



**Monthly Review N° 11-12/2009
November- December 2009**

***We wish you all a very joyful and peaceful holiday
and trust that in 2010 we be able to further contribute
to the promotion and protection of the rights of the child deprived of their family!***

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EDITORIAL

In 20 years, the Convention on the Rights of the Child has achieved a lot for children, even if numerous challenges remain 

The Convention has made it possible to blaze indispensable trails for the protection of children, particularly those deprived of family. It is now a matter of reinforcing and implementing them better.

Twenty years: what an important landmark. At this stage, the mumbling disagreements and growing pains of youth generally belong to the past. The character has been hammered out.

The values and principles of life have been established. At 20, it is time to consolidate what have become established facts and to pursue the targets that have been fixed with all the energy of youth. This is exactly the stage which

now awaits the Convention on the Rights of the Child (CRC). The CRC celebrates its 20th heyday this year. In the course of its short existence, it has already covered a long road. Despite the obstacles and the doubts, its principles are widely recognised today as well as its objectives. In order to convince the most reticent that the CRC is unavoidable, it is essential to reinforce its position and implementation.

The child at the centre of decisions that affect him

The greatest advance of the CRC is certainly the evolution of the perception of the child that it has induced, the latter having finally become a real subject of rights. This change influences the comprehensive protection of children at every level including children deprived of their family, which interests us especially in this Review.

So, the child is henceforth placed at the centre of decisions that concern him. By virtue of the principle of the child's best interest declared in article 3 CRC, his interest must be protected as a priority, and under all circumstances. This principle, unflaggingly hammered out by the professionals in child protection, is not simply a theoretical declaration, it has some extremely specific implications, for example by means of the formal procedure of (Best Interest Determination model) in the context of unaccompanied and separated children (Review 10/2008).

With regard to children deprived of their family, the best interest principle of the child also has particular implications on the implementation of the principle of subsidiarity in inter-country adoption and as a consequence, to the development of permanent solutions of a family type at the domestic level. Drawing on the CRC, the countries of origin are continually taking more and always better charge themselves of their children deprived of family. For example, to a greater extent domestic legislation now sets a maximum length for the placement of the child in an institution, at the end of which a solution that is permanent and preferably of a family type must be found (Review 10/2009). Additionally, countries like Chile, Brazil and also Lithuania, India or South Africa -- just to quote a few -- now have a real culture of adoption developing and their number of domestic adoptions increasing each year. As a result, more and more children are finding an adequate solution within their own country, even in their own community, and in

this way avoid certain traumas linked to being uprooted.

Another important breakthrough is that the CRC has greatly favoured and encouraged the participation of children who have lost their families in the process of being taken into care. Thus numerous domestic legislation, insists upon the consultation of children according to their evolving capacity before signing up to an alternative care measure. Furthermore, as explained in our January 2009 Review, several groups of young people have been established around the world to actively defend such rights.

The CRC at the origin of numerous other legislative developments

On another record, the CRC is at the origin of fundamental legislative developments. On the one hand, being the most widely ratified international convention (only the USA and Somalia have yet to do so), most domestic legislation refers to it. On the other hand it is the basis of numerous other international instruments aiming at implementing one or another of its principles. With regard to the protection of children deprived of their family, THC-93 is the best example of expressing clearly the principles of the implementation of articles 20 and 21 of the CRC. The Guidelines for alternative care of children, which was co-drafted by the ISS and which was welcomed by the UN General Assembly on 20th November is a more recent example. These texts serve as formidable tools in the service of the professionals for the protection of children, by upholding and legitimising their actions.

The challenges which remain to be taken up

These breakthroughs constitute real improvements for providing alternative care for children. Unfortunately there are still numerous challenges to be taken up in the realm of global child protection in order to be satisfactory. As for children deprived of their family, they are still too many of them growing up in institutions without the opportunity of a permanent family solution, equally in countries of origin and receiving countries. According to UNICEF, there are some two million in the world, of whom there are more than 800,000 in just the Region of Central and Eastern Europe Community of Independent States (CEE/CIS). In this context domestic solutions for providing adequate care must still be developed in most countries. Sometimes the very base of the child protection system must be consolidated or even elaborated. But very often

it is rather a matter of fulfilling existing possibilities for alternative care by imagining new solutions so as to respond to the whole package of children's needs. For example, South Africa has recently launched out in this way by setting up an innovative alternative referred to as cluster foster care (Review 10/2009). These developments need a good dose of creativity and open-mindedness as well as sufficient resources, both financial and structural (training, administration etc)

