

## Monthly Review n° 8-9/2005 August – September 2005

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### EDITORIAL

## The « paradox of time » in the adoption process

*One of the difficulties of the adoption process consists of striking a balance between two apparently contradictory aims: on the one hand, the need to take the time to identify the best permanent solution for the child, and on the other hand, the child’s need not to stay too long in the uncertainty of a provisional solution (institution or foster family).*

**T**ime in the adoption process, especially in checking the child’s adoptability, plays a crucial role. None of the parties involved in adoption can be indifferent to it: the child, the parents of origin and the adoptive parents.

Several situations can be distinguished. Certain parents, despite all the support given by the State, are unable to provide care for their child and decide to put him/her up for adoption. In other cases, where adoption is considered the most suitable permanency planning for the child (see Editorial 7/2005), when parental consent is

not available, (abandonment, neglect, etc.), it is a public authority that has to formalise the situation with a view to declaring the child's adoptability. The situation then varies depending upon whether or not an adoptive family from within the country can be found.

### **Situations where the parents consent to adoption**

In cases where the parents of origin envisage putting their child up for adoption, they and the child must receive *psycho-social support* so as to evaluate the chances of preserving and strengthening their ties or, if necessary, of informing them of the consequences of adoption, and preparing them for separation with dignity. This support should begin even before the birth and continue during the adoption proceedings (even afterwards on a voluntary basis).

The support is essential for guaranteeing the freedom and the enlightened nature of the decision. It presupposes the existence of *a legal time frame for reflection before consent is given*. In some countries there is, as an alternative or an add-on, *a time frame for mothers and fathers of origin to retract their consent*. In numerous countries' legislation, the time for reflection after the birth varies between 30 days and 3 months. The period for retracting consent is set at about one or two months. The existence of a time frame for reflection is important given the gravity of the adoption decision; in particular, it spares parents having to give their consent in the upheaval of the birth. On the other hand, the utility of an additional time frame of reflection for retraction of the consent given can be discussed, increasing sometimes the insecurity of the child's status.

Certain mothers of origin change their mind in the course of these time frames. The majority of them, on the contrary, especially when they have been supported during their pregnancy, wish to consent rapidly and definitively to the adoption of their child. They are largely motivated by their will to see the child benefit as soon as possible from the psychological and legal security of placement in an adoptive family, and their wish to start the « mourning » process for their child.

### **Situations where there is no consent from the parents of origin**

In the cases of abandonment of a child with no indication of his/her identity or other legal formalities, *a period is needed during which the Authorities have to take active measures in search of the family of origin*. If the latter is

found, the above-mentioned psycho-social support gets under way.

In other cases where adoption is considered the most suitable solution for a child whose parents do not consent, a legal or administrative Authority must decide in their stead since they have disappeared or fail to provide adequate care of their child (children left in an institution and very rarely visited ...) In the latter case, *a legal period is necessary to work with the parents and give them a chance to renew their contacts and/or improve their care of the child*, before pronouncing, eventually, the forced adoptability of the child. This time frame can vary from several months to one or even two years.

### **Time frame linked to the subsidiarity of inter-country adoption**

In accordance with the international conventions (see especially Editorials 2/2005 and 3/2005), inter-country adoption is subsidiary to domestic adoption. This principle presupposes too that *a time frame be respected in order to actively search, in the country of origin, for an adoptive family* that corresponds to the needs of the child. This period of time varies in practice from a few months to a year.

### **The consequences of the passage of time for the child**

On the other hand, we must remember that *the child's perception of time* (for whom a month can seem like an eternity...) *is different to that of an adult, and that its passing away brings about important consequences in terms of the child's development*.

During the different time frames already mentioned, the child is in principle placed in an institution or a foster family; besides the insecurity, he/she suffers, in numerous countries, the lack of stimuli that can significantly harm his/her development. *The length of the legal time frames must thus be discussed taking into consideration the best interest of the child. The physical and emotional living conditions of children in these temporary circumstances must, therefore, be followed upon by professionals, and their duration cut back to what is strictly necessary*.

In certain countries, when the parents have given a non definitive consent (during the time frame for retracting consent), or under other circumstances where the child's adoptability is

uncertain, it may turn out that the child is placed without hesitation in the home of the prospective adoptive parents in order to provide him/her as soon as possible with the benefits of a family life. The precariousness of this placement at this point in time is great since the child already starts to make bonds with his/her new family, while the decision concerning his/her adoptability is not yet final. Except for the long and complicated procedure of forced adoptability in the course of which the child may well begin to wilt away in an institution, such a solution, contrary to THC-1993 (arts. 16, 17 and 29) is, therefore, rather to be avoided.

