

**Monthly Review N° 6-7/2007
June-July 2007**

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EDITORIAL

The adequate selection of prospective adoptive parents: A guarantee for ethical and successful adoptions 

Whilst in receiving countries, there is great concern about information relating to the health, psychological state of the child and his/her possible background, the same occurs in countries of origin in relation to the criteria of evaluation of prospective adoptive parents.

The approach taken to the selection of prospective adoptive parents plays a fundamental role in the adoption process, which is based on the right of the child to a family. The evaluation of applicants from this perspective makes it possible to guarantee adoptions respectful of the human interests at stake, and

of the principles established by the 1993 Hague Convention on Intercountry Adoption (HC-1993).

Reflections on the adoption project of the prospective adoptive parents

In some receiving countries, it is, each day, increasingly urgent not to continue declaring applicants suitable for adoption on the basis of

criteria, which are not adapted to the needs of adoptable children internationally. Similarly to the change of profile of internationally adoptable children (a high number of them with special needs), the evaluation of applicants has to evolve correlatively. The responsibility for assuming the selection of prospective adoptive parents must therefore be entrusted to professionals concerned with the protection of the child and aware that adoption is a right of the child to a family and not the right of a parent to a child. The training of these professionals (in legal, social, medical and psychological fields), as much as the tools they are provided with, will therefore have to be adapted to these fundamental considerations.

Indeed, the assessment of the candidates goes well beyond a simple administrative process, as mentioned by the French Psychoanalyst, Sophie Marinopoulos – whose article will be published in the next issue – and also consists of raising the awareness and of adequately preparing the candidates. Similarly, whilst the legal requirements and the social variables of the adoption applicants are ascertained – such as their professional stability, economic situation, family structure, it is also a matter of carrying out a psychological study, through which their adoption project will be worked on. The candidates will then be supported throughout this work – a genuine psychological journey – which will allow them to mature their adoption project during the required time to finally meet the – sometimes special – needs of adoptable children. For example, in many cases, the adoption candidates have faced difficult experiences linked to the infertility of one member of the couple. Mourning this infertility may provide candidates with better conditions, on which to build a family relationship with a child.

When this psychological support has not occurred – due to a lack of time within very short legal deadlines, or due to a lack of resources or adequate training of the professionals – and the prospective parents have been selected irrespective of this issue, the risk of future destructive situations, as much for the child as for the candidates, is higher. Equally, some adoptable children have experienced instances of family or institutional violence, of sexual abuse or of other forms of mistreatment in their country of origin, which will arise at some point in the life of the adoptive family. The candidates who have matured their adoption project will be better prepared to confront these moments and to help the child through these crises. They will

thereby also have more confidence in their own abilities to ensure the adopted child's wellbeing and to overcome difficult times, such as the disclosure of the adoption, the search of origins, and the adolescence.

Reflections on the health of candidates

Another essential point is the issue of the candidates' health. Sometimes, discrimination is raised where the candidates' application has not been accepted on grounds of health, even though this is not raised where candidates reject a child "with problems". Thus, it is also important for the candidates that the disclosure of information about their health be complete and clear. If a HIV/AIDS test may be required from the child, it may equally be requested from the applicants. Not mentioning an illness which threatens the life of the applicants goes against the objective of an adoption, which is, as a reminder, to offer a permanent family to a child. It is therefore a matter of carrying out a complete and accurate diagnosis of the physical, mental, emotional and relational health of the adoptive candidates, and, subsequently, of establishing a prognosis of their ability, or not, to respond to the needs of the child they will be entrusted with. This does not mean that all diseases prevent candidates from adopting. However, it is necessary to declare and evaluate these diseases in order to determine if the candidates have the conditions to adopt a child and of what profile. For example, in the case of candidates who present some disabling illnesses, the extent of the implications of their disability in their life, and their remaining or limited availability to care for a child, will be assessed. When the result of this evaluation is positive, it is then a matter of determining if their profile is considered adequate in responding to the needs of a particular child. In this example, it would be advisable not to entrust them with a hyperactive child. This same approach should prevail in the evaluation of other characteristics of adoptive candidates, such as the suitability of their age in relation to that of the child they wish to adopt. On this issue, please refer to Editorial 2005/4, published by the ISS/IRC. The more the evaluation criteria for adoptive candidates meet the needs of the children, the higher the probabilities of success of the adoption.