Among the other large scale challenges to be taken up, it is also a matter of taking better account of the best interests of the child in wider contexts. Therefore, when, in the framework of inter-country adoption the receiving countries bring pressure to bear on the countries of origin to adopt more children, the interest of the latter is threatened. This also occurs when a State carries out adoptions in a country where there are little or poor safeguards. As the ISS/IRC has underlined on numerous occasions in this

bulletin, it is fundamental and urgent that considerable efforts be agreed upon by the receiving countries to better control their requests. In this context countries of origin will be able to concentrate on the protection of their children and finding them a domestic level solution as a priority

Despite the numerous challenges that remain to be taken up, the CRC has made it possible to accomplish spectacular advances in favour of the rights of the child. The changes that have occurred in the context of inter-country adoption in the course of the last 20 years are a brilliant illustration and enable us to envisage the future with optimism.

The IRC/ISS team
November–December 2009

1. Progress for children –A report card on child protection, No 8, September 2009, UNICEF, p19 ([www.crin.org/docs/Progress for Children –No.8 EN 081309.pdf](http://www.crin.org/docs/Progress%20for%20Children%20-%20No.8%20EN%20081309.pdf))

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.

- **Cape Verde:** This body has acceded THC-93 and designated its Central Authority and Competent Authorities
- **Chile and Portugal:** The country has updated its list of accredited bodies
- **Luxembourg:** This country has updated the contact details of its Central Authority and updated the list of its accredited bodies.
- **Paraguay:** This country has designated its Central Authority
- **Togo:** This country has designated its Central Authority and competent authorities.

IN BRIEF

Africa: Recommendations from First International Conference on Family Based Care for Children

The first international conference in Africa on family based care for children has resulted in a comprehensive document, including a list of recommendations on the subject. The conference was well attended by over 419 delegates from 45 countries in Kenya from 28 to 30 September, who together supported the adoption of the Guidelines for Alternative Care of Children. The recommendations included the promotion of, inter alia, laws that support and recognize informal family based care, as well as, other progressive child care mechanisms such as adoption options that are sensitive to and compatible with the African cultures be developed. The recommendations also insist on having laws and policies that protect the child's inheritance to parental property taking into consideration adoption, *kafala*, guardianship, kinship and foster care, among others. These recommendations form an important lobbying tool for those working in the region.

New York: Guidelines on the Alternative Care of Children welcomed at UNGA. To commemorate this landmark event, SOS Children's Villages and ISS launch a publication on the Guidelines

A resolution 'welcoming' the Guidelines for the Alternative Care of Children was adopted by UN General Assembly (UNGA) on 20 November 2009. Whilst the resolution does not 'adopt' the text, the accepted language was part of an effort to avoid having the text re-opened in New York. It is important to note that the UNGA 'welcomed' the Paris Principles (at OP 11) and that that OHCHR itself actually describes them as 'adopted'. The resolution also requests the OHCHR to ensure the wide dissemination of the text and it is important that the text is now implemented as part of national policy. The ISS is extremely pleased with the outcome given its involvement from 2004 with UNICEF, when the call for International Standards was first made.

To aid with the latter, SOS Children's Villages and ISS have launched a small publication of introductory questions to gauge whether the national policy reflects the principles espoused in the Guidelines. For the time being this booklet is available only in English but it is hoped that it will be translated into other UN languages in the near future. The objective of publication is to encourage all those who are committed to protecting and promoting the rights of children at risk of losing parental care, or who have lost parental care, in any national context.

Source: Publication available at <http://www.iss-ssi.org/2009/index.php?id=25>, [http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/A.RES.48.134.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.48.134.En?Opendocument) and <http://www2.ohchr.org/english/law/parisprinciples.htm>,

Tanzania: Adoption of landmark Law of the Child Act 2009

On 6 November 2009, Tanzania's Parliament passed a bill referred to as the Law of the Child Act 2009, which directly incorporates the UNCRC as part of domestic procedures. The law reflects many of the most serious challenges facing children in Tanzania today such as non-discrimination, the right to a name and nationality, the rights and duties of parents and the right to an opinion. Importantly the law sets out processes to ensure the protection for children deprived of their families, including international adoption. Among its provisions, the law deals with customary adoptions, establishes the High Court as the responsible tribunal for adoption applications, sets criteria for prospective adoptive parents (PAPs), identifies conditions for consent including an explanation of the effects of the adoption and promotes participation of the child. Specifically, before an intercountry adoption order is made, the child must have been in the care of the PAPs for at least 3 months and there is a residential requirement of 3 years.

