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**One child is equal to another:
The principle of non-discrimination applied to adoption**

The ban on discrimination is a basic principle of the protection of human rights in general and the rights of the child in particular. It is enshrined in numerous international instruments and cannot be subjected to any derogation (peremptory norms). The United Nations Convention on the Rights of the Child stipulates in particular that its States parties must respect and safeguard the rights which it sets forth « *without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.* » (art. 2, para. 1). Only an application of the Convention true to this principle ensures that *the best interest of the child* is respected.

Nonetheless, this principle does not exclude all distinction between individuals. Only those which are not based on legitimate grounds are prohibited. *It may even be that the obligation of non-discrimination imposes to create advantages for certain categories of people in compensating for the social imbalances that are at the root of inequalities.* The principle envisaged here therefore, by virtue of its very generality, must be specified according to the fields in which it needs to be applied. **In matters of adoption, its implications are manifold and call for shades of meaning.**

Domestic/ inter-country adoptions

The Convention on the Rights of the Child, thus, stresses the risk of inequalities that may be linked to the distinction between domestic and inter-country adoption. It prescribes that States parties must ensure, « that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption » (art. 21, letter c). Practice shows, however, that the opposite hypothesis must be envisaged with just as much, if not greater, attention. It often happens, in fact, that the safeguards granted by domestic adoption procedures do not achieve the level of protection foreseen by inter-country adoption. While, therefore, article 21, letter c, of the Convention retains all of its relevance, it is also essential to recall that the States also bear responsibility for ensuring that children adopted in their own country benefit, particularly, from legal and psychosocial guarantees (intervention of qualified and supervised professionals, checking the child's adoptability and the suitability of the prospective adoptive parents, preparing the child and the parents, professional matching, post-adoption support) equivalent to those provided for inter-country adoption.

Adoptions within/ outside the framework of The Hague Convention of 1993 (THC-1993)

Since THC-1993, like all international treaties, is only binding for member States, the way inter-country adoption procedures function risks being different depending upon whether or not the States concerned are parties to the Convention. If they are not, basic guarantees may not be applied to the detriment of the child's best interest. This is one of the reasons why the Special Commission on the practical operation of THC-1993, during its meeting of 28 November-1st December 2000 organised under the Hague Conference on Private International Law, recommended that States Parties « *as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States.* »¹.

The ISS/IRC recommends, therefore, that the countries of origin that are parties to THC-1993 make provision for parallel guarantees for all their children adopted at the inter-country level, whether it be in a country that is a party to the Convention or not. Similarly, the receiving countries that are parties to THC-1993 should make provision for parallel safeguards for all children adopted by their residents (for example, the ban for the adopters, of going through intermediaries in the countries of origin whose reliability has not been checked, or of choosing their child), whether or not they come from a State party to the Convention².

The States concerned should be particularly attentive to the rules that stipulate the subsidiarity of adoption, checking the adoptability of the child, the combat against undue material gains, co-operation between Authorities of the countries of origin and the receiving countries, the accreditation of intermediaries in

¹ Report and Conclusions of the Special Commission, April 2001, www.iss-ssi.org/Resource_Centre/Tronc_CI/reportspecom2000.PDF, par. 56, recommendation n°11.

² The Belgian Law of 24 April 2003 envisages for example similar safeguards for all inter-country adoptions, regardless of the applicable law and whether or not the country of origin concerned is a party to The Hague Convention.

matters of adoption, information of all parties, checking the suitability of the prospective adoptive parents and the ban on all contacts between the latter and the parents or guardians of the child before the child's adoptability and the suitability of the prospective adoptive parents have been determined by the competent authorities.

Adoptions (domestic and inter-country) going through an adoption accredited body/ independent adoptions

The choice of prospective adoptive parents whether or not to resort to an adoption accredited body can also be a factor of inequality between children. The accredited bodies are particularly guarantors, with and under the control of the States, of the existence, professionalism and the multidisciplinary nature of the medical, legal and psychosocial work done (information, preparation, support) for the benefit of the child, the family of origin and the adoptive family. They assume the role of "third party » on the spot, and carry out the necessary intervention and mediation of society and the State in protecting children deprived of their family. Even in this case, it is essential to be sure that the children involved in the adoption procedure enjoy the same rights, independently of the public or private status of the accredited body in question, especially, in case of inter-country adoption, regarding the professionalism and reliability of the intermediaries in the country of origin.

In the case of independent adoption, this role of the third party does not arise and respect for certain safeguards may be missing. It is for this reason that the ISS supports adoption carried out through an accredited adoption body (see Editorials in Monthly reviews 70, www.iss-ssi.org/Edito.70.eng.pdf, and 71, www.iss-ssi.org/Edito.71.eng.pdf). If, however, independent adoption is authorised by certain States, the latter must be sure that all the functions of an accredited body (including, in the case of inter-country adoption, checking the reliability and training of the intermediary in the country of origin) are accomplished, with the same safeguards, by the official bodies concerned.

Non-related / Relative adoptions (domestic and inter-country)

The principle of non-discrimination also requires that relative adoptions (of the child of the spouse or of a child related to at least one of the adopters) benefit as far as possible from the same level of guarantees as non-related adoptions. This is particularly important as regards the respect for the principle of subsidiarity and the search for the best interests of the child, verifying the medico-psycho-social and legal adoptability of the child, as well as the suitability of the prospective adoptive parents, preparing all the interested parties and the follow-up to the situation. This is not systematically the case in current practice.

Adoption of children with special needs

In the case of children « with special needs », the principle of non-discrimination requires the adoption of *specific (positive) measures*. Here it is not a matter of avoiding an arbitrary distinction between the individuals concerned, but rather, on the contrary, of arranging things so that these children receive specific treatment adapted to their « special needs » (for a more detailed commentary on this topic, see the Editorial in Bulletin 67, www.iss-ssi.org/Edito.67.eng.pdf).

As demonstrated by the example of adoption, the principle of non-discrimination cannot be systematically applied. It has to be adapted to each context. Depending on the cases, it requires either to identify differences of treatments which cannot be justified under the best interest of the child or, on the contrary, to take specific measures aimed at compensating inequalities. Only this differentiated approach ensures that *one child is equal to another* in practice.

