www.iss-ssi.org/images/Publications\\_ISS/ENG/Brochure\\_25-ans\\_-HCCH\\_ANG.pdf](http://www.iss-ssi.org/images/Publications_ISS/ENG/Brochure_25-ans_-HCCH_ANG.pdf).

### **CRIN: New discussion paper *A Children's Rights Approach to Assisted Reproduction***

This paper examines, through a children's rights approach, three groups of Assisted Reproduction Technologies: prenatal screening for genetic health, third-party reproduction and cryopreservation. While recognising that regulation varies widely internationally, the paper notes 'the international trend in jurisprudence to recognise the rights of children in assisted reproduction'. Regarding specifically third-party reproduction, *i.e.* surrogacy and gamete donation, the paper stresses and comments several rights, which can be at risk in such process: the right not to be sold or trafficked; the right to know one's parents; the right to a nationality; the right to have and be cared for by one's parents. Finally, the paper notes the work of ISS in the drafting of 'Principles for better protection of children's rights on the context of surrogacy'.

Source: CRIN (2018). *A Children's Rights Approach to Assisted Reproduction*. Available at: [https://www.crin.org/sites/default/files/a\\_childrens\\_rights\\_approach\\_to\\_assisted\\_reproduction.pdf](https://www.crin.org/sites/default/files/a_childrens_rights_approach_to_assisted_reproduction.pdf). For further information on the work of ISS, please contact: Mia Dambach: [mia.dambach@iss-ssi.org](mailto:mia.dambach@iss-ssi.org).

### **UNICEF: *Children Uprooted: What Local Governments Can Do***

This recent paper by UNICEF is 'an illustration of concrete actions that local actors can take – and are already taking – to advance the rights of every refugee, migrant and internally displaced child living under their jurisdiction regardless of status, not only on their own but also in partnership with regional and national authorities and stakeholders'. It provides several initiatives taken across the world to tackle issues contained in the [UNICEF Six-Point Agenda for Action](#): protection from violence, abuse and exploitation; ending immigration detention; keeping families together; access to quality services; addressing underlying causes; and promotion of measures to combat xenophobia and discrimination. This new paper, in line with the recent document *Beyond Borders* (see p. 11), is based on the idea that the success – or not – of migration stories is decided at local levels, and shows, once again, that protecting the rights of children on the move can be put in practice.

For further information, see: <https://www.unicef.org/eca/what-we-do/emergencies/unicef%E2%80%99s-agenda-action-refugee-and-migrant-children>.

### **A Call to Action to leave no child behind**

This call, launched by SOS Children's Villages in early April 2018, is aimed at advocating amongst States Members of the UN General Assembly, in order to strengthen their efforts for the rights of children deprived of parental care, or at risk of so being. This advocacy intends to focus the next resolution of the Third Committee of the UN General Assembly, foreseen for 2019, on this issue. The 10<sup>th</sup> anniversary of the Guidelines for the Alternative Care of Children – approved by the General Assembly in 2009 – is an ideal opportunity to remind States of their obligations towards the affected children, and to regulate the alternative care systems, whilst placing the child's best interests at the heart of the latter. To date, a sad picture remains: one out of 10 children grows without adequate parental care, even though this loss of parental care could often be prevented. The adoption of this resolution – which is supported by the Committee on the Rights of the Child – would offer the political support necessary to make progress for children deprived of a family. Please join the 34 associations and NGOs, including ISS, RELAF, the Better Care Network and EuroChild, which have expressed their support to the call for action.

For further information, please contact: Mia Dambach, [mia.dambach@iss-ssi.org](mailto:mia.dambach@iss-ssi.org).

## LEGISLATION

### Inter-American Court of Human Rights: Judgement in the case *Ramírez Escobar and Others v Guatemala*

*On 9 March 2018, the Inter-American Court of Human Rights (IACtHR) issued its judgement in the above-mentioned case, with an emphasis as much on family separation as on intercountry adoption.*

The case *Ramírez Escobar and Others v Guatemala*<sup>1</sup> resulted from the separation of the Ramírez brothers, at the age of seven and one, from their biological family, and their subsequent placement in residential care, due to an anonymous report against their mother, who had allegedly abandoned them. Both children were subsequently declared abandoned, and adopted internationally by two different US families through a notarial procedure, which was possible at the time within the Guatemalan legal framework. In 2006, a petition was submitted to the Inter-American Commission on Human Rights, by a group of NGOs on behalf of the victims, when the brothers were still a child and an adolescent. The case subsequently proceeded only on behalf of the elder brother, who expressed difficulties to form attachments in his adoptive culture and society, and faced reluctance to talk about it within his adoptive family.