Source: http://www.unicef.org/infobycountry/tanzania_51662.html

LEGISLATION

Uruguay adopts a new law, which improves the care system for children separated, or at risk of being separated from their family 🏠

On 18 September 2009, the new Law N° 18.590 was approved; it amends some articles of the Childhood and Adolescence Code 2004, which are related to the care of children separated, or at risk of being separated, from their family.

The new Uruguayan law strengthens the priority given to keeping the child within his family and, in order to achieve it, foresees the arrangement of support measures for families. For those children who have been permanently separated from their family, the law states, in detail, the family-type alternatives, which may be offered to the child (eg: extended family, other family-type foster homes, or families for adoption) and requires the avoidance of

institutionalisation as an objective. In addition, the law establishes a limited period of time for the child's stay in the institution: 45 days for children under the age of two years and 90 days for children aged two to seven, except in exceptional cases. In accordance with the law, Uruguay's Institute of the Child and Adolescent (INAU) has two years to progressively achieve this objective.

The adoption procedure

In accordance with the new law, the INAU is the body in charge of proposing, implementing and monitoring the policy on adoption. However, it may develop agreements with public and private entities, which comply with the criteria established by the law (art. 158). Among its functions, the INAU will have to develop counselling and support programmes for families, who have expressed the wish to place their children with adoptive families. On the other hand, consent given to the child's separation before his birth or within 30 days from his birth will not be valid. The adoption of a child will only be possible when his adoptability has been confirmed by the competent judge and after he himself has given his consent.

For the selection and appointment of adoptive families, the new law states that the INAU is the only competent body, via teams specialised on the issue and the General Adoption Register (art. 159). Moreover, the law introduces an interesting provision, which aims to maintain the ties between the child and his family of origin, even in situations of adoption. Furthermore, should the child have ties with members of his family of origin, which are highly significant and positive for his comprehensive development, the law states that an adoption may only take place if the adopters commit themselves to respect and protect these bonds. Therefore, they will have to respect the agreed regime of visits. In addition, the law specifies that this condition will not restrict the adoptee's rights in relation to his adoptive family given all adoptions are full adoptions. The law also recommends the joint adoption of siblings and, in relation to those children who have a special need it states that the State will ensure their comprehensive care.

Intercountry adoption

In the section on intercountry adoption, the law reaffirms the principle of subsidiarity, by specifying that preference must be given to the child's placement with families, who live on the national territory. The law has a 6 month residential requirement for foreign prospective adoptive parents, which may be shortened by the judge based on justifiable grounds and the child's best interests.

Information for the child on his adoption

The law grants the child the right to know that he is an adoptee "from his youngest age". It also recognises, from the age of 15 years, his right to access the data held on the National Adoption Register in relation to his personal background and his family of origin. It will be the adoptive parents' duty, and subsidiarity that of the INAU, to inform the child on this issue, taking account of his age and characteristics, as well as to support and guide him should he wish to recreate ties to his family of origin.

The law mentions 'partners and concubines' that have cohabitated for at least 4 years as being able to be prospective adoptive parents although it does not specify what this term includes. There have been numerous debates on whether homosexual couples are also able to adopt or not, given that their civil union are recognised in Uruguay. Despite the focus of such debates, it is important to note, that the law represents significant progress in the implementation of the children's right to live in an environment which best responds to their needs as presented in this brief article.

Source: Law N° 18.590,
<http://www.presidencia.gub.uy/web/leyes/2009/09/E/C1384.pdf>

PRACTICE

The NORDIC APPROACH to Intercountry Adoption

The Nordic Approach to intercountry adoption is based on the rights of the child and higher ethical standards in intercountry adoption. Below is an overview of the Nordic Approach prepared by the Nordic Adoption Council(1) which the ISS/IRC believes closely resembles the principles in THC-93.