The ISS/IRC team

- **New e-mail address:** As of Friday 25 February 2005, the e-mail address of the ISS/IRC will be irc-cir@iss-ssi.org. Thank you in advance for using this new address in your future correspondence.

The Hague Convention of 1993 on Intercountry Adoption (THC-1993)

Source: Permanent Bureau of The Hague Conference:

http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69

Next Special Commission: *The Special Commission to review the operation of THC-1993* will take place from 17 to 23 September 2005. The first day will address the question of approval of adoption bodies. See also Bulletin 71 on the preparatory meeting of September 2004 on the draft Guide to Good Practices.

Conventions concerning the rights of the child deprived of family

- **United Nations Committee on the Rights of the Child:** *Concluding Observations of the 38th session, 10-28 January 2005, during which the following States parties' reports were examined: Albania, Austria, Bahamas, Belize, Bolivia, Iran, Luxembourg, Nigeria, Sweden and Togo.* The Committee expressed its satisfaction with the States' submission of their periodic reports and with their progress in implementing the Convention on the Rights of the Child (CRC). It was particularly pleased with the ratification of **THC-1993** by Albania (2000), Bolivia (2002) and Luxembourg (2002) and encouraged Belize, Iran and Nigeria to do likewise. Austria and Sweden already ratified THC-1993 respectively in 1999 and 1997. The Committee also congratulated Sweden (1997) on the entry into force in January 2005 of the amendments to its legislation for inter-country adoption. It also welcomed the ratification of the **Optional Protocol to the CRC on the sale of children, child prostitution and child pornography** by Austria, Belize and Bolivia (2003). It encouraged the States which have deposited their signature of this protocol (Luxembourg, Nigeria, Sweden) to ratify it, and the other States (Bahamas and Iran) to both deposit their signature and the instruments of ratification.

The Committee also hailed the progress made with **the registration of births** in Albania, Bolivia and Togo, but remained perturbed by the great number of children still not registered in the Bahamas, Belize, Bolivia, Nigeria and Togo. In certain of these countries, the Committee recommended the use of mobile registration units and awareness-raising campaigns. It also recommended that the unregistered children be granted access to basic services, like education and health, pending their registration. Furthermore, the Committee expressly requested States to eliminate all discriminatory measures in accessing the birth registration system. This particularly concerns children of vulnerable and marginalised groups in Albania, the children of immigrants or those born out of wedlock in Belize, the children of indigenous people in Bolivia and children whose parents are refugees or foreigners in Nigeria.

The Committee recalled **the importance of the right of every child to know the identity of his/her parents**. It still had misgivings in this context about the practice of anonymous births in Austria and Luxembourg and called upon these countries to take all necessary steps, particularly legislative ones, to prevent them and to enable children to have access to information about their parents, how and when it is appropriate.

The Committee noted with concern **the high number of children deprived of their family environment and living in an institution:** in Albania children can be taken away from their family because of their poor state of health; in Albania and Bolivia numerous parents with financial difficulties place their children in an institution; in the Bahamas and Belize, children displaying « uncontrollable behaviour » can be placed in an institution at the request of their parents; in Iran numerous children born out of wedlock are abandoned and many have been institutionalised because they have become orphans as a result of the Bam earthquake or because their parents are drug addicts; in Nigeria many children are abandoned and the number of those orphaned by AIDS never stops growing; in Sweden the number of children in institutions is greater than those in foster care – it is a problem that mainly concerns children of foreign families.

In this regard, the Committee recommended the development of *a global policy for children and the family*. It entails improving support services for the family (Albania, Bahamas, Belize), amending the law and relevant practices (Bahamas, Belize) primarily in order to guarantee adequate measures of alternative protection, preferably of the family type (foster care, *kafalah*) (Bolivia, Iran, Nigeria) or likewise adopting specific preventive measures for foreign families (Sweden).

The Committee warmly welcomed *the programmes of deinstitutionalization* run in Albania. It encouraged that State to strengthen these programmes and to ensure a follow-up, as well as the reintegration of children who have been institutionalized, while allowing them to participate in the choice of their future and to retain their rights to social protection. At the same time, the Committee recommended to the Bahamas and Belize that they set up similar programmes.

As for *the children who continue to live in institutions*, the Committee recommended that supervision of their living conditions be stepped up, that training of the staff who take care of them be ensured, that their placement be supervised regularly and that their return to their family of origin be worked at on a full time basis when it appears appropriate. In particular, it recommended that Luxembourg ensure that placement in institutions or foster care be envisaged for a fixed term and be subject to regular review.

With regard to **adoption**, the Committee welcomed the efforts of Albania and Belize in promoting *domestic adoption* and *respect for the principle of subsidiarity of inter-country adoption*. By the same token, it encouraged Bolivia to enhance its awareness of the importance of domestic adoption and to pursue a global adoption policy.

On the other hand, the Committee continued to view **the practice of independent adoptions** as a cause for concern, **as well as the sale of children for adoption which occurs in Albania**. It condemns besides **vague adoption procedures and the occurrence of informal adoptions in Togo**, as well as **illegal adoptions in Bolivia**. Thus, it strongly encouraged the States to reinforce their formal procedures for domestic and inter-country adoption. It recommended in particular that Albania **limit its co-operation in matters of inter-country adoption with the States parties to THC-1993**. Finally, it emphasised the lack of *supervision of adoption* in Bolivia and Togo and suggested that these States set up an effective system of protection in this field.


- The 39th session of the Committee will take place in May 2005 and will deal with the following countries: Bosnia -Herzegovina, Costa Rica, Ecuador, Mongolia, Nepal, Nicaragua, Norway, Philippines, Saint-Lucia and Yemen. Source: www.ohchr.org/english/bodies/crc/crcs38.htm.