Adequacy of a good evaluation of candidates and the respect for the ethical principles of adoption


The implementation of an adoption process, which respects the fundamental principles established by the HC-1993, will depend,

amongst others, upon the quality of the assessment of the candidates. The submission of complete and correct reports on adoptive candidates to the countries of origin will enable, amongst others, a better implementation of the principle of subsidiarity. Indeed, in some cases, the Central Authorities of countries of origin spend too much time in reviewing, analysing and returning incomplete reports of foreign applicants. First, this implies less time to spend on the study of the situation of the child, and, secondly, less time on the assessment of domestic applicants. The principle of subsidiarity, which is enshrined in legislation, does not succeed in being as applied as it should be in practice. Furthermore, the evaluation of applicants, as well as the declaration of adoptability of the child, are at the

centre of the principles of joint responsibility and reciprocity between receiving countries and countries of origin; these are principles on which the HC-1993 is based. With the aim of ensuring an adoption based on the best interests of the child, some guarantees must be obtained from both parties: country of origin – receiving country; adoptee – adopters. The guarantees relating to the capacities of the applicants must follow the same logic as those linked to those of the child. Satisfactory adoptive relationships providing a permanent protection to the child, and the respect for the human dignity of those involved, will depend upon the concerned actors' compliance with their obligations in this matter.

The ISS/IRC team

IRC NEWS

- **Project on distance training and exchange of experiences – New Fact Sheets on the ISS/IRC website** : Three new training Fact Sheets (N°39, 40 and 41) have been issued. They address issues relating to accredited bodies, and are available from the ISS/IRC website: http://www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_fic.html.

ACTORS IN MATTERS OF ADOPTION

Source: Permanent Bureau of The Hague Conference: http://hcch.e-vision.nl/index_en.php?act=conventions.authorities&cid=69.

- **Costa Rica:** This country has updated the contact details of its Central Authority.
- **Denmark:** This country has updated the contact details of its accredited bodies and has appointed the Competent Authority for the Faroe Islands.
- **Slovakia:** This country has updated the contact details of its Central Authority and of its Competent Authorities.

LEGISLATION

COSTA RICA and ECUADOR: New regulations governing domestic and intercountry adoption procedures

Both countries have approved new texts, which will regulate specific aspects of adoption: authorisation of intermediaries in intercountry adoption in Ecuador, and the functions and processes of various institutional bodies in domestic and intercountry adoption in Costa Rica.

As much in Costa Rica as in Ecuador, domestic adoption represents increasingly important rates, a trend reflected in recent statistics and in the limited number of intercountry adoptions. In 2006, 63 domestic adoptions and 15 intercountry adoptions were carried out in Costa Rica¹. Similarly, in Ecuador, statistics of the same year inform of 120 domestic adoptions and 27

intercountry adoptions². Both countries already possess legislation on the adoption concept and procedure; the new texts provide additional information for its improved implementation.

Costa Rica: Regulations on the process of domestic and intercountry adoption

In addition to establishing the organisational structure of the Patronato Nacional de la Infancia (PANI – National Children Board) as well as the functions and tasks of the institutional bodies empowered to participate in the adoption process, in line with the intention to decentralise its administrative tasks, the Regulations also provide additional information on some aspects of the processes of domestic and intercountry adoption. In particular:

- In the assessment of families for the adoption of a minor, it is interesting to emphasise that the participation of prospective adoptive parents in training and reflection workshops focusing on adoption constitutes a requirement, which must be complied with before the placement of a child for adoption purposes.
- The declaration of suitability and the placement a child for adoption purposes will be the responsibility of the PANI's Adoption Department and of the competent Regional Adoption Council (or the National Adoption Council in those areas in which no regional council is operating). The former will be responsible for determining the compatibility between adoptable children and the profiles of assessed prospective adoptive parents, and will submit a proposal and recommendations of possible placements to the Council. The latter will determine which prospective adoptive parents appear to be the most suitable for the placement.
- The direct hand-over of minors, undertaken by biological parents, to an institution, or before the institution to a specific third-party, is possible. The PANI will assess the selected individual or couple and will send its report to the competent Adoption Council, in order for the latter to confirm the child's placement in accordance with the parents' wishes. The local PANI office will here have an important role to play in providing support to all the parties, and in ascertaining the impossibility of placing the child in a suitable family environment, with his/her extended family or with people, who he/she has an affective relationship with, and who have expressed an interest before the institution.
- For the placement of a child for intercountry adoption purposes, the Regulations establish that the application must be processed via the Central Authority of the prospective

adoptive parents' usual country of residence, or failing that, via a collaborating body or entity in matters of intercountry adoption, and which is duly accredited in their usual country of residence, and authorised by the National Adoption Council. The process of authorisation of the latter is also set out by the Regulations.

Ecuador: Regulations for the authorisation of intercountry adoption intermediary agencies

The present Regulations establish the procedure and the bodies responsible for the authorisation of intercountry adoption intermediary entities in Ecuador. In this regard, the Consejo Nacional de la Niñez y Adolescencia (CNNA - National Council for Children and Adolescents) is the responsible body for approving or rejecting requests for authorisation of such entities, while the CNNA Executive Secretariat is responsible for processing the authorisation process for the CNNA.