The Nordic Adoption Council's Conference 2009 on intercountry Adoption took place in Iceland from 3rd to 6th of September. Present at the Conference were all of the NAC-members, who represent all but one of the Nordic

organizations, i.e. the organizations from Norway, Sweden, Finland, Iceland and Denmark, accredited to work with intercountry adoptions plus parents organizations from some of the countries. The Conference agreed upon the following joint global venture in intercountry

adoption context, based on the ambition to put **children's rights and higher ethics** at the forefront of the agenda when it comes to practices and basic rules in intercountry adoption.

The background is well known: intercountry adoption is under increasing pressure due to the fact, that more and financially strong receiving countries have dramatically increased their number of approved families for adoption, while many of the traditional countries of origin have either put restrictions or barriers upon intercountry adoption or have closed up their intercountry adoption programmes completely due to better living conditions in the country, increased domestic adoption or - in worst case - excessive pressure from potential adoptive families resulting in scandals involving trafficking.

The Nordic organizations have – globally - the longest experience in mediating in intercountry adoption due to the fact, that intercountry adoption became a recognized social and legal phenomenon in the Nordic countries already some years after the Second World War. At the conference celebrated in Iceland, the Nordic Adoption Organizations – many of whom have celebrated 40 years' anniversary - *agreed on the following standpoints to secure intercountry adoption processes based on ethics and responsibility:*

* To engage in a joint effort with the Nordic Central Authorities, the accredited Adoption Organizations and the adoptive family associations in the Nordic countries to **globally promote the Nordic Approach** to Intercountry Adoption.

* To emphasize the areas where the Nordic approach sets **higher ethical standards** than those established legally and by Intercountry conventions and promoting these areas, including the aim at abolishing private or independent adoptions, prohibiting contact with biological families prior to the adoption, to prohibit the intervention of private intermediaries, etc.

* To secure **intensive support to giving countries** with weak economies and structures to promote awareness, to empower public institutions and to help set restrictions.

* To globally promote **adoption as a positive solution** including the EU context where awareness of adoption as a positive solution for children at risk is highly underestimated.

* To secure **networking and sharing of knowledge** with other stakeholders in intercountry adoption.

* To promote the idea of having a limited number of **highly professionalized NGOs as accredited organizations** to act as intermediaries in intercountry adoption, thereby securing continuity, engagement and commitment, sustainability and non-political engagement in the work.

* To do advocacy for the **restriction** of powerful receiving countries **from putting undue pressure on the countries of origin** by presenting huge number of applications which are not realistic seen in relation to the number of children available for adoption, and which puts immense administrative burdens on the countries of origin and might encourage trafficking.

* likewise and for the above reasons to do advocacy among the Central Authorities of the receiving countries to impose regulations restricting the organizations from presenting one family's application to more than one country of origin simultaneously, unless in special and extreme circumstances

* To **take responsibility for the post-adoption services**, including the CAs taking responsibility for post-adoption counseling, securing the child's right to its own history and the preservation of the files of the adoptees.

* To ensure that **research has the proper focus on the rights of the child** by ensuring – for example – that research concerning adoptees' development does not merely focus on a comparison between adoptees' development and the development of biological children, but does instead focus on adoption as an alternative solution to institutionalization or foster care placement of children at risk.

* To be **agenda-setting in the European and global context**- based on the many years of experience accumulated in the Nordic countries in the field of intercountry adoption.

The Nordic approach aims at securing the rights of the child and setting intercountry adoption into its right context as a good alternative for

children, when a permanent family solution cannot be found in the child's country of origin.

NAC consist of:

AC Børnehjælp (AC International Child Support) Denmark (www.a-c.dk), DanAdopt Denmark (www.danadopt.dk), Adoption & Samfund (Adoption & Society) Denmark (www.adoption.dk); Interpedia Finland (www.interpedia.fi); Pelastakaa Lapset (Save the Children Finland) (www.savethechildren.fi); City of Helsinki Finland,

(www.hel.fi/adoptio); Adoptioperheet ry/Adoptivfamiljer Finland; (www.adoptioperheet.fi) Islensk Ættleiðing (Icelandic Adoption Society) Iceland (www.isadopt.is); Adopsjonsforum Norway, (www.adopsjonsforum.no); InorAdopt Norway (www.inoradopt.no), Verdens Barn (Children of the World) www.verdensbarn.no; Adoptionscentrum Sweden (www.adoptionscentrum.se) Barnen Framför Allt (Children above All) Sweden (www.bfa.se); Barnens Vänner (Friends of Children) Sweden (www.bvadopt.se); FFIA Sweden (www.ffa.se)

INTERDISCIPLINARY RESOURCES

The Elaine and Gerald Schuster Institute for Investigative Journalism: an online resource listing abuses in intercountry adoption

The American website compiles, among other sensitive issues, information about corruption cases denounced in countries of origin.