Protagonists in matters of Adoption

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

- **Canada**: British Colombia has updated the particulars of its adoption accredited bodies.
- **Germany**: This country has updated the lists of its Central Authorities and of its adoption accredited bodies.
- **Malta**: This country has designated its Central Authority: the Department of Family Welfare, Social Work Centre, 469, St. Joseph High Road, Santa Verena, HMR18, Malta ; tel.: +356 2144 3415 / 2144 1311; fax: +356 2149 0468 ; Mr Frank Mifsud, Director; frank.mifsud@gov.mt.
- **Salvador**: The name of the Central Authority of this country is no longer « El Instituto de Protección del Menor » (ISPM), but « El Instituto Salvadoreño para el Desarrollo Integral de la Niñez y la Adolescencia » (ISNA). However, its particulars remain unchanged.

Legislation

- **Belarus** : According to the latest information received on the website of the US State Department and the adoption body, International Assistance Group (IAG), approved by the Russian government and the Council on Accreditation of Services for Families and Children in the United States, the Belarus Government signed legislation amending the Law on adoption (not available at the IRC) on 4 January 2005. According to the IAG, these amendments that came into force on 14 January 2005 reflect the Government's will to *give priority to domestic foster care* for Belarusian children. The American embassy in Minsk describes the new conditions set by this legislation in the following manner: children declared adoptable must, henceforth, have been recorded in the central register, the National Orphans Database, for a minimum of six months before they can be considered for inter-country adoption. Before, the Belarusian legislation mentioned that a child should be officially offered 3-4 times to Belarusian families before being considered for adoption by foreigners (procedure opened to criticism). The Central Authority of Belarus, the National Center of Adoption, will be responsible for reviewing the situation of the

children inscribed in the register for more than six months. It will prepare the files to be sent to various proceedings where approval is required for inter-country adoption. Final approval rests with the Ministry of Education, which will return the files to the Central Authority before they are ultimately submitted to the courts. According to the IAG, the number of post-adoption reports required has also been changed. Before, a report had to be presented every six months for a period of three years. In future, an annual report is required over a period of five years. According to the US State Department, no new inter-country adoption procedure will be undertaken in 2005, giving the Belarusian Government time to put the new measures in place; as a reminder, a suspension of inter-country adoption has been in force in the country since 1 November 2004 (see Monthly Review 71).

Sources: US State Department: http://travel.state.gov/family/adoption/notices/notices_2083.html; International Assistant Group, www.iagadoptions.org/default.htm.

- **Guatemala** 🇬🇲: The UNICEF office in Guatemala has published a summary (available in Spanish at ISS/IRC in hard copy) of the interventions made at the International Seminar entitled “La Adopción: Un Derecho Humano de los Niños y las Niñas de Pertener a una Familia” (Adoption: A Human Right of Children to belong to a Family) which was held on 14 -15 October 2004 in Guatemala City (see Bulletin 72-73).

As described in earlier Bulletins (58 to 62 and 72-73), the Constitutional Court (CC) declared Decree 50-2002 on the accession of Guatemala to THC-1993 unconstitutional for procedural reasons. Shortly thereafter, the Congress issued a reform of Decree 50-2002 thus correcting the procedural errors which had given rise to the declaration of unconstitutionality (see Bulletin 58-59). Unfortunately, certain professionals and bodies continue to take the view that THC-1993 is not in force in Guatemala.

On the other hand, all those who addressed the Seminar **were entirely of the view in concurring that THC-1993 is in force in Guatemala**. J.L. Borrayo, doctor of international law, explained that the above-mentioned reform confirmed that Guatemala is a party to THC-1993 and that the Court’s ruling exposes Guatemala to international obligations, if it was counting on shirking the responsibilities assumed by the said convention. The Deputy Secretary General of the Permanent Bureau of The Hague Conference on Private International Law recalled that « in line with international law, Guatemala is legally bound by THC-1993 and will have to apply all the Convention's procedures and safeguards to adoptions coming within the scope of the Convention ». By the same token Judge Rohmoser of the CC, who recorded a negative vote against the judgment of unconstitutionality, added an additional reason to uphold the previous opinions. In point of fact, according to the Constitution (art. 149), treaties must be accomplished in good faith and « this carries the argument that if THC-1993 is in force in the international context, it is likewise in internal law. International customary law is obligatory in internal law according to the above-mentioned article ».

Furthermore, during the seminar a consensus was reached on the need **for Guatemala to adopt the required measures to apply the principles, rights and guarantees that the Convention on the Rights of the Child and THC-1993 establish in matters of adoption**.

At the seminar, views converged on the **urgency for Congress to approve a specific and comprehensive law that governs adoption in accordance with the new doctrine of global protection**. UNICEF believes that « the solution is in the hands of Congress, given the fact that it can approve a specific law incorporating the contents of THC-1993 ». At the same time, the National Committee for Children and Adolescents – the body responsible for the formulation of policies for the global protection of children and adolescents – pleaded in favour of approving a law that respects the principles mentioned above. The President of Guatemala has pointed out that the *Law on the Protection of children and Adolescents* suggests that a law governing adoption should exist and has expressed, like the President of Congress, the urgent need to adopt such a law and not to prolong the debates which have taken place up till now. Nonetheless, Rosa Maria Ortiz – a delegate to the United Nations Committee on the Rights of the Child – has raised an important problem. Indeed « the proposals for laws on adoption are always imbued with the topic of inter-country adoption, when they should rather be strengthening the **procedure for domestic adoption** ». In addition, she recalled that «a law on adoption cannot be *conditioned solely by adoptions of an international type* ».

A consensus was also reached on the **urgent need for Congress to issue a decree suspending the adoption procedures for a certain period of time**, which would make it possible to clearly define the content of a law on adoption and its approval. With this in view, the President of the Congressional Legislative Committee for Minors and the Family announced that he will submit a Bill. In this regard, we recall that the Committee on the Rights of the Child “strongly” recommended in July 2001 that Guatemala “suspend adoptions in order to take the adequate legislative and institutional measures to

prevent the sale and trafficking of children and to establish an adoption procedure which is in full compliance with the principles and provisions of the Convention” on the Rights of the Child” (see Bulletin 54).