#### Context

The case of the Ramírez brothers took place within the well-known context of irregularities in intercountry adoption proceedings affecting Guatemalan children. Indeed, the weak and inadequate legal framework, the lack of control by competent authorities, and the existence of criminal networks and structures focusing on intercountry adoption, resulted in a very profitable intercountry adoption system in the country, which resulted in serious violations of the rights of the children affected by these proceedings, as well as of the rights of their biological families. A new legal framework was approved in 2007, which addressed many of these concerns and opened the path to the full implementation of the 1993 Hague Convention.

#### Judgement of the IACtHR

The IACtHR declared that the State was responsible for the violation of the prohibition of arbitrary interference in family life, the right to family protection, judicial safeguards, the right to

judicial protection and the prohibition of discrimination, and all the rights protected by the American Convention on Human Rights, of the adoptee and his biological parents<sup>2</sup>.

#### Family separation

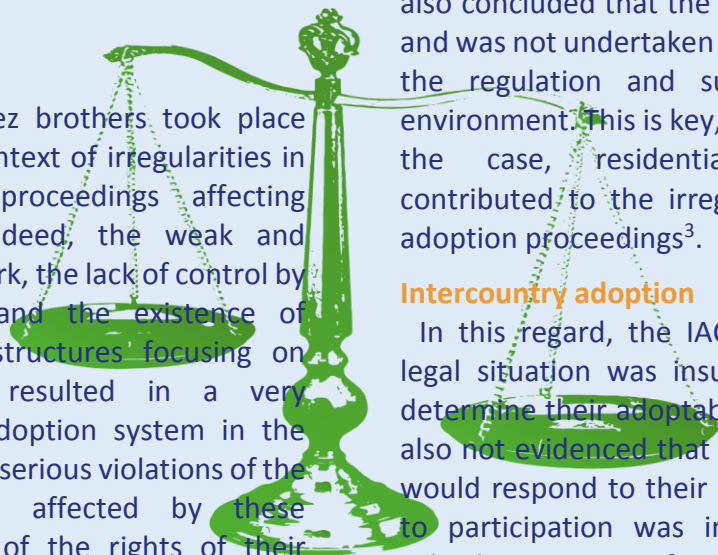
With regards to family separation, the IACtHR concluded that the latter was undertaken on the basis of an insufficient and discriminatory investigation with regards to the family, through procedure that even infringed upon the legislation in force at the time of the facts, with the due participation of the children and their parents, and which resulted, in addition, in judicial decisions, which did not demonstrate that the separation was truly a necessary measure.

#### Alternative care

With regards to the children's subsequent placement in a residential care home, the IACtHR also concluded that the latter was not necessary, and was not undertaken with due safeguards as to the regulation and supervision of the care environment. This is key, given that, at the time of the case, residential homes sometimes contributed to the irregularities in intercountry adoption proceedings<sup>3</sup>.

#### Intercountry adoption

In this regard, the IACtHR declared that their legal situation was insufficiently ascertained to determine their adoptability. Furthermore, it was also not evidenced that an intercountry adoption would respond to their best interests; their right to participation was infringed upon; and the subsidiary nature of intercountry adoption was not taken into account when considering other options in the children's country. Finally, the necessary control and supervision was not undertaken so as to ensure the safeguards of the procedure, nor the absence of undue economic gain.



## Reparation measures

By declaring that the State of Guatemala is responsible for the arbitrary separation of the Ramírez family, given the irregularities committed in the process of declaration of abandonment and the subsequent intercountry adoption proceedings<sup>4</sup>, the IACtHR also decided on a series of reparation measures, including:

- that the State must adopt all necessary and adequate measures to support and contribute to the restitution of the family bonds between the young adoptee and his biological parents;
- that the State must adopt all necessary and adequate measures to amend the victim's birth

certificate, in order to reflect the legal family relationship at the time of his birth;

- that the State must initiate and undertake the relevant criminal, administrative and disciplinary investigations in this case;
- that the State must hold a public event for the recognition of international responsibility, as well as a documentary on the events in this case; and
- that the State must adopt the necessary measures to create and implement an efficient national programme to ensure the adequate supervision, accountability and control of child institutionalisation in the country.

**The IACtHR's judgement in the case of *Ramírez Escobar and Others v Guatemala* demonstrates the complex implications of the reality of intercountry adoption in Guatemala for decades, and their impact to date – and most probably for years to come. Furthermore, the present judgement also represents a very important precedent for the country, the region and all countries involved in intercountry adoption procedures, when preventing and having to respond to alleged or proven irregularities in intercountry adoption. Its contribution to international case-law on this issue is very valuable and readers are encouraged to read the full judgement in order to continue combining efforts**

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## References:

<sup>1</sup> Inter-American Court of Human Rights, Case *Ramírez Escobar and Others v Guatemala*. Merits, Reparations and Costs. Judgement of 9 March 2018. Serie C No. 351; available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_351\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_351_esp.pdf).