The front-page¹ of the Institute website declares: “the Elaine and Gerald Schuster Institute for Investigative Journalism, the nation’s first investigative reporting center based at a university, was launched in September 2004 to help fill the void in high-quality public interest and investigative journalism — and to counter the increasing corporate control of what Americans read, see and hear”. With this aim, the Institute proposes a whole set of themes from politics to justice, sexual harassment of teenagers at work, etc. But the section dedicated to intercountry adoption is definitely the largest one.

Mapping abuses

The website proposes a world-map² showing where reports of abuses have been most often denounced by the media, NGOs and researchers. Not less than 28 countries are referred to and in some cases a summary of findings and articles is also included.

An alternative source of information

Such a website can be useful for the authorities in charge of authorising parents to adopt children in certain countries. The different

sources listed in the website can provide some clear arguments for central authorities when they have some doubts about the guarantees offered. Alternatively, the information can be of value in terms of simply warning prospective adoptive parents about the risks they may face. The information is also quickly and easily accessible.

However, one has also to be cautious about taking the information provided out of its context: abuses identified in certain parts of a country do not necessarily reflect the reality of the country as a whole. In addition, several countries of origin are making great efforts to fight poor practices in adoption, and it would be a shame to label a country as “corrupt” without taking into account the other aspects of its child protection system. Last but not least, little is said about the role of foreign actors and the responsibility that they should assume in such contexts.

Nevertheless the website provides interesting and valuable information that should be read in its proper context.

¹<http://www.brandeis.edu/investigate/about/index.html>

²<http://www.clairepavlikpurqus.com/Schuster/AdoptionMap3.html>

I MATTER: An international campaign is launched by SOS Children's Villages on Leaving Care

Based on its many years of experience working with children and young people leaving care, SOS Children's Villages has decided to launch an international campaign on the subject.

The campaign 'I MATTER' aims to ensure that young people leaving care will be adequately prepared for issues that they will face, including inter alia, suitable employment, housing, education and emotional stability. This effort is consistent with paragraphs 131 to 135 Guidelines on Alternative Care for Children.

The need for such a campaign

Young people leaving all forms of care, from foster to institutional care are often expected to reach a level of independence earlier than their peers and usually without the same support network. Without adequate preparation, this group is often at risk of failure of fully integrating into society as well as faces obstacles in sustaining their basic needs such as food and shelter.

It is this gap that formed the genesis of the campaign targeting 15 countries across Europe and Central Asia 'aiming to collect and share good practices in supporting their transition and their resilience; and will, when necessary, lobby for changes in policy and practice'. The campaign will include 6 briefing papers, published twice a year until 2011.

Resources for professionals and young people

In the first briefing paper, the views of the UN Committee on the Rights of the Child are included, which explains their intention to focus more attention on the issue as many children leave the care system before turning 18 years old (eg: 14 years old in Albania). There are also good practices on successful advocacy from a Youth in Care Network and also illustrations of helpful procedures for semi independent living. For example, in the north of France, studio flats have been established within one building where young people can live independently as subtenants but within a set structure of supervision. This model provides a good training ground for independent living. The paper also has specific resources for professionals and young people.

The ISS/IRC welcomes the 'I MATTER' campaign as an innovative preventative and proactive effort to protect those who are often the most socially excluded within our communities.

Source: <http://www.sos-childrensvillages.org/Focus-areas/Child-rights/Advocacy-in-action/Documents/0910-LAO-BriefingPaper-final.pdf>

SPECIAL SERIES - GUIDELINES ON THE ALTERNATIVE CARE OF CHILDREN

Practical directions for an adequate provision of alternative care for children outside their country of habitual residence

To illustrate the eighth part of the Guidelines governing alternative protection for children who find themselves outside their country of habitual residence, the ISS /IRC has chosen to present two initiatives that have been implemented in Spain and in France

In a world where migratory movements are proliferating for political, economic, social or other reasons, many children are finding themselves outside their country of habitual residence, alone or accompanied by an adult, who is not a relative. Far from their family, house, village, these children often live in a situation of extreme vulnerability, and in need of special attention from the countries that receive them. In order to better guarantee the provision of substitute care for them in the receiving

country, the Guidelines for the Alternative Care of Children, set minimum protective standards (see the rectangular insert on the opposite page).