In the conclusions of the seminar, the minimal content of the future law on adoption is set out in some detail and the main points outlined in the UNICEF position paper are reiterated (commentary and analysis in Bulletin 72-73).

Currently, an interdisciplinary roundtable led by the Secretariat of The Social Charity of the First Lady (SOSEP) has drafted and presented a specific law to Congress. During the past months, a process of reform of the Civil Code on this subject has been encouraged in Congress. However, the reform has been blocked in the plenary session at the third reading.

Source: UNICEF Guatemala.

Rights of children deprived of their family

Nepal

- In response to the build-up of the Maoist insurgency that has caused unrest in Nepal for nine years and has already resulted in more than 10,000 deaths, King Gyanendra, on the throne since June 2001 after the assassination of his brother and nine family members, has just sacked his Prime Minister and declared a state of emergency (tougher redeployment of military patrols, flights to the capital have been suspended and phone lines have been cut). According to Amnesty International (mission in Nepal, 10 – 16 February 2005, available at: www.web.amnesty.org/library/index/engasa310222005) and Human Rights Watch, hundreds of protestors were arrested (political leaders, journalists, students, human rights defenders...) The king accuses the Prime Minister of failing to bring the Maoist rebels to the negotiation table by the deadline of 13 January 2005 set for the government. The King has now taken over full control of the executive powers of Nepal and has set himself a binding 3-year mandate « to restore democracy and public order ». Among the measures envisaged are the reinforcement of the security forces and control of the press by the Palace. Amnesty International and Human Rights Watch propose a list of the fundamental rights which have been suspended under the state of emergency. In its mission report in Nepal, Amnesty International recommends among others that foreign countries suspend their military aid to the Government of Nepal. Amnesty International also calls on the United Nations High Commissioner for Human Rights to send a mission in this country. On 18 February, the Day of Democracy, which is a national holiday in Nepal, the blockage initiated by the Maoist insurgents on 13 February was still impeding transport between Kathmandu and the countryside.

These political events only serve to sour the climate of constant fear, tension and insecurity, in which Nepalese families are living, and make it more difficult for them to have access to the transport and communication networks. As the consequences of this situation, *the social task of family reunification has been shattered and the risks of abduction and trafficking in children have increased* (sexual abuse and child labour, enforced military recruitment) (See Bulletin 58-59 of July-August 2003 and the report of Amnesty International mission in this country). In point of fact, numerous children find themselves *separated from their parents and some even find themselves orphans*, which makes them all the more vulnerable. According to a report published by Watchlist on Children and Armed Conflict in January 2005, the violations of children’s rights in the midst of the armed conflict have simply increased since the end of the ceasefire in August 2003. The report specifies that, according to the Child Workers in Nepal Concerned Center (CWIN), between January and June 2004, more than 2,000 children were orphaned by the conflict. An assessment made by Save the Children - UK in 2003 of a representative sample of the population shows that at least 20,000 to 30,000 children have allegedly been separated from their families, but without specifying the exact proportion of separations directly caused by the conflict. These figures, frequently cited as the most feasible estimate currently available, do not, however, clarify whether these children have lost one or even both parents. The report of Watchlist on Children and Armed Conflict appeals to the Nepalese Government, the Maoist insurgents and the United Nations Security Council, as well as the humanitarian community in Nepal as a whole, that *steps be taken immediately to protect the Nepalese children and adolescents from the diverse hardships that they fall victims to*.

Yet still according to the report of Watchlist on Children and Armed Conflict, an NGO active in Nepal, that chooses to remain anonymous, reports that in response to a growing number of children separated from their families because of the conflict, *homes for those affected by the conflict have been set up*. An

example of this is the Sahara Children's Home in Nepalgunj, which houses about 60 girls and boys. Children who have lost at least one parent are generally admitted to the institutions, *even if the other parent or members of the extended family continue to live with them*. To date no regulatory framework exists for these institutions. In response to such practices and to the more general need for adequate protection of Nepalese children, the Ministry for Women, Children and Social Welfare, as well as the Central Child Welfare Board, supported by UNICEF and the ILO-IPEC, *are at present elaborating minimal standards for the care for children in need of special protection, with particular reference to caring for children in institutions*. The ISS/IRC recommends that these standards promote in particular *the urgent search for the family environment that is most conducive to the child's development*, in conformity with the principle of the best interests of the child. The placement of the child with one or more surviving parent(s) or with the extended family should, therefore, be considered and supported first of all, before any other measure of family protection. Furthermore, institutional care must remain, in principle, an exceptional and temporary measure. It can be used on condition that the search for the child's family be undertaken and that a permanency planning be drawn up as soon as possible.

With regard to the state of adoption in this country, which is not a party to THC-1993, the ISS/IRC recalls that domestic adoption is difficult there because of the caste system and ethnic origins of adoptable children (see Bulletin 58-59 of July-August 2003). The ISS/IRC continues to urge Nepal to develop measures to prevent abandonment and provide support (including financial support) for the families of origin, at the same time as promoting domestic adoption. As for *inter-country adoption*, as the international community has already often mentioned, *it should not be envisaged in countries or regions of armed conflict*. Even when the hostilities have ceased, it can only be introduced after a sufficiently long period that allows the competent authorities to ensure that no member of the child's family or community is alive and willing to take the child into their care, and that no domestic adoption is foreseen. Nepal will submit its periodic report for the next session of the United Nations Committee on the Rights of the Child in May 2005. This report includes information on the current situation of adoption in this country (available at the following address: [www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/8ddcd187339e34bec1256f8d005a766b/\\$FILE/G0445042.doc](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/8ddcd187339e34bec1256f8d005a766b/$FILE/G0445042.doc))

The French Central Authority (Mission de l'adoption internationale- MAI) strongly advises prospective adoptive parents against going to Nepal in the politically troubled climate that currently prevails there; furthermore, just like the US State Department, it invites them to regularly consult the information put out by the Ministry of Foreign Affairs for any travel envisaged in this country.