Based on the requirements set by the Code for Children and Adolescents, the CNNA also requires the requesting entity complies with a variety of quality, administrative, financial and legal requirements, both in the country of origin of the prospective adoptive parents as well as in Ecuador.

This system will enable the authorised intermediary entities to operate for a period of three years. These authorisations may be renewed, although also cancelled due to some form of failure to comply with the legislation in force.

Sources: Reglamento para los procesos de adopción nacional e internacional (Regulations on domestic and intercountry adoption processes), Patronato Nacional de la Infancia, La Gaceta N°9, 12 January 2007, pp. 41-49; Reglamento para la autorización de entidades de intermediación de adopción internacional (Regulations on the authorisation of intermediary intercountry adoption entities), Consejo Nacional de la Niñez y Adolescencia, Resolución N° 0004-CNNA-2006, 13 September 2006.

¹ Patronato Nacional de la Infancia, *Reglamento de adopciones enfatiza trabajo apoyado por la sociedad* [Adoption regulations emphasise the work supported by society], www.pani.go.cr (see *Noticias*).

² Consejo Nacional de la Niñez y Adolescencia.

DENMARK: Temporary suspension of adoptions from India

Following a Danish television documentary accusing an accredited adoption body of having placed children from an orphanage in the western Indian city of Pune without the birth parent's approval, the government has decided to temporarily suspend adoptions from India.

As a result of the television programme broadcast on 10 June 2007, the Danish Department of Family Affairs, acting as Central Authority for adoption, is carrying out an investigation on the financial relations between Danish accredited bodies for adoption and collaborators in India. Until this investigation has been finalised, no new applicants from Denmark will be able to apply for adoption in India. With regards to the cases where an Indian child has already been matched with a Danish family, the Central Authority has decided that they shall not be affected by this suspension. In such cases, it has been decided to request the accredited

bodies to supply the Central Authority with additional information on the case – something which has already been done. In other words, according to the information provided by the Danish Central Authority, in cases where an Indian child has already been matched with the Danish family, the latter is allowed to bring the child into Denmark.

Sources: Danish National Board of Adoption and Danish Department of Family Affairs (joint Central Adoption Authority in Denmark); 'Denmark suspends all adoptions from India following reports children could have been abducted', *Associated Press*, 11 June 2007, <http://www.pr-inside.com/denmark-suspends-all-adoptions-from-india-r150234.htm>.

PHILIPPINES: Temporary suspension in the registration of unmarried prospective parents

In the face of the increasing number of foreign prospective parents to be assessed, and taking into account the backlog, the Central Authority for the Philippines is taking certain measures.

On 25 May 2007, according to the Secrétariat à l'adoption internationale (SAI, Central Authority of Quebec), the Republic of the Philippines has temporarily halted applications submitted by foreign prospective adoptive parents who are unmarried. In the communiqué intended for its overseas collaborators in intercountry adoption, the Republic of the Philippines indicates that this decision will enable it to complete its processing of the numerous files still awaiting the proposal of a child and will avoid any unnecessary wait for new applicants. The Inter-Country Adoption Board (ICAB, Central Authority of the Republic of the Philippines) has not specified the duration of this moratorium. Moreover, according to the Mission de l'Adoption Internationale (MAI, Central Authority of France), Filipino law does not prohibit adoptions by unmarried persons or common-law spouses. However, in practice, only a couple married for at least three years, who are practising Christians, and who submit a joint request, may adopt. The MAI has also gained information about the state of

intercountry adoption in the Republic of the Philippines. In this regard, it mentions the absence of a correlation between the age of children awaiting adoptive parents, and the wishes expressed by the prospective adoptive parents. At a time when the majority of requests for adoption reflect the explicit wish to adopt a very young and healthy child (less than three years old), the children currently waiting for adoptive parents are in fact aged six or more, and/or siblings in groups of three children (with health problems or a difficult past). The MAI, therefore, advises families, who do not yet have an active file in this country, and who wish to adopt a young child, to select and contact another country.

Sources: Secrétariat à l'adoption internationale (Quebec, Canada), <http://www.adoption.gouv.qc.ca/site/3.262.0.0.1.0.phtml>; Mission de l'Adoption Internationale (France) http://www.diplomatie.gouv.fr/fr/les-francais-etranger_1296/conseils-aux-familles_3104/adoption-internationale_2605/pays-origine_3233/fiches-pays_3895/philippines_9627.html.

Orphans affected by HIV/AIDS in Brazil: An international recognition as a standard model against AIDS

This article provides important information reflecting the opportunities for fighting against HIV/AIDS in developing countries.