<sup>2</sup> Inter-American Court of Human Rights, Press release: 'Guatemala es responsable por la separación arbitraria de la familia Ramírez y las adopciones irregulares de sus dos hijos', 17 May 2018; available at: [http://www.corteidh.or.cr/docs/comunicados/cp\\_17\\_18.pdf](http://www.corteidh.or.cr/docs/comunicados/cp_17_18.pdf).

<sup>3</sup> International Commission Against Impunity in Guatemala, CICIG (2010). *Report on Players Involved in the Illegal Adoption Process in Guatemala since the Entry into Force of the Adoption Law (Decree 77-2007)*, pp. 30 and 36; available at: [http://www.cicig.org/uploads/documents/informes/INFOR-TEMA\\_DOC05\\_20101201\\_EN.pdf](http://www.cicig.org/uploads/documents/informes/INFOR-TEMA_DOC05_20101201_EN.pdf).

<sup>4</sup> *Supra* 2.

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## PRACTICE

### Report on the sale of children and illegal adoption

*In this report published in 2017, Nigel Cantwell provides a detailed analysis of the scheme of illegal adoptions, both at domestic and international levels.*

Due to a number of international publications, there has been, over the last few years, increased attention on how to respond to illegal adoptions<sup>1</sup>. A [Working Group on preventing and addressing illicit practices in intercountry adoption](#) has been established at the Hague Conference on Private International Law; and, in 2016, the Special Rapporteur on Sale and Sexual Exploitation of

Children dedicated her [report](#) to the issue of illegal adoptions, both contributing to global awareness-raising on this issue. In 2017, the publication also by Nigel Cantwell, [Sale of Children and Illegal Adoption](#)<sup>2</sup>, continued this trend of highlighting systemic issues and identifying effective responses to illicit practices.

### **‘Recognising and tackling the “environment” for illegal adoptions’**

Illegal adoptions have various root causes, both in receiving countries and countries of origin. For the latter, certain factors serve to create an environment which is advantageous for ‘those seeking to procure children for adoption’. These factors include: discrimination against unwed/single mothers; the vulnerability and marginalisation of ethnic minorities; and an alternative care system reliant on privately-run institutions. Further, exceptional events, such as natural disasters or armed conflict, can be the basis for illicit practices to occur (see Monthly Review 8/2010 of August 2010; see also ISS (2010). *Haiti: “Expediting” intercountry adoptions in the aftermath of a natural disaster ... preventing future harm* (2010)<sup>3</sup>).

From the receiving countries’ side, several factors can create an environment that is likely to generate illicit practices: pressure on countries of origin to ‘make children available for adoption’; resorting to non-Hague States of origin<sup>4</sup>, including through bilateral agreements (see Monthly Review No. 195 of October 2015); the existence of a special relationship between adoption agencies and child care; and financial incentives, such as development or humanitarian aid, or payments to a residential facility for care costs.

### **‘Recommendations to redress illegal adoptions’**

While the above factors have become widely known, actions taken to counter them are still disparate. It is only through consistency, cooperation and collective actions that illicit practices will be deterred. It is not solely the responsibility of the countries of origin, nor solely responsibility of the receiving countries. Actions need to be taken at all stages of the intercountry adoption process by all stakeholders including central authorities, adoption accredited bodies, governments, institutions, prospective adoptive parents, adopted persons and civil society. For example, the role of financial incentives, such as care costs, development/humanitarian aid and contributions/donations, especially when they determine the outcome of the adoption process, and their impact on illicit practices should be given specific attention.

The same reasoning applies to unsupervised and direct adoptions – for which the Permanent

Bureau constantly encourages States to work towards their elimination<sup>5</sup>. Risks are even more apparent when there are adoptions carried out from non-Hague countries of origin (see Monthly Review No. 206 of July 2016).

Further, certain statistics and figures should be carefully looked at: can a (too high?) number of accredited bodies play a significant role in the adoption landscape, potentially leading to ‘competition for “adoptable” children’? Can the highly imbalanced ratio of demand/supply lead some prospective adoptive parents to consider ‘illicit pathways’ to realise their wish to have a child (see Monthly Reviews No. 2/2008 and No. 194/2015)? Not surprisingly, such questions are positively answered by the author of this new publication. It is important to remember that some pathways may result in the bypassing of normal adoption procedures, for example ‘relative’ adoptions, adoption via legal guardianship, ‘expatriate adoptions’ (see Monthly Review No. 210 of March 2017) and the conversion of *kafalah* into adoption (see Monthly Review No. 213 of July 2017 and p. 12). Indeed, in some of these kinds of cases, a reduction in necessary conditions for the adoption can lead to weaker safeguards, potentially endangering the best interests of the child.