Sources: United Nations Committee on the Rights of the Child, Amnesty International ; Human Rights Watch, www.hrw.org/doc/?t=asia; Watch List on Children and Armed Conflict, www.watchlist.org/reports/nepal.report.20050120.pdf; MAI, www.diplomatie.gouv.fr/mai/ind_pays.html; US State Department, http://travel.state.gov/family/adoption/country/country_424.html; Tribune de Genève, 2 February 2005; Le Monde, 18 February 2005, www.lemonde.fr/web/article/0,1-0@2-3216,36-398586,0.html.

Russia

- **The ISS/IRC presentation of the country situation:** Existing Russian legislation sets out the rights of children deprived of a family environment in (1) *the Civil Code*; (2) *the Family Code* (last amended in 2004), which establishes the following arrangements for children deprived of parental care: adoption is given priority as the best arrangement for bringing up a child in a family; fostering or guardianship of a child by an individual (foster parent or guardian); temporary placement with a foster family; and residential care. Although the Family Code gives priority to raising children in a family, in practice, unfortunately, the Code is not always followed; (3) *the Federal Law on Additional Guarantees for the Social Protection of Orphans and Children left without Parental Care*; and (4) *the Federal Law of 2001 on the National Database for Children without Parental Care*.

The Code of Administrative Offences, the Criminal Code and the Code of Civil Procedure also apply to **adoption**. Russia signed THC-1993 in 2000 (but has not yet ratified it) and inter-country adoption is also governed by several regulations. Russia is a Federation of States which have a certain autonomy in planning adoption procedures. As some of the regions are more favourably inclined towards inter-country adoption while others are not, practices can vary from one region to another. The United Nations Committee on the Rights of the Child in its Concluding Observations on Russia in 1999 expressed its concern at the inadequate safeguards against **illicit transfer** and **trafficking** in children outside the State party and the potential abuse of inter-country adoption for trafficking purposes. **Other risks that this country is facing in adoption** are as follows:


- There is no obligation to go through an accredited body in order to adopt in Russia, although since the publication of *the Regulations of 2000 defining matters relating to the authorisation of foreign accredited adoption bodies*, there is a tendency for **adoptions carried out through an agency to take precedence over** independent adoptions (see Bulletin 54 and *for more information on why inter-country adoption through monitored accredited bodies provides more guarantees of professionalism, psycho-social work and respect for the rights of the child than independent adoption*, see the Editorial in *Monthly Review 70*, www.iss-ssi.org/Edito.70.eng.pdf).
- According to the Russian Central Authority, the **activity of intermediaries** in adoption creates problems due mostly to a lack of proper control, such as the quality of the documents prepared for the prospective adoptive parents (expired documents, mistranslations, etc), insufficient knowledge of adoption legal instruments, etc.
- National and foreign prospective adoptive parents can **select a child**: in certain regions of Russia, parents apply to the regional Ministry of Education, which refers them to a children's home. Foreign adoptive parents are required to travel to Russia to meet adoptable children, and there they select a child and apply to the court for a hearing date. This practice is a result of totally insufficient work of the guardianship and trusteeship bodies and of the staff of Regional Databases of Children deprived of Parental Care. The 2001 Federal Law on the National Database introduced the notion of "limited information" about the child which may be used in public and which makes a preliminary selection possible without contacting the child in person. Unfortunately these possibilities have not yet been used to the extent needed. In addition, there are many websites and chat groups on **photo-listing** children from Russia where future parents can pre-select their children. The ISS/IRC recalls that such a possibility for prospective adopters, either nationals or foreigners, to «choose» a child does not comply with ethical guidelines and runs considerable risks in terms of the rights of the child. *The matching of a child with a family must, in principle, be a professional decision, taken preferably by an interdisciplinary team, and by identifying the most appropriate family for the child, taking into account the latter's needs and characteristics. After the matching, the prospective adoptive parents receive the available information about the child. If they confirm the matching they can meet the child with a professional support. If the mutual adjustment is positive, the prospective parents can request adoption to the Court.*
- The fact that prospective adoptive parents have to **travel twice** to Russia (once to meet the child, make the decision to adopt and then sign all the paperwork, and a second time to finalise the adoption and attend a court hearing) violates the rights of the child to security and continuity, and can have a negative effect on the attachment process. *Indeed, the child can feel that he/she has been abandoned again, this time by the adoptive parents who did not take him/her back with them to the receiving country between these two visits. The problem could be solved, as in other countries of origin, by requiring prospective adoptive parents to stay in Russia with the child for a professionally supervised trial period and then speeding up the judicial and administrative procedures.*
- **November Roundtable in the Duma**: In November 2004 the Russian Parliament, the Duma, held a *Roundtable on "the Laws on Adoption: Practices and Ways to Improve them"* when several other risks for children deprived of parental care and children adopted in the country were addressed.
- The General Prosecutor's Office and the Duma are concerned about "**the level of homelessness among children, as well as an increase in the number of orphans**". They have drawn attention to "**the inefficiency of the work done by child welfare agencies**". In fact, the overwhelming majority (around 95%) of Russian children being admitted to institutions are not orphans but abandoned children, the so-called "social orphans", i.e. they have one or both parents alive.
- The Russian Deputy General Prosecutor, Mr. Kolesnikov, declared that the adoption of children by foreigners "has turned into **a profitable business**" in the country. Even if adoption is supposed to be free of charge, the costs of inter-country adoption in Russia are very high. According to Mr. Kolesnikov, the General Prosecutor's Office has received **a growing number of complaints about adoptions by foreigners and about adoption officials abusing their powers** in several regions (for example, accepting bribes to speed up the adoption process). More than fifteen cases resulted in criminal proceedings and at least two corrupt officials were found guilty of unlawful adoption.
- Mr. Kolesnikov said that child welfare agencies do not take the necessary steps to have children adopted by Russian families. "It has become well known that certain child welfare agencies have mercenary motives for allowing Russian children to be adopted by foreigners". The growing number of inter-country adoptions compared with domestic adoptions **does not uphold the principle that the former is**

subsidiary to the latter. Furthermore, he took note of the fact that since 2003 more children had been adopted by foreigners than by Russians, and over the period 2001 to 2003 the rate of adoption of Russian children by foreigners had soared by 51%. According to the Ministry of Education, in 2003 the number of inter-country adoptions (7,852) exceeded the number of domestic adoptions (7,331) for the first time. *The ISS/IRC recalls that priority should be given to placing a child for adoption in his/her community of origin. A decision in favour of inter-country adoption should only be taken when the search for a satisfactory solution in the child's country of origin has failed (see ISS/IRC Ethical guidelines: www.iss-ssi.org/Resource_Centre/ethical_guidelines.PDF).* However, *the new Federal Law 185*, adopted on 28 December 2004 and in force since 10 January 2005, requires that *adoptable children be on the federal database for six months (earlier it was three) before they can be adopted by foreigners*. One wonders what these three additional months in the database will change. In any case, this should be accompanied by proactive efforts on the part of the competent authorities to find a permanent family solution within Russia (reintegration with the parents, kinship care or domestic adoption) and promote domestic adoption.