In 1996, Brazil gained visibility when it guaranteed free access to anti-retroviral drugs (ARVs) to all its citizens affected with HIV/AIDS (Law N° 9.313, 13 November 1996). Today, the country supports HIV/AIDS treatment for approximately 180,000 persons. The government negotiated lower prices on the companies' pharmaceuticals and began to manufacture generic drugs. It is estimated that since the mid-1990s, Brazil has reduced by half the mortality rate derived from AIDS and reduced the incidence of associated opportunistic infections by 80%. The Brazilian programme integrates prevention efforts across the country, counselling and testing for HIV/AIDS, condoms distribution, syringe-exchange programmes for injecting drug users, educational campaigns and treatment programmes for individuals infected by the disease, all free of charge. Internationally, Brazil is considered as an inspirational model to be followed when it comes to prevention and to fighting against HIV/AIDS.

Recent statistics on orphans in Brazil and the policy to give treatment to these children

In comparison, and according to UNICEF statistics, 3,7 million children are orphans worldwide, either from a father or a mother, and Brazil comes ninth in the list of countries worldwide with the largest number of orphans. Only 15% of the children currently affected by HIV worldwide receive treatment. Just one out of ten pregnant women contaminated by HIV has means to avoid transmitting the virus to her child. Only seven countries offer treatment reaching 20% of its infected children. Brazil is considered as one of the very few countries, which obtains and delivers medicine to more than 50% of its 17,000 pregnant AIDS affected women in the country. Almost 7,500 AIDS affected children receive a treatment; this number is one of the highest amongst developing countries.

The Global Campaign launched in 2005 and the goals of this programme

On 22 November 2005, a Global Campaign to combat HIV/AIDS was launched and was aimed at children and adolescents, given that in Brazil it is estimated that almost 21,000 children live with AIDS. This campaign advocated, for anyone in need, free and rapid access to information, prevention, as well as the guarantee to universal access to anti-retroviral drugs. The main goal was to avoid babies being born with the virus in the country. The campaign had four priorities: 1) to prevent vertical transmission (mother-to-child); 2) to guarantee paediatric treatment; 3) to protect and give care support to children affected by HIV/AIDS; 4) and to promote the prevention, information and development of the public health service.

A standard model for developing countries in Latin-America

In order to achieve these goals, UNICEF, the Brazilian National Programme on STDs and HIV together with UNAIDS are today, promoting training for health professionals and guaranteeing 50,000 fast HIV tests for pregnant women in the States of Ceará, Rio Grande do Norte, Paraíba, Alagoas e Piauí. These are considered regions where it is difficult to access pre-natal and HIV testing for women during their pregnancy. The second goal is to implement the prevention programme with adolescents, via a partnership programme involving the Health Ministry, the Ministry of Education, UNESCO and UNICEF. The third aim is to enable the transportation of drugs to

READING SUGGESTIONS

Janine Noël: le regard précurseur d'une pédo-psychiatre [Janine Noël : The precursory look of a Child Psychiatrist], in *Enfance Majuscule*, N° 93, March-April 2007. This issue of the review *Enfance Majuscule* pays tribute to Janine Noël, a well-known French Child Psychiatrist, who recently passed away. Throughout her rich and wide-ranging professional career, Janine Noël has gained a precious experience of adoption in the clinical context. This series includes several articles, which she has written or co-written, as well as many tributes paid by her fellow colleagues.

developing countries, such as Bolivia, Cape Verde, Guinea-Bissau, Paraguay, São Tomé and Príncipe, Timor-Leste and Nicaragua. The fourth goal is to provide access to fast HIV tests for pregnant women.

Brazil tries to demonstrate that HIV/AIDS treatment in developing countries is possible and that providing prevention and assistance in such countries may become a reality.

Sources: I França-Junior, M Doring and I M Stella 'Orphans and vulnerable children affected by HIV/AIDS in Brazil: Where do we stand and where are we heading?', *Revista de Saúde Pública*, 2006;40(Supl), pp. 23-30, <http://www.scielosp.org/pdf/rsp/v40s0/05.pdf>; UNICEF Brazil Global Campaign Unite for Children, United against AIDS,

www.unicef.org/brazil/campanha_aids3.htm; 'ONU mostra que Brasil tem 3,7 milhões de órfãos', *Jornal de Brasília*, 17 January 2007 (via Ministry of Foreign Relations, 11/03/2007), www.mre.gov.br/portugues/noticiario/nacional/selecao_detalhe.asp?ID_RESENHA=300668; 'Experiência do Brasil no combate à aids é destaque em conferência internacional', *Rádiorás Agência Brasil*, 22 November 2006, www.agenciabrasil.gov.br/noticias/2006/11/22/materia.2006-11-22.1622234202/view; Brazil's National Programme on AIDS and other STDs, www.aids.gov.br; G C Levi and M A A Vitória, 'Fighting against AIDS: the Brazilian experience', *AIDS*, Vol. 16(18)6, December 2002, pp. 2373-2383; P R Teixeira, M Vitória and J Barcarolo, 'Antiretroviral treatment in resource-poor settings: the Brazilian experience', *AIDS* 2004, 18 (both via <http://www.aidsonline.com/pt/re/aids/>).