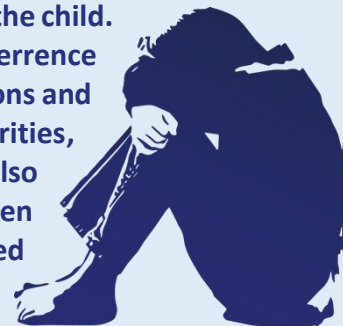
### **‘Current conditions for a “perfect storm” in intercountry adoption’**

According to the publication’s author, there are ‘several reasons for considering that we now need to confront the multi-faceted conditions of a “perfect storm” as regards illegal adoptions – both despite and because of the decline in the number of children being adopted abroad’. Among other impacts, this decline has significantly financially affected agencies, as a vast majority of them are dependent on fees paid by prospective adoptive parents (see Monthly Review No. 199 of December 2016). As a result, ‘the most professional and ethical agencies might be among the first to disappear’. Further, the limited ‘supply’ of children could lead actors to look for countries which can ‘provide this missing link of “opportunity”’. Finally, other aspects of the intercountry adoption procedure are questioned by the publication’s author, including the priority, which is sometimes given to children with special needs. Whilst this practice has had positive

results, it remains at the centre of debates. Indeed, in practice, this priority has generated situations where children are classified as having ‘special needs’ as a result of subjective criteria,

varying from one professional to another and from one country to another (see Monthly Review No. 215 of September 2017).

**This study encourages readers to question their practices, thoughts and beliefs about how to carry out intercountry adoptions in a way that respects the rights of its main subject, *i.e.* the child. Illegal adoptions have various and serious consequences (see p. 5), and deterrence requires bravery. Bravery from whom? From everyone: from the adopted persons and civil society, who will raise awareness and investigate; from competent authorities, who will take common approaches to safeguards children’s interests; but also from adoptive parents, who will face the reality of the adoption and, as has been seen in some recent mediated adoptions cases from Uganda to the United States, will have the bravery to ‘give back’ their adopted child to his or her biological family, who had not consented to the adoption.**



### References:

<sup>1</sup> International Social Service (2011). *Intercountry Adoption and its Risks: A Guide for Prospective Adopters*; International Social Service (2012). *Investigating the grey zones of intercountry adoptions*; as well as Baglietto, C., Cantwell, N. y Dambach, M (2015). *Responding to Illegal Adoptions – A Professional Handbook*. Switzerland: International Social Service.

<sup>2</sup> Available at: [https://www.terredeshommes.nl/sites/tdh/files/uploads/tdh\\_2017\\_report\\_sale\\_of\\_children.pdf](https://www.terredeshommes.nl/sites/tdh/files/uploads/tdh_2017_report_sale_of_children.pdf).

<sup>3</sup> Available at: [http://www.iss-ssi.org/images/Publications\\_ISS/FRA/Haiti\\_ISS\\_FRA.pdf](http://www.iss-ssi.org/images/Publications_ISS/FRA/Haiti_ISS_FRA.pdf).

<sup>4</sup> See Para. 35 of the Conclusions and Recommendations adopted by the Fourth Meeting of the 2015 Special Commission on the Practical Operation of the 1993 Hague Convention.

<sup>5</sup> *Ibid*, at 46.

## Supporting children in vulnerable families: The experience of Quebec in adopting a common language amongst all actors

*To protect children in vulnerable families, we need a partnership with parents, a dialogue amongst practitioners, and the development of a common language, which enables us to capture situations to their full extent. In this article, Stéphanie Romanens-Pythoud, Editor of the French-speaking Swiss mental health magazine Diagonales, tells us about an approach, which intends to put these requirements into practice<sup>1</sup>.*

‘AIDES<sup>2</sup> is not a programme’, according to Claire Chamberland, Professor Emeritus at the University of Montreal and the instigator of the project. AIDES – the Inter-Agency Partnership for Child Development and Safety initiative – is, instead, an approach, a practical proposal for a path of action with vulnerable families. Launched in Quebec in 2003, the initiative aims to encourage and support collaboration between parents and the various practitioners working with children faced with multiple risk factors, whether or not they are reported to child protection services.

### The parent is listened to and their point of view is taken into account

The AIDES approach provides tools and a common language for analysing any situation.

‘When a situation was reported, we noticed that the various professionals involved did not always see things from the same perspective, or apply the same benchmarks’, Chamberland explained at the 6<sup>th</sup> Annual Congress of Switzerland’s Mental Health Network, held in Biel on 16 November 2017.

‘As a generalisation: child protection services focus on the child and base their intervention on the attachment theory. Preventive services look at the whole family, using a more systematic approach. Services for women, who have experienced domestic abuse, take a more sociological and feminist approach, while services for abusive men adopt a humanistic or cognitive behavioural approach. Against this backdrop, we



wanted to develop a common language and benchmarks for all professionals involved in a situation and ensure they all focused on the child'. The specialist also underlined the importance of channels to understanding each other's language. 'It is essential to engage with each other, for mutual understanding and cooperation'. Currently, however, there is insufficient collaboration.