By way of illustration, the Red Cross in Spain and the Chain of Hope Association in France have been able to provide concrete responses to the needs of these children by launching two programmes.

Social and educational integration of unaccompanied immigrant children in the receiving countries.

In accordance with paragraph 140 of the Guidelines,

unaccompanied or separated children already abroad should in principle enjoy the same level of protection and care national children in country concerned". The CRoNo project launched by the Spanish Red Cross in 2006 is committed to this approach. The project focuses on immigrant children from 12 to 18 years of age who are mostly unaccompanied or have a family connection and find themselves in risky circumstances on Spanish soil. Based on an individualised accompaniment strategy, the CRoNo programme consists of developing a plan for social-educational intervention for each beneficiary child. This plan

includes several levels, enabling the child to pursue his solid development in a cultural and social environment that is often very different from his own. In particular the child is offered emotional assistance, access to language training and courses about Spanish social customs (communication, conflict resolution, and a questioning mind). Opportunities are also offered for leisure activities, support in job hunting and in the procedures linked to the status of a foreigner, etc. These various activities help enable the child to integrate into

Spanish society, participate in the social life, benefit from his rights and to carry out his duties as a citizen.

This programme so far

has benefited more than 300 children of different nationalities

(Morocco, sub-saharan Africa, Eastern Europe), who have left their countries. These children have been directed towards the CRoNo programme by the services for child protection, the school system, and reception centres or even by the trainers of the programme. Furthermore, when they reach 18 years of age the children benefit from a follow-up by means of a panel of social services left at their disposal, as well as a professional insertion plan. It is also appropriate to recall that during the entire process of providing child care, the family reunification of the child is always possible, in accordance with Spanish legislation. Children can therefore be sent back to their country

of origin but only if the required conditions are met. To campaign against abusive returns of children to their country of origin, paragraph 147 of the Guidelines lists specific cases where such a return is prohibited (eg: the child's safety is threatened, the absence of a relative, family member or an accredited institution capable of taking care of and protecting the child and any other reasons contrary to the child's best interests).

Principles of the Guidelines governing alternative protection for children who find themselves outside their country of habitual residence

The following principles should be applied to all institutions, public and private, and to individuals participating in steps leading to the placement of a child abroad or to the provision of care to a child who is already abroad (par.136 and 139).

- *Principles governing the placement of a child abroad :*

- To ensure that a designated body has the specific responsibility for determining standards for placement as well as for supervising and monitoring the operation of such schemes (par. 137).
- To guarantee close international co-operation, particularly by ratifying or adhering to The Hague Convention 1996 (par.138).

- *Principles governing the protection of a child already abroad :*

- To ensure that unaccompanied or separated children receive protection equivalent to that of children of the receiving country (par.140).
- In determining appropriate care provision, the diversity and disparity of unaccompanied or separated children (such as ethnic and migratory background or cultural and religious diversity) should be taken into consideration on a case-by-case basis (par.141).
- To prohibit the deprivation of liberty of unaccompanied, separated or trafficked children (par. 142-143).
- To appoint a guardian as soon as the child has been identified (par.144).
- To search for the child's family, to re-establish and facilitate the maintenance of family ties whenever it corresponds with his best interests (par.145 et 150).
- To assist in planning the future of an unaccompanied or separated child in a manner that best protects his/her rights, reasonable efforts to procure information in order to conduct an assessment of the child's risk should be made (par.146).
- To prohibit the child's return to his country of habitual residence in the cases specified (par. 147).
- To promote co-operation between States (par.148-149).
- To envisage a placement leading to adoption or kafala only once the efforts to search to find the child's family has been exhausted (par.151).

Timely provision of care for children from disadvantaged countries, who need urgent medical treatment.