Adoption breakdown – Prevention and remedy: Analysis of a topic still little explored

The publication by J Galli and F Viero on the prevention and remedy of adoption breakdown explores the different areas and causes of adoption failures, taking into account the conflicts, which stem from the adopters, the adoptees and from those who are involved in the adoption process.

Adoption failure constitutes a phenomenon, which is growing at an alarming rate, and which can be observed within the Services which deal with families, children and adolescents, whether at the psychological or at the social level, and about which we need to reflect in order to be able to carry out an intensive work of prevention and remedy. This is suggested in Jolanda Galli and Francesco Viero's¹ publication, entitled *El fracaso en la adopción. Prevención y reparación* [Adoption breakdown: Prevention and remedy].

Still today, these preventive actions do not appear to have achieved sufficiently effective results, if we take into account the fact that the percentage of adoption failures turns out to be increasingly higher and more worrying, especially for adopted minors who accumulate one breakdown after another.

What is the breakdown of an adoption? What are its consequences and how can it be prevented and remedied?

For a family, the failure of an adoption represents its inability to care for a child and to create a significant affective relationship with him/her, and not to have managed to progress with him/her through the developmental phases leading to his/her own independence as an adult.

Beside adoptions, which succeed in confronting situations of developmental crises, finding new solutions which allow for the preservation of the established affective bond, there are other adoption experiences, in which suffering and discomfort prevail amongst both the parents and the child, which may subsequently result in the failure, which interrupts the attachment they had managed to achieve. In these situations, the child and/or the adolescent experiences once again the situation of return to a life in an institution or of transfer to another adoptive or foster family, and will experience even further difficulties in creating new stable affective ties.

If the adoption of a child has as its primary aim the possibility of experiencing a process of remedying the most deficient internal aspects, a failure in this process will provoke the subsequent weakening of his/her internal resources and of the structures of his/her developing personality.

The reactivation of the trauma of abandonment, which comes with every adoption breakdown and in the removal of the minor from the family with whom he/she had been placed, determines, in addition to the psychological suffering of the subjects involved, very high support and social costs.

The publication by J Galli and F Viero takes into account the clinical aspects and the

complexity of the process of adoption, the work of the professionals and of all those who are involved, as well as the need for a constantly updated qualification, and the importance of coordination between the various bodies which must intervene (legal, psychological and social), as well as the private bodies represented by entities (called Ecais in Italy), which serve as a bridge in intercountry adoption.

* We thank Jolanda Galli and Francesco Viero – co-authors of the publication *El fracaso en la adopción. Prevención y reparación* [Adoption breakdown: Prevention and remedy], Acebo Collection, Madrid, 2007 – for the drafting of this article.

For further information on the authors:

¹ Jolanda GALLI, a Psychologist and Psychotherapist with psychoanalytical training, has dealt with adoption for many years. She has carried out numerous training activities for professionals of public services in Italy and all over the world. Francesco VIERO, a Child Neuropsychiatrist and Psychotherapist with psychoanalytical training has dealt, amongst others, with adoption in clinical and psychotherapeutic practice. Both have collaborated with the Commission for Intercountry Adoptions in Italy. They are also co-authors of *I percorsi dell'adozione*, Armando Editor, 2005. For further information on their other publications, please contact the ISS/IRC.

READERS' FORUM

Interview with Matilde Luna, from Argentina

Matilde Luna is a Psychologist and Lecturer in Minors and the Family at the National University of Lomas de Zamora, Argentina. She is also a Teacher, Researcher and Adviser to Non-Governmental Organisations, and to the National Secretariat for Human Rights in Argentina. In this interview, Matilde Luna shares her valuable practical and theoretical experience of foster families with the readers of the Review.

Name and surname: Matilde Luna.

Place of residence and work: Buenos Aires - Argentina.

Professional title/responsibilities: Psychologist, Lecturer in Minors and the Family at the National University of Lomas de Zamora. Teacher, Researcher and Adviser to NGOs, and Coordinator of a project entitled *Alternatives to the deprivation of liberty*, in cooperation with UNICEF and within the National Secretariat for Human Rights in Argentina.

Has your country ratified the 1993 Hague Convention on Intercountry adoption (HC-1993)?
No.

What types of adoptions are carried out in your country? Domestic adoptions.

1. Could you briefly describe your experience of foster care?

My experience begins with field work with families and children. First, as a Psychologist in a boarding school for children, and subsequently in a governmental programme of foster care. Based on this experience, I developed research and teaching activities. Currently, I am involved in the training, supervision and support of professionals and institutions, and, in the governmental area, I coordinate a project

focused on alternative programmes, in particular on foster care.