### The needs of the child

In practical terms, AIDES provides all partners with an ecosystemic assessment framework for the developmental needs of children. This model allows us to explore the different dimensions of the child's development. Their needs – in terms of health, education, emotional and behavioural development, identity, family and social relationships, social presentation and self care skills – are analysed in conjunction with the responses given by their parents – in terms of ensuring safety, emotional warmth, stimulation, guidance and boundaries, and stability. Their needs are also assessed in relation to the family and environmental factors in their upbringing (family history and functioning, extended family and significant others, parents' income and employment, housing, social integration, available community resources and services). 'Such a framework allows us to explore all the dimensions, to make links between them, and to consider the interactions at work. This enables us to gather all significant information', as stated by the Quebec Professor.

### Three practical tools to make informed decisions

Based on this ecological assessment framework, AIDES offers three tools to help partners reflect and make an informed decision in a given situation:

- A **child's needs analysis workbook**, for a comprehensive and in-depth analysis of the child's

situation and complex needs. This workbook allows us to integrate all available information, in order for us to obtain a full picture of the strengths and needs of the child and their parental figures, as well as the resources and limitations due to family and environmental factors. The aim is also to share this information with all actors involved, including parental figures and children. This tool should facilitate decision-making and service-planning, providing an action plan for parents, children and partners. Used at all stages of the intervention process (assessment, planning, monitoring and review), it also enables us to follow the long-term development of the child.

- An **initial analysis form** of the developmental needs of the child, for use by social workers. This enables a quick reading of the situation and needs of the child, following a service request, referral or report.

- A **common analysis form** of these needs, designed for those working in partnership with social workers, such as early-years practitioners, teachers and Police officers. This form enables a quick reading of the situation and needs of the child, and an assessment of the professional support that needs to be put in place.

'These forms are not designed to be questionnaires, but tools for sharing information with the parent and other actors', Chamberland emphasises. 'We use a participatory approach, which makes the parent a full partner'. On an equal basis to the other actors involved, the parent is listened to and their point of view is taken into account right from the start of the assessment. Thus, they contribute actively to developing and implementing the action plan, through specific contributions and responsibilities identified in agreement with the other partners. This approach encourages and sustains the commitment of parents and children at all stages of the intervention process.

**As emphasised by the AIDES team, 'the practices piloted under the AIDES initiative have had a positive impact on the relationship between parents and practitioners in a child protection context. They noticeably reduce the potentially confrontational nature of face-to-face conversations'<sup>3</sup>. As underlined by Chamberland, 'throughout the process, it is not only a case of ensuring the protection and safety of the children. We always need to keep in mind their development and their long-term life story'. 'This is an important perspective for supporting parents. By talking to them about the dreams they have for their child, and about their developmental needs, we are no longer just talking to them about problems. This results in them being much more proactive towards their children'.**

## References:

<sup>1</sup> This is an extract of an article by Stéphanie Romanens-Pythoud in *Diagonales* No. 122, of March/April 2018. *Diagonales* is a bimonthly review published by Graap (*Groupe d'accueil et d'action psychiatrique* [Psychiatric Reception and Action Group]) in Lausanne. For further information, see: <http://www.graap.ch>.

<sup>2</sup> See: <http://www.initiativeaides.ca>.

<sup>3</sup> Extract of the following article: Chamberland, C., Dufour, S., Lemay, L., Lessard, D, Clément, M.-E. y Poirier, M.-A. (2015). 'L'analyse écosystémique et participative des besoins des enfants vulnérables au Québec : 15 ans de recherche et d'intervention'. In *Revue de psychoéducation*, Vol. 44, No. 2, pp. 457-468; available in French at: <http://www.researchgate.net>.

## INTERDISCIPLINARY RESOURCES

### MOOC4COM Project: Launch of website aimed at children on the move

*CELCIS, with technical advice from FXB Harvard and an inter-agency taskforce, including ISS, is currently developing a Massive Open Online Course (MOOC) on 'Ensuring Suitable Care for Children on the Move'. In this context, a website centralising numerous resources on this topic has been launched<sup>1</sup>.*

In 2016, approximately 50 million children were on the move throughout the world (UNICEF, 2016). The latter are often deprived of parental protection and exposed to various forms of dangers and exploitation. It is time for these children to have their basic rights guaranteed and to be adequately cared for. To this end, the 'MOOC4COM: Ensuring Suitable Care for Children on the Move' is being developed and should, in principle, be launched in 2019. In the meantime, a dedicated website has been launched to centralise all information relating to the future MOOC, international initiatives, standards, training and promising practices across the world.

#### Objectives and content of the MOOC4COM

This MOOC is built on the the experience of a previous MOOC '[Getting Care Right for All Children: Implementing the UN Guidelines for the Alternative Care of Children](#)', developed by CELCIS with the support of a multi-agency group – which had participants from 172 different countries in 2016.

The MOOC4CoM aims, first and foremost, at strengthening capacities of the tens of thousands of persons who make decisions every day for children concerned by migration. Available in Arabic, English, French and Spanish, the training

will help workers adopt a 'do no harm' and best interests approach.