Another case targeted by the Guidelines is that of children needing medical treatment that their country of origin can not provide. An adequate provision of care of the child during his stay in the receiving country must therefore be organised (paragraph 137), a mission that the Chain of Hope, a French Association has been fulfilling for several years. The Association takes responsibility for the transport of the children, their reception by a host family, their care, their return to their country, and their medical follow-up. The network of the Chain of Hope brings together today more than 300 families chosen in interviews by the teams of the association. These families play a fundamental role, because they care for the child during the whole period of his stay (8 to 10 weeks), and behave as if the child was their own. They receive no remuneration, but the medical expenses involved are reimbursed by the Chain of Hope. The programme of providing care for these children takes place in several stages:

- The detection of the need by local medical staff of cases among the children that urgently require a surgical intervention aged from 4 to 16 years of age
- The selection by the Medical Committee of the Chain of Hope among the files for children in need of care.

- The transfer of the child to France, which is under the responsibility of a benevolent companion of : Aviation Sans Frontiers (ASF)
- The reception of the child and the selected family's care for him once he arrives at the airport
- The child's hospitalisation, generally for about two weeks
- The period of convalescence in the care of the host receiving family
- The child's return to his country of origin, once he gets a clean bill of health
- The follow-up by the local medical staff. They regularly transmit information on the child's state of health to the Chain of Hope.

It is important to specify that the Chain of Hope gives priority to the provision of medical care for the child in his country of origin whenever it is possible. In that way it organizes operational missions in the field and at the same time, it trains local medical staff and helps in developing and equipping specialised hospital structures.

The ISS/IRC welcomes very warmly these initiatives of the civil society. It hopes however that the States support and participation in these activities should logically form part of their child protection policy as advocated in paragraph 2 of the Guidelines. Furthermore a rigorous control of the placement of these children is expected as per paragraph 137, a task that still remains a challenge to be taken up for many countries.

READER'S FORUM

Child protection systems in the South Pacific Islands: Part 1

Ms Sue Farran is a lecturer at the Dundee Law School having spent five years teaching at the University of the South Pacific (Vanuatu), where she remains a Visiting Lecturer. Based on her expertise the ISS/IRC asked Ms Farran to share her views on the child protection system in this region and later in part 2 on adoptions.

Name, surname: Sue Farran.

Place of residence and work: Dundee, Scotland

Professional position: Lecturer at Dundee Law School

1. How would you describe the overall child protection system in the South Pacific Islands?

I would describe these as undeveloped and under resourced. This is not just a personal view but one borne out by repeated concerns expressed in observations of UN Committees on country reports regarding UNCRC and CEDAW. Governments have been very slow to put in

place any state or public provision so the burden falls on families, non-governmental organisations, churches and charities. For example, only Fiji has a system of dedicated Family Courts and even these are not specifically children's courts or hearings.

Although there is reference to the welfare of the child or the child's best interest in much of the legislation which applies to formal adoption in the region, judges often give this cursory consideration or may indeed be unaware of what this means. In any case judges rarely have the

assistance of child professionals to help them determine the best outcome for a child.

2. What are the alternative care options for children deprived of their family in the South Pacific Islands?

The South Pacific island countries are fortunate in that they have not experienced the devastation caused to families in many other parts of the world by ravages such as AIDS, Civil war and genocide or major natural disasters. The number of orphans is therefore very small. However there is increasing prevalence of teenage pregnancy and single mothers – again noted by UN observations. Also in a number of countries, especially those of Melanesia and Micronesia population growth rates are high with a large percentage of the total population represented by children and young people. Moreover increasing poverty due to the shift from subsistence agricultural economies to monetised ones and growing urbanisations and peri-urbanisation has led to an increase in poverty and people living on the margins so that there are children who are abandoned or whose natural parent or parents cannot support them. It should also be pointed out that this is a region where abortion in most Pacific island countries is illegal and where availability of contraception is limited, especially in rural areas.

Generally the extended family continues to provide for these children, who are often informally adopted by relatives. Sometimes the extended family includes relatives living abroad, especially among Polynesian families from Samoa and Tonga, who may live in New Zealand, Australia or America or indeed in American Samoa in the case of Samoans. In Micronesian countries such as Marshall Islands, Palau and Federated States of Micronesia there is also more freedom of movement to other parts of the USA such as Guam and Hawaii so families from these islands may have extended family members living there. The extended family provides a valuable safety-net for such children especially in the face of state neglect – although it may also account for state inaction. However such children can be subject to abuse and neglect within these situations and their status is often unclear especially where no formal adoption takes place. In the first regional CRC workshop held towards the end of 2008 in Vanuatu, Pacific youth themselves highlighted the problems that can be encountered in such informal adoptions.