#### « A reasonable time frame » versus rapidity

Article 35 of THC-1993 calls upon « the competent authorities of the Contracting States to act expeditiously in the process of adoption ». According to the Explanatory Report of THC-1993 (n° 546), « the formulation of article 35 was judged to be 'too general and impersonal'. It was also observed that the file had to be examined carefully before a decision on the adoption, was taken and to accelerate the proceedings could be against the best interests of the child ».

We, thus, believe that the notion of « a reasonable period of time » would be more appropriate to take into account than that of « rapidity » as a necessary concern about the passage of time in a professional adoption procedure focussed on the interests of the child.

#### Conclusion

The active and attentive management of time by all professional protagonists contributes, therefore, at the same time to an early supervision of the merits of the adoption envisaged, to the accompaniment of the children and the families, to the respect of the priority of assisting the family of origin and to the subsidiarity of inter-country adoption, and finally to the legal security of the pre-adoption placement.

It certainly entails *avoiding the unnecessary suffering of children in provisional situations*, particularly through *a systematic review of the circumstances of children with family difficulties* (see Editorial 7/2005), so that a decision may be taken at the right moment. But, at the same time, it entails *refusing any false alarms* so as to leave each actor in adoption the chance to evolve personally and to guarantee the professionalism of the adoption process.

Finally, each professional will devote himself/herself tirelessly to the search for the balance between of a reasonable period of time that makes it possible to safeguard the rights of all and the professionalism of the procedure.

*The ISS/IRC Team*

For more concerning the applications extracted from national practices, see the section on «Rights of the child: Chile», in this Bulletin; in Bulletin 65: «Chile»; and in Bulletin 68-69: «The Philippines». Explanatory Report of THC-1993: <http://hcch.e-vision.nl/upload/exp133e.pdf>. The earlier Editorials are available on the website: [www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/editoriatronc\\_di.html](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/editoriatronc_di.html)

#### IRC NEWS

##### • The ISS/IRC is launching a new training project and a distance exchange of experiences

This new project provides both a thematic and systematic approach to the issue and action in favour of children deprived of family or at risk of so being, those in need of adoption or already adopted. In this sense, it supplements the Monthly Review of the ISS/IRC which concentrates basically on recent developments.

This project is conceived as a theoretical and practical framework intended for professionals, particularly those working in developing countries or those in transition. Interested parties residing in other regions will nevertheless find in it useful items of information.

##### What does the project consist of?

Thematic training fact sheets are circulated on a monthly basis, beginning in August 2005, to the partners of ISS/IRC. Each fact sheet will be devoted to a particular aspect of the issue envisaged. They will be divided into three main headings:

1. The implementation of a global policy for children and the family.
2. The performance of the adoption procedure.
3. The specificities of inter-country adoption.

These fact sheets endeavour to be multidisciplinary. They address questions examined from both the legal and psychosocial perspective and offer, if the need arises, ethical considerations.

The fact sheets aim to respond to the needs of practice and hope to provoke an exchange of experiences

between protagonists from various countries. Anyone may propose changes and cite their particular experiences. The fact sheets will be updated regularly and can be consulted on the ISS/IRC website.

### **Your views count for us !**

You have in principle received the first fact sheet and you will also find it on our Internet site ([http://www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/body\\_tronc\\_di.html#Fiches](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/body_tronc_di.html#Fiches)). To let us have your comments or perhaps to bring to our attention a problem of distribution, please don't hesitate to write to us at [irc-cir@iss-ssi.org](mailto:irc-cir@iss-ssi.org).

We are also interested in receiving the particulars of other professionals in the field of the rights of children deprived of family (authorities, placement bodies, adoption agencies, NGOs, researchers, practitioners and resource persons) who might usefully receive our Monthly Review and our thematic fact sheets in your country. Thanks in advance!