In addition, the training aims to raise awareness of gender issues, while preventing and protecting girls and boys from violence, through appropriate care options in accordance with international standards.

Thus, the different modules will address, *inter alia*, topics related to the identification of the migrant child and their immediate protection needs, in-depth assessments to determine appropriate responses in the short, medium and long term, as well as sustainable quality solutions (access to health and

education services, integration, reunification, reintegration, transition to adulthood, etc.).

#### A gold mine

While the MOOC's launch is depending on available funding, the inter-agency task force decided to capitalise on the expertise and resources shared by the main international organisations in the fields of migration, humanitarian action and alternative care.

In this sense, the website contains a section with useful links to initiatives concerning the promotion of children's rights in the context of migration, such as the Children's Rights Initiative in the Global Compacts or the 'Destination Unknown' campaign. In addition, it refers to

#### What is a MOOC<sup>2</sup>?

- an **innovative** and highly **interactive** digital tool;
- learning within an **international and interdisciplinary community**;
- **sole condition**: internet access;
- **availability**: 24/24, 7/7 (during determined period);
- **duration**: 6 weeks, 2 hours per module;
- available in **several languages**.

matrixes of laws and other international and regional texts, as well as existing trainings and promising practices around the world.

ISS invites you to consult this new website, and is honored to participate in this inter-agency project, and contribute through its expertise in the field of alternative care, as well as the practical experience of its network in dealing with cross-border cases and in transnational cooperation in relation to children on the move.

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### References:

<sup>1</sup> See: <http://www.childrenonthemovemooc.com/index.php/en/>.

<sup>2</sup> MOOC: Massive Open Online Course.

## UNICEF: *Beyond Borders – How to make the global compacts on migration and refugees work for uprooted children*

*In 2017, UNICEF published a report<sup>1</sup> in the line of the [2018 Global Compacts on Refugees](#), where it calls for States to ‘incorporate principles – and practices – that can provide a safe home, a safe passage and a safe destination for every migrant displaced and refugee children’.*

This report aims to show that, despite the various challenges that can be encountered, the rights of children on the move are not only theoretical but can be put in practice. It is important to recall here that in these emergency contexts, adoptions should not be considered and can be arguably a form of forced migration (see Monthly Review No. 220 of April 2018).

### Protection from exploitation and violence

Vulnerabilities faced by children on the move, and especially unaccompanied and separated children are numerous – including abuse, smuggling, exploitation and, in general, lower access to services than children of the destination country. Further, the journey in itself contains several dangers, such as crossing the Mediterranean Sea. As a consequence, there is a constant real need for Governments ‘to increase safe and legal channels for children to migrate’, as highlighted especially in the recent Joint [General Comments](#) (see Monthly Review n°219 March 2018).

Some work is already on its way, such as in Germany, which received about 400,000 children from 2015 to 2016. Thanks to a cooperation with UNICEF and other partners, the Government launched an initiative dedicated to the improvement of protection and care in refugee centres, as well as to the support for integration. One of the results of this action was the drafting

of *Minimum Standards for the Protection of Refugees and Migrants Living in Refugee Centres*. In addition, the German authorities have created the position of ‘protection coordinator’ in 100 refugee centres. This initiative, based on cooperation, has enabled the strengthening of the existing protection system.

Further, the work of the West Africa Network for the Protection of Children (WAN) – composed of governments, NGOs and individuals - must be underlined as an illustration of cross-border cooperation for the protection of children on the move. This network is involved in the ‘identification of children in vulnerable situations, family tracing and social evaluation prior to facilitating return within an agreed case management tool’. These efforts led to the publication of the handbook [ECOWAS Support Procedures and Standards for the Protection and Reintegration of Vulnerable Children on the Move and Young Migrants](#), which established eight qualities of care for uprooted children. This handbook, as a qualitative basis, has now been adapted to the [international level](#) but also to the Swiss context.

### End detention

According to UNICEF, at least 100 countries detain children for immigration reasons. However, several alternatives exist to children’s detention<sup>2</sup>, such as foster care, supervised independent living

or community-based accommodation for families. It must also be recalled that the [UN Guidelines for the Alternative Care of Children](#) have dedicated a specific chapter to care in emergency situations, where States are encouraged ‘to develop, as necessary, temporary and long-term family based care’ but also ‘to use residential care only as a temporary measure until family-based care can be developed’ (Para. 154). While only a small number of countries have eliminated detention for immigration reasons, some practices need to be highlighted. In Greece, for example, where 10% of the total of refugees are unaccompanied children, ‘Safe Zones’ were created in camps that provide supervision and ‘comprehensive care to unaccompanied children for up to three months until a placement in suitable shelter can be found’. Such action is needed when the child protection system can or does not provide solid alternatives, at the same time protecting children and giving more time for an adequate solution to be found.