2. Could you describe the evolution of this child protection measure in Argentina and Latin America?

Foster care is suffering the same changes as the system of assistance to children. At the beginning, programmes of 'substitute families' were a response to the model of state guardianship. One of its consequences was a kind of action to 'set aside' the family of origin and the removal of the child from his/her community. As the Convention on the Rights of the Child imposes itself, and the local laws are adapted, the programmes are also adjusted to the model imposed by the paradigm of comprehensive protection. The discourse changes first, and later the practices. Currently, new programmes are being initiated by NGOs. In the Secretariat for Human Rights, we are working in order for practices in the old programmes of substitute families to be adapted to the paradigm of rights: respect for child participation, his/her identity, assistance to the family of origin, prevention of appropriation, etc.

3. How does foster care fit into the system of comprehensive child protection, and in particular, what relation does it have to adoption?

We must still make progress in the coordination of the services designed to protect children. One of the obstacles in the establishment of this network is the overload of legal services and of programmes placing children. In Argentina, the concept of "transition" of foster care is strongly imposing itself; thus, the adoption measure remains designed for situations defined as irreversible.

4. What are the main challenges and difficulties encountered in foster care?

With regard to its temporary character, as far as I am concerned, I believe we should accept that in some situations, the family of origin still maintains a tie that cannot be completely severed, and that it is important for the child to take the place that his/her family can offer him/her. Thus, the challenge is to prepare foster families, who are able to live with the reality of "sharing the child", without replacing his/her identity, and complying with their important function of accommodating and 'parenting' a child together with the family of origin.

5. From your valuable field experience with children and families, could you mention some relevant evidence?

It has always amazed me to listen to the stories of families, both those of origin and foster families. When we assess what they have to say, they prove that, with creativity and a natural approach, they are able to solve situations for which the technicians do not have any "recipe". What we have to learn from this process is that we must let the unexpectedness of the meeting emerge. We do not have to fear when the decision to entrust the child to a family or the decision to separate him/her has been analysed and made. We must not be an obstacle to his/her encounter or new encounter when this benefits the child.

6. What good practices could be transmitted to professionals managing foster care programmes?

This is an aspect, which particularly interests me: practices should be known. In this sense, I believe that practice is good when it is open to

critical analysis, when the programme imposes itself the condition of systematisation and review of processes, that 'it undertakes self analysis'. We have completed a number of publications which are disseminated and reflect real experiences. They gradually become references in the development and improvement of programmes. Examples of these experiences can be found in the publication *Vínculos en la Infancia. Nuevas contribuciones al acogimiento familiar* [The ties of childhood. New contributions to foster care], Matilde Luna, Lumen-Humanitas, Buenos Aires, 2005, 160 pp., and other materials are under preparation. (For further information, please contact: matildeluna@arnet.com.ar).

7. Is the ISS/IRC Review an interesting tool in your work? Do you have any proposals for change?

The Review has become an essential reference. Together with other activities in which ISS has participated, such as reports on children deprived of parental care, they are a reference in my daily work, and in the training of new professionals in practice and research. It is very important to develop these materials in various languages. At least for Spanish-speakers, the works of ISS are a meeting point. I have had the honour to collaborate in the translation of the preliminary documents of the International Guidelines on the alternative care of children separated from their families, or at risk of so being, jointly with Soledad Franco. I deeply thank ISS for their respect towards the various languages, thereby promoting and facilitating knowledge.

8. Would you have a message, which you would like to share with our readers?

To promote the exchange, which enriches us. Every country, every region, has a culture and history of its own. The contributions of every one of us, are linked to the reality we come from. I am confident that from Argentina – with a great tradition of studies in the field of mental health – we can contribute to the understanding of ties. We should promote the idea that other research and practice centres could also share their contributions mobilised by networks, such as the one constituted by ISS.

Unaccompanied minors: Gaps in their protection despite a wide range of domestic and international legal instruments

Even though several international, regional and national instruments, in principle, enable to guarantee the rights of unaccompanied children, in practice their implementation does not always fully respond to the needs for protection of these children.

The legislation applicable to unaccompanied minors should ensure a coherent approach to their protection as children, as children separated from their parents or their legal guardians, and as isolated children in a foreign territory (triple protection). By virtue of their status, these children find themselves at the crossroad of several international, regional and national legislations in matters of human rights, children's rights, refugee rights, and sometimes the rights of foreigners. The predominance of one legislation over another, the bad combination of a set of applicable legislation or even their restrictive interpretation, often leads to the inadequate protection of unaccompanied minors and their fundamental rights. The gaps linked to their protection, in particular those mentioned by the United Nations Committee on the Rights of the Child in its General Comment N°6, of 2005, call for the establishment of legislative responses and practices adapted to their specific needs.