- Into the bargain, several *reasons why Russian nationals are discouraged from adopting Russian children* were given during the above mentioned roundtable, such as the amendments to the Family Code (art. 127) which introduced in 1998 a ban on adoption by families in poor housing or with low incomes. However, Federal Law 185 now modifies this article, making requirements about prospective parents' financial situation or living conditions more flexible and granting the courts more discretion in this regard, taking into account the child's best interest. Nevertheless, the uncertainty about their future and their stability makes Russians unwilling to care for another child. The fact that foster parents receive an allowance to raise their foster children, while adoptive parents do not benefit from such economic help also discourages them. The Deputy Head of the Public Security Service of the Russian Interior Ministry reported that the absence of clear legal requirements for adoption "**impedes proper control of this process as circumstances require and in the best interest of adopted Russian children**". *It must be stressed that **subsidized adoption** (full adoption with ongoing state subsidies for the adoptive family) could, as in other countries, enable Russian families whose needs and motivation have been professionally evaluated, to adopt Russian children (on the same theme, see the Editorial of Monthly Review 1/2005).*

Sources: Committee on the Rights of the Child: www.ohchr.org/english/bodies/crc/index.htm; Presentation at the Inter-country Adoption Colloquium « Getting to know each other means understanding each other better », May 2004, Montréal, Canada : S. Tsekhonia (Manager, Department of methodical-organizational procurement, of the database on children deprived of parental care , Ministry of Education), Placement of children deprived of parental care with foster families in the Russian Federation. Current situation and related problems", www.adoption.gouv.qc.ca/fr/mod.php?mod=userpage&page_id=69&menu=1006; O. Dyuzheva, Professor of Law at the Moscow State University; O. Khazova (Professor, Institute of State and Law of Russian Academy of Sciences, Moscow), "L'adoption Internationale en Russie" (Intercountry adoption in Russia), *Revue Internationale de Droit Comparé*, 2003, No.4, pp.861-880; B. Altshuler, Head of the Regional Non-Governmental Organization for protection of children's rights "Rights of the Child"; US State Department, http://travel.state.gov/family/adoption/country/country_441.html; French Central Authority (MAI), www.diplomatie.gouv.fr/mai/ind_pays.html ; Human Rights Watch alternative report to the Committee on the Rights of the Child: www.crin.org/docs/resources/treaties/crc.22/Russia_NGO_Report.pdf; The daily Russia Journal www.russiajournal.com (16 November 2004), MosNews, www.mosnews.com (15 November 2004) and O. Yablokova, Moscow Times, www.asfaru.org (22 November 2004).

Tsunami

- **Sri Lanka** : In the wake of the South-East Asia tsunami, the authorities for the protection of children in Sri Lanka published on 28 January 2005 a series of **directives about protecting children affected by the disaster**. After an assessment of the situation, these directives recall the need for immediate intervention on behalf of the children who have survived the tsunami but have been orphaned, separated from their family or even unaccompanied. The implementation of the protective measures envisaged in this document (available at the following address: www.childprotection.gov.lk/pdfs/TsPolicyFramework.PDF) is based upon the fundamental principle whereby children have the right to be taken into care by their family including under circumstances such as the tsunami. The families and communities are to be involved in all the activities undertaken.

The collection of data on orphaned or separated children figures among the elements of the humanitarian emergency response. The data collection is done right away in the refugee camps by the national Authority for Child Protection and by the Central Authority of Sri Lanka (*Department of Probation and Child Care Services*), in co-operation with local services. UNICEF, together with a number of NGO, students and doctors has also collaborated in this activity. Individual assessments have been carried out at the same time so as to identify the right solution for each child. The data gathered are made available by the above-mentioned Sri Lankan authorities. The results announced by each of the authorities are much the same: on 28 January, about 3,202 children had lost one parent, 858 both parents and 38 were unaccompanied.

The protective measures are itemized by the following priorities: urgent support for families taking children into their care; keeping siblings together; and reuniting separated children from their family or those unaccompanied with both their parents, one parent and/or other members of their family. *Building new institutions to house children should not be encouraged, except as a last resort.* A temporary institutional care might be necessary, given the special circumstances of the tsunami. This measure would only be prolonged in the long term if no family solution is possible. Furthermore, still according to the guidelines, a review of the standards and practices used by the institutions is desirable, so as to ensure a high quality of care (preference for small scale structures based on community type models). For the longer term adoption may be considered.

The directives also strive to *prevent the abduction of children and other illegal activities.* Steps have been taken to prevent the illegal displacement of children outside their country. Up to now, no case has been officially reported. The directives envisage in particular the guarantees necessary for registering the parents or other members of the child's family (proof of their identity and their family relationship with the child). If someone who is not part of the child's family wishes to take into his/her care or adopt the child, he/she will have to follow a clearly defined procedure; a study of the child's family history and a follow-up to each case will be done. Finally, any member of the family of an orphaned child must have the child registered with the competent authorities. In addition, the guidelines establish a system of co-ordination, supervision and management of the various sources of funding that are received from overseas and which are earmarked in support of the programmes of protection and assistance (including sponsorship) for the children affected by the tsunami. Moreover, they emphasize the need to elaborate a control mechanism for the financial programmes at the local level, in order to prevent the risks of abuse and exploitation and to ensure that the rights of the child are protected on a full-time basis.