### Family unity and legal status

‘Protecting children requires keeping them with their parents or caretakers and fast-tracking procedures that reunite them with family members in destination countries and countries of origin’, key elements that can be found in the UN Guidelines for the Alternative Care of Children (see, in particular, Paras. 155 and 162).

New technologies can have their role to play in this quest for reunification, for example with the [Child Protection Information Management System \(CPIMS\)](#), an online tool used in South Sudan to reunite families. It allows, among others, the exchange of information on unaccompanied and separated children as well as on family members, to enable, at the end, matches for reunification. It has yet benefited more than 5,000 children in the country.

**The ISS/IRC welcomes this report which shows that, even work remains to be undertaken, solutions exist to better protect children on the move and prevent their detention.**

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#### References:

<sup>1</sup> UNICEF (2017). *Beyond Borders – How to make the global compacts on migration and refugees work for uprooted children*. Available at: [https://www.unicef.org/publications/index\\_101735.html](https://www.unicef.org/publications/index_101735.html).

<sup>2</sup> See, in particular, Sampson, R., Chew, V., Mitchell, G., and Bowring, L. (2015). *There Are Alternatives: A Handbook for Preventing Unnecessary Immigration Detention*. Melbourne: International Detention Coalition; and for the African context International Detention Coalition (2018). *There are alternatives: Africa*. Melbourne: International Detention Coalition.

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## CROSS-BORDER CHILD PROTECTION IN THE FRAMEWORK OF THE 1996 HAGUE CONVENTION

### 1996 Hague Convention on Child Protection: An international framework for cross-border *kafalah*? (Part II)

*This second part of the interview with Hans van Loon, former Secretary General of the Permanent Bureau of the Hague Conference on Private International Law, and who stood at the cradle of the 1996 Hague Convention<sup>1</sup>, will focus on the Contracting States’ obligations under this Convention.*

In part I of the interview, published in Monthly review n° 220 (April 2018), Hans van Loon explained the protections provided by the provisions of the 1996 Hague Convention in cases of cross-border *kafalah* arrangements, and highlighted the challenges linked to arrangements

that do not comply with these standards (e.g. private arrangements). This second part will focus on the Contracting States’ obligations related to the 1996 HC and the added value of bilateral agreements.

## 1. What are the obligations of a State Party to 1996 Hague Convention in terms of, for example, recognition and follow-up of the placement?

- **Recognition of a *kafalah* placement:** All Contracting States to the 1996 Hague Convention are under an obligation to recognise a *kafalah* measure taken by the authorities of a Contracting State, and to recognise it 'by operation of law' (Art. 23 (1)), *i.e.* without the need to resort to any proceeding to obtain such recognition. This obligation is subject, however, to the conditions of Article 23 (2), including the condition that, in the case of a 'cross-border *kafalah*', Article 33 has been complied with<sup>2</sup>. An interested person, *e.g.* a *kafil*, in the receiving State may request an explicit decision to recognise the *kafalah* (Art. 24), or a declaration of enforceability or registration for that purpose, in that State (Art. 26).

- **Ensuring the child's access to the territory:** As noted, the 1996 Hague Convention does not apply to 'decisions on the right of asylum and on immigration' (Art. 4 j)). That means that the obligation of a State party to recognise the *kafalah* does not imply, *per se*, any obligation of that State to admit the child to its territory. Only where, in a 'cross-border *kafalah*' situation, the receiving State has given its consent to the placement of the child on its territory, that consent should, and will normally, imply a right of the child to enter and reside in that State under the conditions determined by that State. Whether, failing the receiving State's consent, a *makful* child may, nonetheless, enter or reside in a State party, is not determined by the 1996 Hague Convention, but by the laws on migration (including Constitutional and Human Rights Law) applicable in that State.

- **Effect of change of habitual residence:** Under the 1996 Hague Convention, the change of the *makful* child's habitual residence to the receiving State, including in the case of Article 33, will leave subsisting the *kafalah* measure determined in the State of origin in respect of the child (Art. 14). Nevertheless, the conditions for the exercise of the measure are governed by the law of the receiving State (Art. 15 (3)). As a result of the change of habitual residence, the authorities of the receiving State acquire jurisdiction to take any measures of protection (Art. 5 (2)). In case of urgency, they may even take such a measure as

soon as the child is present in the receiving State (Art. 11).

- **Steps following the placement:** Chapter V of the 1996 Hague Convention does not provide for a general follow-up obligation for the receiving State. However, the Central Authority of the receiving State must take all appropriate steps to provide the competent authorities of another Contracting State, including the State of origin, assistance in discovering the whereabouts of the child (Art. 31 c)); may provide a report or request its authorities to take protective measures (Art. 32); may request information from the State of origin (Art. 34), or admit and consider information provided by the State of origin regarding a parent's access to the child (Art. 35). In the event of non-recognition of a *kafalah* measure (Art. 23 2)), it is for the authorities of the receiving State to arrange for appropriate measures of protection of the child, *e.g.* a provisional guardianship pending a permanent solution, which solution may be found either in the receiving State or in the State of origin<sup>3</sup>.