Children separated from their family

In addition to the rights enshrined in international and regional conventions on humanitarian and human rights law, unaccompanied children benefit from the protection resulting from the Convention on the Rights of the Child (CRC). Indeed, the countries, which have ratified this Convention, have committed themselves to guaranteeing the protection of all children present on their territory, and to recognising the principle of the best interests of the child as a fundamental state principle. Thus, a child, whether a national or a foreigner, must benefit without discrimination from all the rights enshrined in the CRC and in domestic child protection laws, which are in force in the territory where they are (article 2 of the CRC). Furthermore, considering the particular situation of unaccompanied minors, specific protection should be granted to them in accordance with articles 20 and 22 of the CRC, which stipulate that children temporarily or definitively separated from their parents are

entitled to special protection, similarly to refugee children or those seeking refugee status. Being isolated in a foreign territory, these children are also particularly vulnerable to various forms of abuse, and therefore, should benefit from the specific protection foreseen by the Optional Protocols to the CRC on the sale of children and children in armed conflict.

Children who are also refugees or immigrants?

When an asylum or refugee status determination procedure has been initiated, other international and regional instruments designed to guarantee the protection of unaccompanied children are applicable, in particular the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. However, in practice, the restrictive interpretation of the concept of persecution prevents unaccompanied minors from being granted refugee status. Thus, there is a kind of legal vacuum, which is or is not exploited depending upon the migration policies of governments.

In many countries, in particular European countries, unaccompanied minors are therefore being applied immigration legislation, which, according to Terry Smith¹, makes them dependent upon a general framework rather than upon a specific status. Although some immigration laws include specific provisions for unaccompanied minors, these guarantees are however not as significant as those conferred by national and international child protection laws. The superimposition of these different laws is most often not favourable to children.

From the current deficient protection of children ...

In order to remedy these shortcomings, specific instruments have been drafted by various international organisations. Thus, in 1997, the Separated Children in Europe Programme (SCEP) was born under the auspices of the United Nations High Commissioner for Refugees (UNHCR) and the International Save the Children Alliance, followed in 2004 by a Statement of Good

Practice. The International Bureau for Children's Rights adapted the SCEP to the Canadian situation and, in 2003, published a Best Practice Statement for separated children in Canada. Guidelines on Policies and Procedures dealing with Unaccompanied Children Seeking Asylum were also issued by UNHCR in February 1997, followed in January 2004 by the Inter-Agency Guiding Principles on Unaccompanied and Separated Children and the UNHCR Guidelines on the Formal Determination of the Best Interests of the Child in May 2006. At the

European level, several recommendations have been issued by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe, such as Recommendation 1703 (2005) on Protection and Assistance for Separated Children Seeking Asylum.

These documents denounce, on the one hand, the shortages of the provisions established by States with a view to adequately protect unaccompanied children, and highlight the areas in which major gaps remain. In particular, the following issues are addressed: the systems of identification and registration of unaccompanied children, their documentation, their age assessment, the appointment of a guardian and legal representative, the access to legal advice, the existence of an effective mechanism for tracing their family, and the facilitation of their family reunification in the receiving country, the country of origin or a third country. Moreover, when these children arrive, they often find themselves refused entry into the territory and are placed in detention, which violates article 37 of the CRC. It also occurs that some States illegally return unaccompanied children, thereby violating the principle of *non-refoulement*, enshrined in international human rights law, international humanitarian law and international refugee law.

... to a more favourable future?

Several independent programmes or those financed by States develop good practices in this area. The French NGO Enfants du Monde-Droits de l'Homme has set up a service of reception and guidance for unaccompanied minors², which not only covers their basic needs, but also has the fundamental objective of developing with them a long-term life project. In Latin America, the Inter-American Children's

Institute is a technical organ of the Organization of American States, specialised in the promotion and protection of the rights of children and adolescents. It has been made responsible for including the implementation of the Inter-American Programme for the promotion and protection of migrants in its activities. This includes migrant workers and their families, and the situation of unaccompanied migrant children³. Yet other projects, such as the one presented in the box above, aim to prevent the migration of children and to protect them from various forms of

How to protect unaccompanied children?
The Swiss Foundation of the International Social Service has developed a project in Western Africa, in a region where several tens of thousands of children are victims of cross-border human trafficking. The action taken consists of setting up a programme of social and professional integration of unaccompanied children in the transnational context of Western Africa. In other words, it is a matter of preventing children from leaving or of supporting the voluntary return of those who have already left their country. In the latter case, a work of reintegration is carried out with the children concerned, as well as an individualised psycho-social follow-up. This two-year project is part of a South-South approach, designed to create a synergy amongst several countries of the region, with a view to finding sustainable solutions to the problems linked to child protection. It is based on a participatory approach (children, families, local child protection actors) and aims at developing existing structures and the skills of local partners. Thus, these objectives are achieved thanks to the creation or the strengthening of reception and guidance structures, comprising teams of trained local professionals, and intended to sustain the project once it has been implemented. This project thereby responds to a sustainable development logic based on the resort to local abilities and the beneficiary countries' non-dependence upon external support.

exploitation to which they may be exposed, particularly in their country of origin.