### ● **Updating the website** : Two documents have been added to our website under the heading of Documents of interest:

- *Proposed international guidelines for the protection of children without parental care: An initial overview of issues to be addressed*, Working group of NGOs, Geneva, January 2005: [www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/documents/NGOGpGuideOverview040205\\_000.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/NGOGpGuideOverview040205_000.pdf). This text constitutes a follow-up by the Working Group of NGOs on Children without parental care, of the working document prepared jointly by UNICEF and the ISS on the need for international norms for children without parental care (see Editorial 72-73 [www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/documents/Edito.72-73.eng\\_000.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.72-73.eng_000.pdf)). The primary aim of these guidelines should be to guarantee, on the one hand, that the children do not find themselves placed unnecessarily away from home, and on the other hand, that this form of care provision be of a type and quality that correspond to the rights and special needs of the children concerned. This document also exists in English and French (see [www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/uniceftronc\\_di.html](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/uniceftronc_di.html)).
- *La Convention de La Haye du 29 mai 1993: Analyse juridique* (The Hague Convention of 29 May 1993: Legal analysis), Isabelle Lammerant, updated April 2005: [www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/documents/IL-AnalysejuridiqueFRA.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/IL-AnalysejuridiqueFRA.pdf). This legal analysis of the Convention, available in French, covers six aspects: the universal dimension; the ethical dimension; international co-operation; the possibility of delegating competencies of the State to professionals; the concrete mechanism of adoption; and the recognition of full rights of adoptions carried out in accordance with the Convention.

## THE HAGUE CONVENTION OF 1993 ON INTERCOUNTRY ADOPTION (THC-1993)

### **The ISS assesses the implementation of THC-1993**

*In preparation of the Special Commission of 17-23 September 2005, ISS makes known its concerns on the current trends and on the ethical stakes of inter-country adoption.*

**T**o prepare the Special Commission of The Hague Conference that will meet from 17 to 23 September 2005 to evaluate the practical operation of THC-1993 (see Monthly Reviews 2/2005 and 71), the ISS has elaborated a document that brings out the primary causes for concern. The contribution of the ISS network, as well as its wider experience of contacts with all its interlocutors from the countries of origin and receiving countries ones have been instrumental in identifying these topics; we would like to take this opportunity to warmly thank once more all those who share with us their practice and their questions.

The ISS evaluation paper addresses the following issues: the current evolution and trends of inter-country adoption and their

consequences in view of the best interests of children; the permanency planning for each child deprived of parental care, including by means of the application of the subsidiarity principle of inter-country adoption; the inter-country adoption of children with special needs; the adoption of foreign children through an adoption accredited body (AAB) or through independent adoptions?; the accreditation and authorization of adoption bodies; the implications of article 29 of THC-1993 on matching and on direct adoptions; relative adoptions; cases of avoidance of THC-1993 through domestic adoption; non-discrimination principle between children benefiting from Hague and non-Hague adoptions.

This document is available in English on the ISS website at the address <http://www.iss->

[ssi.org/Resource\\_Centre/Tronc\\_DI/documents/EvaluationSSICLH2005.pdf](http://ssi.org/Resource_Centre/Tronc_DI/documents/EvaluationSSICLH2005.pdf). It can also be found on the website of The Hague Conference, together with countries' responses to the questionnaire sent out by the Permanent Bureau in preparation for the Special Commission, the draft agenda of the Commission, a note from the Permanent Bureau on the questions of

accreditation and a draft guide to good practices: <http://hcch.e-vision.nl/index-fr.php?act=progress.listing&cat=8>.

We will always be very interested in knowing your reactions to our document and will of course keep you informed about the follow-up to the Special Commission, to which the ISS/IRC will participate.

## OTHER CONVENTIONS AND INTERNATIONAL DOCUMENTS CONCERNING THE RIGHTS OF CHILDREN DEPRIVED OF THEIR FAMILY

### Convention of the Council of Europe on Contact concerning Children

**Errata:** An error was made in our previous Monthly Review n°7 of July 2005: instead of Convention of "Council of Europe", we mentioned Convention of the "European Council". Kindly excuse us for this error, we thank you for your comprehension.

### The Hague Convention of 1996: Hungary

Source: The Permanent Bureau of The Hague Conference: [http://hcch.e-vision.nl/index\\_en.php?act=conventions.status&cid=70](http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=70)

**T**he Hague Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children was *signed by Hungary* on 4 July

2005. The Convention is currently in force in ten countries and moreover has been signed by nineteen countries.

See Monthly Reviews 70, 72-73 and 3/2005.

### PROTAGONISTS IN MATTER OF ADOPTION

Source: Permanent Bureau of the Hague Conference: [http://hcch.e-vision.nl/index\\_en.php?act=conventions.authorities&cid=69](http://hcch.e-vision.nl/index_en.php?act=conventions.authorities&cid=69).