In the wake of the tsunami, the Ministry of Justice has decided to undertake *a legislative review of the area of child protection*, in co-operation with the National Authority for the Protection of Children and the Central Authority.

Finally, the directives make provision for the implementation of *psychological support programmes* for children suffering from traumas caused by the disaster. These programmes are based on community approaches that promote the psychological rehabilitation and the social reintegration of children. They consist especially of training for staff responsible for supporting the children.

Awareness-raising campaigns have been launched, particularly through the media, to inform people of the existence of these guidelines. The competent authorities, the NGO and other entities in the private sector have been given responsibility for implementing them.

Source: *The National Child Protection Authority- Sri Lanka,*
www.childprotection.gov.lk/tsunami/tsuMain.htm#situation.

- **Indonesia** 🇮🇩: In Indonesia, the country worst hit by the disaster, the chairman of the National Commission for Child Protection has underlined the essential role of the letters written by children throughout Indonesia and other nations to traumatised Acehnese children. In fact, as was stressed by the professionals, these letters play an active part in the treatment of Acehnese children suffering from trauma. On 17 January 2005 at least 30% of the estimated 100,000 to 300,000 Acehnese children, orphaned or separated from their parents or other family members in Aceh, were suffering from severe trauma. Most of the Aceh children affected by the catastrophe lost both parents and other family members and are aged between four and 10, according to the National Commission on Child Protection. On the same date, according to Minister of National Education Bambang Sudibyo, over 420 schools in Aceh were wiped out by the tsunami disaster. The Ministry of National Education stressed that makeshift schools in 95 areas near refugee camps are being set up and would start functioning from 26 January. According to the United Nations and other agencies, as many as 10,000 children in Indonesia's tsunami devastated Aceh province may be seeking lost parents. The tsunami had an enormous impact on children, with UNICEF estimating that up to half of all the victims were youngsters. Furthermore,

UNICEF recalls that it is really difficult to know the number of children without any surviving parents or adult support. The number of unaccompanied or separated children can only be estimated. A social affairs ministry statement on 15 February put the figure at 10,000, while UNICEF said its estimate was up to 8,000. The social affairs ministry statement also said that a priority was being put on supporting families who had taken children into their care and that adoption or institutional care would be considered as a last resort. According to the ministry adults seeking lost children through official channels are shown five pictures of children. If they correctly identify the missing child additional questions are asked (the child's favourite food, the names of school,...). Finally, hostilities between military patrols and separatist movements fighting for the independence of Aceh have re-opened.
Sources: Indonesian Press, 17 January 2005; CRINMAIL N°653, 17 February 2005; Le Monde, 18 February 2005.

Interdisciplinary resources

Regional standards for the protection of children without parental care

- While ISS and UNICEF are working on the elaboration of *global standards improving the protection of children without parental care* (see Editorial of Monthly Review 72-73), *two similar regional projects are being developed*. They have similar objectives, but one concentrates on East and Central Africa while the other one is focused on Europe.
- The African project, already well developed, is presented in a document entitled “**Raising the Standards – Quality childcare provision in East and Central Africa**” . Published last month, it sets out the results of the work carried out in the region by Save the Children - UK in collaboration with a consultant and a range of partners. It proposes a set of standards and indicators which “are intended to guide Save the Children programme staff and partner agencies in the provision of a minimum standard of care for *children who are disproportionately vulnerable to violations of their rights to survival, development, protection and participation*”. These standards apply equally to the conflict and emergency contexts. They are primarily intended for managers and practitioners but can also be the basis for advocacy of childcare policy and minimum national standards for the care of children in need of special protection. In order to develop these standards based mainly on the United Nations Convention on the Rights of the Children (CRC), several childcare providers were visited in Kinshasa (Democratic Republic of Congo), as well as in Nairobi and Kisumu (Kenya). Various settings and approaches designed to meet the needs of children were reviewed during the visits. The quality of the care provided was also studied. It was diverse, with only a few of the services providing care, even occasionally, at a level equivalent to any of the provisions of the CRC.

The document contains 28 standards grouped in five different chapters. The presentation of each standard includes a description of it, its indicators and contra-indicators (behaviours, circumstances or indications that suggest a standard exists, is in place at an acceptable level or, on the contrary, that a standard is either not in place or not operating at an acceptable level). The basis of the standard is also specified, usually articles of the CRC or good practice experience. Finally, the practical implications are clarified in a short summary of matters related to the standard and highlighting the importance of the standard in the life of the child.

In concrete terms, the first group of standards and indicators concerns **the professional practice** and insists upon the necessity for childcare programmes to have written aims and objectives, a child protection policy and a clear referral and admission process. *All children should have a care plan, their placements should be reviewed regularly and systems for rehabilitation through care and aftercare should exist.* The second chapter is about **personal care**. Among other things, it accentuates the importance of having access to preventive and remedial healthcare and to education. *It recalls that children must be supported to make informed choices, that they must be treated with dignity and respect at all times and that their right to privacy should be preserved. Their positive relationships and attachments are to be encouraged and their sense of identity maintained.* The third group of standards is specifically focused on **caregivers**, recalling that they *should have regular supervision and support and benefit from professional development and training.* Their recruitment as well as their deployment should ensure quality childcare and protection. With regard to **resources**, the fourth group of standards, the document describes the basic and appropriate services that should be made accessible to provide adequate care and emphasizes that **accommodation should promote children's health and development.** The last chapter concentrates on **management issues**, with the requirement that appropriate

programme records be maintained, that children's confidential details and records be respected and maintained and that owners and managers of childcare programmes be accountable.