## 2. Under what circumstance can a *kafalah* be 'converted' into an adoption?

Adoption decisions are not covered by the 1996 Hague Convention (Art. 4 b)). The 1996 Hague Convention, therefore, does not determine the jurisdiction of the authorities of the receiving State to take a decision on adoption of the *makful* child. However, *kafalah* is, in many respects, the functional equivalent of (simple) adoption under the applicable law (not providing for adoption) of the State of origin. A country like Morocco, which is a Party to the 1996 Hague Convention, does not provide for adoption resulting in the severance of the child's legal bonds with the biological family and his or her full integration into the adoptive family. However, Moroccan law offers *kafalah*, which has neither of these effects but does establish an obligation for the *kafil* to provide a child with protection, maintenance and education, as an alternative legal device to ensure that a child will grow up in the care of a family. Under the 1996 Hague Convention (Art. 23, see above), the other Contracting States are under an obligation to recognise a measure of *kafalah*.

Therefore, an immediate 'conversion' of a *kafalah* into an adoption upon arrival of the child

in the receiving State, before the child is fully integrated in that receiving State – as currently practiced between some countries – may raise questions from a human rights perspective, in respect of both the child’s identity and the child’s and family members’ rights to respect for private and family life, notably under the European Convention on Human Rights<sup>4</sup>.

One could imagine a situation, in which both States were also Parties to the 1993 Hague Convention (e.g. assuming that Morocco were to join the 1993 Hague Convention). In such a situation, the Moroccan authorities might, with or without determining a *kafalah* measure, entrust the child to prospective adoptive parents habitually resident, for example in France or Belgium, in accordance with Article 17 of the 1993 Hague Convention, with a view to the child’s adoption by a decision of the French or Belgian courts.

### 3. What additional protections could be included in bilateral agreements?

Bilateral agreements, supplementing the 1996 Hague Convention, may go beyond the provisions of the 1996 Hague Convention. They might, for example:

- exclude private *kafalah* cross-border arrangements, through a mandatory scope provision (an equivalent to Art. 2 of the 1993 Hague Convention is missing in the 1996 Hague Convention);
- provide more detailed requirements, such as ensuring that before considering a ‘cross-border *kafalah*’ measure, an effort is made to find a family for the child in the State of origin, that all persons concerned and the child have given their informed and free consent, that the prospective *kafils* are eligible and suited for the *kafalah*, and the child will be authorised to enter and reside permanently in the receiving State (see Arts. 4 and 5 of the 1993 Hague Convention);
- include more extensive provisions on the role of Central Authorities, other public authorities and intermediaries, such as those of Chapter III of the 1993 Hague Convention;
- provide more elaborate procedural requirements (Arts. 14-20 of the 1993 Hague Convention); and
- add general provisions, such as Articles 29-35 of the 1993 Hague Convention.

Such bilateral agreements might also deal with any financial issues relating to the cross-border *kafalah* placement.

**The ISS/IRC encourages State parties to fully comply with the 1996 Hague Convention procedures. It further promotes the establishment of bilateral agreements, which could provide for additional safeguards in accordance with the legislations involved.**

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#### References:

<sup>1</sup> *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children*; see <https://www.hcch.net/en/instruments/conventions/full-text/?cid=70>.

<sup>2</sup> Article 33 stipulates: ‘(1) *If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by kafala or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care*’.

<sup>3</sup> Art. 11 of the Dutch Law of 16 February 2006 implementing the 1996 Hague Convention, <http://wetten.overheid.nl/BWBR0019574/2017-09-01>, contains a specific provision to this effect.

<sup>4</sup> For example, the ECtHR case of *Harroudj v. France* (4 October 2012, Application No. 43631/09), respecting the *kafalah* placement during the period of ‘integration of [kafalah] children of foreign origin without cutting them off immediately from the rules of their country of origin (...) show[s] respect for cultural pluralism’.

## FORTHCOMING CONFERENCES AND TRAININGS

- **Morocco:** *Global Forum on Migration and Development (FGMD)*, Agadir, 21-22 June 2018. For further information, see: <https://gfmd.org/>.
- **Switzerland:** *Accueillir et soigner des mineurs étrangers isolés*, Workshop for professionals, Espace A, Geneva, 8 June 2018. For further information, see: <http://www.espace-a.ch>.
- **World:** *2018 EuroChild Conference: Building a better Europe with children: All aboard!*, Call for child delegations until 1 July 2018. For further information, see: [http://www.eurochild.org/news/news-details/article/eurochild-conference-2018-call-for-childrens-delegations/?no\\_cache=1](http://www.eurochild.org/news/news-details/article/eurochild-conference-2018-call-for-childrens-delegations/?no_cache=1).

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