- **Austria, Canada (Nova Scotia, Ontario, and Prince Edward Island) and Colombia:** These countries or provinces have updated the particulars of their Central Authorities.
- **Bulgaria:** This country has updated the particulars of its accredited bodies.
- **Germany:** This country has updated the particulars of the common Central Authority for the regions of Bremen, Hamburg, Lower Saxony and Schleswig-Holstein, as well as the list of its accredited bodies.
- **Romania:** As it was published in our Monthly Review n° 70, in application of the Law n° 274/2004 on the creation, organisation and the functioning of the Romanian Office for Adoption, the former National Authority for the Protection of Children and Adoption has henceforth been divided in two:
  - The National Authority for the Protection of the Rights of the Child, which coordinates the activities on the protection of children's rights
  - The Romanian Office for Adoption, with competences on domestic and intercountry adoption. The new details of the new Central Authority are: Romanian Office for Adoptions; 29, Muzeul Zambaccian Street; district 1; Bucarest 011872. Tel.: +40 (21) 230 1362, fax: +40 (21) 230 1320.We recall that intercountry adoption of Romanian children is limited to adoption by grandparents living abroad of their grandchildren possibly in need of adoption. See Monthly Review 70.

## PROCEDURE

### Thailand: quota for foreign prospective adoptive parents

*The Thai authorities have adapted the maximum number of new files of prospective adoptive parents to the needs of their children.*

The Central Australian Authorities (Australian Capital Territory, New South Wales, Queensland, Victoria, Western Australia and Tasmania), those of Belgium (French Community), of Canada (Quebec), Denmark, Sweden and Switzerland have notified us that the Thai authorities have assigned them a maximum quota of new files of prospective adoptive parents for 2005. After a Thai moratorium on the receipt of new requests for the adoption of healthy young children in 2003 and 2004 (see Bulletins 60-61 and 63), these Central Authorities of receiving countries have thus received the authorization to send Thailand

a limited number of files of prospective adoptive parents for 2005. According to the receiving countries, this quota ranges from 18 to 50.

According to the ISS/IRC, these practices of suspensions and quotas seem to reflect an interest in linking the *number or requests for inter-country adoption to the estimated needs of the children* (see Editorial 60, [http://www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/documents/Edito.65.eng.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.65.eng.pdf)). The ISS/IRC however has not been informed about the key to the distribution used by the Thai authorities to determine the different quotas for the receiving countries.

## CHILDREN'S RIGHTS

### CHILE: The time frames in the process of consent to adoption

*Although a child's waiting in an institution can have negative consequences for him/her, the work done with the family of origin is important. We have to try to strike a balance in the time frames of the process of domestic adoption.*

Just as we explained in the Bulletin 65, *the Chilean Law of Adoption (LA) of 1999 was amended in October 2003*. Among the aims of the reform was the promotion of a speedier action in the preliminary procedure process leading up to adoption so as to avoid the child remaining in an institution for a long time (see too the Editorial in this edition). Two years after the reform, we would like to analyse how the above-mentioned law is being applied in cases where the family of origin, and especially the birth mother, expresses her wish to hand over their child before a competent judge of minors (art. 8.a and 9 LA).

#### **Acompaniment before giving consent to adoption**

In case of consent, before beginning the legal steps of a pre-adoption process, pregnant women (6 months in average) or who have just had the child should generally turn to public or private bodies in search of assistance and

advice. Only in a few cases is the father also present to support the relinquishment or to confirm how he and the birth mother can keep the child.

In the adoption accredited body (AAB) "Fundación San José para la Adopción Familiar Cristiana" (The San Jose Foundation for Christian Family Adoption) (which is one of the three AABs existing in the country and that works in domestic adoption) the birth mothers can be treated as outpatients (when they are given an appointment or need one) or they can be hospitalised in the San José Home (a recent establishment of the body's residential premises that receives them for the time needed). In both cases *they are supported by a pair of professionals (a psychologist and a social worker) with the aim of thinking as a group about their decision*. Moreover they participate in at least one legal meeting where the significance of the legal process of adoption is explained to

them. This process leads to a free decision-taking moment without pressure.

During this process of prior awareness the professionals seek out the family networks and the mothers' own psychological and social resources. When the mothers persist in putting the child up for adoption, the professionals support them in the said decision. This process of awareness takes place *before, during and after the birth*.