Nonetheless, the provision of an effective and sustainable response to this ever increasing phenomenon requires States to fully assume their responsibilities for these children, and to undertake real international cooperation. One of the international protection instruments, which could enable such cooperation is the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. The promotion of this text – ratified to date by only 14 countries – should be seriously considered by those countries, which wish to

improve the situation of isolated migrant

¹ Report on the EU-project "Promoting inclusion for unaccompanied young asylum seekers and immigrants – A duty of justice and care", prepared by Terry Smith, Independent Researcher, United Kingdom.

² Reception and orientation centre for foreign isolated children, Enfants du Monde-Droits de l'Homme, www.emdh.org/emdh/html/page_type.html

³ Report of the Inter-American Children's Institute - IIN/OEA on the implementation of the Inter-American Programme for the promotion and the protection of the human rights of migrants, including migrant workers and their families, www.oas.org/DIL/esp/migrantes_sesion_especial_20_06_informe_IIN.doc

Sources: General Comment N° 6 (2005) of the Committee on the Rights of the Child on the treatment on unaccompanied and separated children outside their country of origin, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2.005.6.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2.005.6.En?OpenDocument); Separated Children in Europe Program, Reports and materials, <http://www.separated-children-europe->

children.

programme.org/separated_children/publications/reports/index.html; Best Practice Statement on Separated Children in Canada, International Bureau for Children's Rights, 2003,

http://www.ibcr.org/Publications/Trafficking_SC/2003_SC_Best_Practice_En.pdf; Guidelines on Policies and Procedures dealing with Unaccompanied Children Seeking Asylum, UNHCR, February 1997,

<http://www.unhcr.org/publ/PUBL/3d4f91cf4.pdf>; UNHCR Guidelines on the Formal Determination of the Best Interests of the Child, May 2006,

<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=447d5bf24>; Inter-Agency Guiding Principles on Unaccompanied and Separated Children 2004, January 2004,

[http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p11_01/\\$File/ICRC_002_1011.PDF!Open](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p11_01/$File/ICRC_002_1011.PDF!Open);

Recommendation 1703 (2005) of the European Parliamentary Assembly on Protection and Assistance for Separated Children Seeking Asylum, <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta05/EREC1703.htm>.

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Switzerland:** *Children in Street Situations : Prevention, Intervention and Rights-based Approach*, International Seminar organised by the International Institute for the Rights of the Child, in collaboration with the Swiss Foundation of the International Social Service and Terre des hommes (TdH), 16-20 October 2007, Sion, Switzerland. This seminar intends to provide a clear perspective of problems encountered by children in street situations, to identify better practices and possible synergies in this field. Its objective is to conclude on the creation of a strong and common action, and in particular, to contribute to the preparation of a General Comment of the Committee on the Rights of the Child on 'children in street situations'. Seminar in English and French. Contact : Institut Universitaire Kurt Bösch (IUKB), Case postale 4176, CH-1950 Sion 4 ; Tel : +41 27 205 73 03 ; Fax : +41 27 205 73 02 ; ide@childsrightrights.org; www.childsrightrights.org.
- **United States:** *Adoption Ethics and Accountability*, hosted by the Evan B. Donaldson Adoption Institute and Ethica Inc., 15-16 October 2007, Washington, D.C. Conference participants will have the opportunity to attend panel discussions and workshops focusing on a variety of issues, including birth family rights, sibling relationships, transracial adoption, pre- and post-adoption services, access to identifying and non-identifying information, and the regulation of adoption agencies and professionals. Contact: Mari Cochran, Project Administrator, Evan B. Donaldson Adoption Institute, mcochran@adoptioninstitute.org; www.ethicsconference.net.

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www.iss-ssi.org/Resource_Centre/Resource_Center_EN/About_ISS-IRC/about_iss-irc.html. See Activities.

The ISS/IRC would like to express its gratitude to the governments (including certain Federated States) of the following countries for their financial support in the realisation of this Monthly Review: Andorra, Australia, Belgium, Canada, Cyprus, Denmark, France, Germany, Iceland, Italy, Luxembourg, Monaco, New Zealand, the Netherlands, Norway, South Africa, Spain, Sweden and Switzerland. The ISS/IRC also thanks the Canton of Geneva for its specific contribution.