Save the Children now invites other agencies and NGOs to test and pilot the standards across a range of settings and cultures. Such experience would help to further develop and improve these quality standards. *The organisation encourages them to share the results of these experiences.* It would be particularly helpful if the responses contain a short summary of the nature of the initiative; dilemmas and challenges encountered in gaining acceptance of either the concept of quality childcare standards or of the practical application of the standards; successes, challenges, gaps and suggestions for improvement; feedback on general issues (structure of the document, resource implications in applying the standards, the application of the "best interest" principle...); specific reactions to the detail of individual standards; whether there is any other documentation or experience that could be drawn upon to further develop and improve these standards. The feedback can be shared with Bill Bell, childrights@savethechildren.org.uk. *Save the Children also hopes that its publication will be used as the basis for further dialogue and action towards the establishment of international childcare standards and guidelines such as those on which ISS and UNICEF are working.* The document can be downloaded at the address: www.savethechildren.org.uk/temp/scuk/cache/cmsattach/2167_Raising%20the%20standards.pdf.

- **In Europe**, a standard-raising initiative was also started last year. The project, *entitled Quality4Children* and based on the United Nations Convention on the Rights of the Child, was launched by the International Federation of Educative Communities (FICE), International Foster Care Organisation (IFCO) and SOS Children's Villages. These three organisations are practicing experts active in the field of childcare. *They identified an increasing need for developing pan-European standards to help the hundreds of thousands of European children and youths who cannot grow up with their biological family and are placed into out-of-home care. The objective of the project is to assure and improve the chances of development for these children and youths*, by collecting good practices, developing quality standards, implementing them and setting up a European advocacy network of people working in the field, youths, representatives of the scientific/research community, representatives of social/youth welfare authorities, as well as politicians. The three NGOs would like those directly involved to participate in the development of these quality standards: children and youths, biological families, main care persons. This requires a narrative approach to the collection of information (storytelling, narrative interviews...).

Not less than 32 countries are participating in the project. Each of them are represented by a national project coordinator who, together with his/her national team, is currently collecting good practices and existing national quality standards in out-of-home child care. The result of this research will be presented to **the European Congress "Quality4Children" in Gmunden, in Austria, on 1-2 June** (see below), followed by two workshop days for the national coordinators. At the workshop cross-national working groups will be set up in order to further develop the good practices towards quality standards in the field of out-of-home childcare. The implementation process is scheduled to begin at the end of the year 2006. For further information, visit website www.quality4children.info or contact the project organisation at: Project "Quality4Children", Hermann-Gmeiner-Str. 51, A-6021 Innsbruck, Austria; quality4children@sos-kd.org.

Forthcoming conferences, seminars, colloquia and Courses

- **Austria:** *Quality4Children*, European Congress, Gmunden, 1-2 June 2005. Themes to be addressed: setting up a European social system for young people, caring for children outside their family (exchange of good practices), participation and partnership (with children, families of origin, the community, the authorities,...). Intended audience: young people and parents with some experience of foster care, social workers, authorities dealing with the protection of young people, scientists, researchers, NGO and responsible regional, national and European politicians and representatives of the United Nations. Working language: English and German. *Contact:* Project Quality4Children (see too above, Interdisciplinary resources), SOS Children's Villages, Hermann-Gmeiner-Straße 51, A-6021 Innsbruck, Austria; tel.: +43512/3316-0; fax: +43512/3316-5686; www.quality4children.info; congressinfo@quality4children.info.
- **Brazil:** *10º Encontro Nacional de Associações e Grupos de Apoio à Adoção (ENAPA) (10th National Meeting of Associations and Groups in support of Adoption)*, Goiania (GO), 26-29 May 2005. Organised

by the National Movement of groups in support of adoption (for more information about the establishment of this Movement see Bulletin 65). General aim: to ensure the follow-up to this vast social Movement intended to provide solutions of a family nature, or failing that institutional solutions, for children and adolescents deprived of the fundamental right to live in a family. This meeting aims to make possible for these groups to get together, publish their experiences, devise working methods, mobilise resources and means of support, stimulate the creation of new groups and strengthen the Movement with a view to developing a new adoption culture in Brazil and throughout the world. It is for associations and groups in support of adoption and professionals. Working language : Portuguese.

Contacts : tel: (+55) 62 215 8069; fax: (+55) 62 215 8246 ; inscricao@decimoenapa.org; www.decimoenapa.org.

• **France:**

a) *Les secrets, le secret sur les origines: maintien, révélation, accès au dossier, quels enjeux? (The secrets, the secret of origins : maintaining, divulging, access to the file, what is at stake ?)*, Nelly Leblanc (psychologist), Paris, 9-11 May and 7-8 June 2005. Themes to be addressed : research and investigation into the past, ignorance of origins and the sense of identity and belonging, the impact of a secret on the psychic development and on the cross-generation dynamic, the laws governing the secret, receiving those in search of their origins.

b) *Médecins et psychologues intervenant en adoption: cliniques et rôles (Doctors and psychologists active in adoption: clinics and their role)*, Omblin Ozoux-Teffaine (psychologist), Paris, 19-20 May, 8-9 September, 13-14 October 2005. Themes to be addressed: the adoptability of the child at the psychodynamic and medical level, the role of professionals in forging the adoptive filiation ties.

c) *Adoption d'enfants venant de l'étranger (Adopting children coming from abroad)*, Omblin Ozoux-Teffaine (psychologist), Paris, 23-27 May 2005. Themes to be addressed: the causes, conditions and risks of inter-country adoption, the matching of a child and his/her adoptive parents in applying THC-1993, preparing children and the parents.

All these activities are envisaged for those involved in adoption and child care. *Contact:* COPES, 20 rue de Dantzig, 75015 Paris ; tel. : +33 1 53 68 93 40 ; fax. : +33 1 53 68 93 45 ; copes-formation@wanadoo.fr; www.lecopes.com.

• **Switzerland:** *Un autre regard sur l'adoption internationale (Another perception of inter-country adoption)*, Anne-Marie Crine, psychologist, specialist in the Adoption Service of the Ministry of the French Community of Belgium, Geneva, 25 April 2005 at 8p.m. The conference will aim at showing how to reconcile the demands of prospective adoptive couples and the real possibilities of inter-country adoption. It will offer an approach which is both legal and ethical. *Contact:* Espace adoption, 30 rue des Vollandes, 1207 Geneva; tel. : +41 (0)22 910 05 48 ; info@espace-adoption.ch; www.espace-adoption.ch.

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