3. In the context of its overall child protection framework, what is the role of adoption?

Formal adoption is a concept introduced under colonial law. However it is clear from the case-law of the region, especially cases involving rights to land and inheritance that various forms of customary adoption have a long tradition in the region. As with most introduced concepts, when we speak of 'adoption' in the South Pacific there is a need to distinguish between formal adoption approved by a court and traditional forms of 'adoption'. In the later the test is usually whether a person has been sufficiently integrated into a bloodline, clan or family so as to be entitled to certain rights, for example, land, title, names, honours etc. In some cases full-adoption for these purposes is distinguished from half-adoption, and often the rights of an adopted person will still be regarded as being of unequal value in custom as those of a natural heir or child born into a bloodline, clan or family. Moreover whereas the introduced idea of adoption envisages the severing of ties with the natural parents, this is not necessarily the case in custom adoption and in countries such as Samoa there may be continuing links with the natural parents. This plural approach to adoption can create problems, for example, regarding the law of incest and marriage, as well as the law of succession.

4. What is the legislative framework for adoptions in the South Pacific Islands?

The formal, written law governing adoption in the region is essential that either introduced directly from England or closely modelled on such laws. Much of it is antiquated and has not been reformed in the Pacific Island country where it is applied although it has since been modified in its country of origin. Much of it is not only antiquated but premised on structures and institutions which simply do not exist in the South Pacific. For example in Niue the Adoption Act 1955 is that of New Zealand and refers extensively to Maori issues and the infrastructure available in New Zealand.

In some countries there are different laws which apply depending on race and ethnicity, for example in Cook Islands, Kiribati and Nauru.

Two countries, Solomon Islands and Marshall Islands have recently reformed their law on adoption to make it more effective especially in safeguarding children and regulating the process of adoption, and Samoa has taken steps to regulate adoption agencies more

vigorously. However the Solomon Islands law does not include customary adoptions which are also practiced there and it seems doubtful whether the Marshall Islands' law is being effective to prevent the unregulated adoption of babies of Marshallese mothers who are born out of the jurisdiction.

5. How is this legislative framework compatible with the Convention on the Rights of the Child and the Hague Convention in practice?

All the countries of the region have signed up the CRC but only Vanuatu has incorporated this into domestic law, although Fiji has taken its provisions into account in a number of ways in its Family Law Act 2002, however its law of adoption is still governed by the Adoption of Infants Act of 1945. In some countries, such as Tuvalu the courts have expressly stated that the CRC is not part of the domestic law and so need not be taken into account. None of these countries are party to the Hague Convention. While the courts may refer from time to time to the CRC and its provisions much depends on the judge. Also there is the problem of determining what is 'in the best interests of the

child' in the context of the Pacific region. Some judges have held that it is better for a child to have the opportunity of material benefits available in New Zealand or elsewhere, which not available in the Pacific island of birth. Others have expressed some concern about loss of cultural connections, language and adoption by non-indigenous parents. While some judges have expressed concern about non-indigenous adoptions they have also indicated that it is not for the courts to determine policy regarding adoption.

Much depends on the attitude of individual judges. For example, an English judge sitting in Vanuatu took it upon himself to visit the home of potential adoptive parents. While this may seem rather unorthodox in some jurisdictions there wasn't anyone else to do this!

Overall I would say that there is insufficient attention given to the desirability of trying to keep the child in its country of origin, or ensuring that all the procedural safeguards are observed, for example requirements as to residence and time for bonding with the adoptive parents, the consent of the natural mother and father, and consideration of the long-term welfare of a child.

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **France:** *Les conflits d'appartenance aujourd'hui. L'enfant séparé de sa famille en accueil familial à temps complet et en internat (The conflict of belonging today. The child that is separated from his family who is part of a foster family full time and in a boarding school)*, COPEs, Paris, 4 -5 February and 15 -16 March 2010. For more information: www.lecopes.org.
- **Netherlands:** Post Graduate Diploma on Children, Youth and Development, Hague, 10 week course from 21 April to 2 July 2010. For more information, contact ISS at info@iss.nl
- **United Kingdom:** *Assessing Parenting Training*, London, 28 January, 25 February and 25 March 2010. For information: www.childandfamilytraining.org.uk.

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