### **Non-existent time for reflection under the law, but applied more and more in practice**

The Chilean law does not provide for an obligatory period for reflection after the birth and before consent to adoption. On the contrary, *and in violation of art. 4.c.4. of The Hague Convention on Intercountry Adoption of 1993*, it stipulates that the parents can consent to adoption before the birth of the child (art. 10 LA).

However, the Central Authority (el Servicio Nacional de Menores, SENAME) and the Fundación San José do not endorse this possibility of consenting to adoption before child birth. SENAME in its "Technical Orientations (2000-2002)" points that "given the high number of mothers that decide to keep their child after the birth, SENAME advises not to start this process, as it would be an element of pressure against the parents and would possibly be against the best interest of the child. In this respect the Adoption Units of SENAME should not initiate procedures in order to give the child before its birth, except in very justified situations and which would only and exclusively be in relation with a risk for the child's life". Furthermore, it is compulsory that the previous authorization granted by the SENAME be confirmed by a judge. In fact, the above-mentioned article 10 has only been applied three times since 1999.

*In practice, the birth mothers consent to adoption before a court at least one month after child birth.* Experience shows that the process of awareness can evolve during this period of time, especially if it entails four months of reflection in cases where the woman was already six months pregnant when she arrived.

*Between 40 and 50% of these mothers decide to keep their child either during the pregnancy or after birth.* Otherwise, the pre-adoption proceedings begin by means of a document presented by the AAB, *together with reports prepared by the two professionals.* The birth mother is summoned to make a statement in

court and *from that day onwards, she has 60 days to retract her consent* (art. 9 LA).

In case where only one of the birth parents may have consented to adoption, the judge will within three days take the appropriate measures to obtain the declaration of the other parent.

### **Period for retraction**

Having gone through the 60 days (the period for retraction) means that the birth mother has not repented her wish to voluntarily put the child up for adoption. This procedure in some cases is carried out by means of *a personal appearance of the birth mother in Court*. Nonetheless, in most cases, for the last few months, the Fundación San José has abandoned this practice. Indeed, *the non presentation of the birth mother is enough to understand that she ratifies her consent.*

This makes one think about the benefits of *the establishment of a legal period for reflection before giving consent instead of a time for retraction.* That could allow the possibility to declare final adoptability of the child more quickly and to avoid added emotional difficulties for the birth mothers during the ratification process of their consent.

After the ratification *the decision of the child's adoptability is requested and is finalised within a period of 30 days in average.* Although the reform of 2003 reduced this legal period to 10 days (art. 9.3 LA), in practice the delay in deciding upon the adoptability (susceptibility of adoptability) of a child persists.

Finally, *within a period of 15 days in average the birth mother is notified of the decision and 10 days later (art. 17 LA) without appeal,* the decision stands firm.

### **Entrust the personal and provisional custody of the child to the prospective adoptive parents**

After the said final decision, and within a period of approximately 15 days, the AAB presents to the court one or three files of Chilean prospective adoptive parents, previously declared suitable by the AAB or the Central Authority (the National Service for Minors).

The act of presenting one or three files varies according to the courts. Some courts trust in the technical and interdisciplinary capacity of the AAB to select the applicants who are best able to satisfy the needs of a particular child. Nonetheless, other courts require the AAB to present them with three alternative couples and

it is the judge who selects the one who in his opinion is the most suitable.

After the presentation of the prospective adoptive parents, the judge issues a legal judgment by means of which he entrusts them with the provisional custody of the child and authorises the release of the child from the institution where he/her resides.

Today, new-born adoptable children are being placed (with the consent of their parents) in the provisional and personal custody of Chilean prospective adoptive parents, when *the children are more than 8 months old*. Before the reform, it was at 5 months or 5 and a half months. Paradoxically, if the reform has legally reduced the procedural periods of time for the pre-adoption processes, these have been increased in practice. This is without counting factors that could arise during the legal proceedings, such as the search for the family of origin, the disappearance of the birth mother, added delays in the courts, etc.

After the transfer of the child, the prospective adoptive parents must proceed, as quickly as possible, to the competent court in order to present the request for adoption. In the usual practice, it is in a period of one month.

### **A difficult balance**

Once more, we can see how difficult it is in practice to strike a balance between, on the one hand, the time needed to work with the family of origin and to elaborate a permanency planning for the child, and on the other hand, the time the child spends in an institution, before being adopted. In point of fact, in the institution children lack the stability and continuity that an appropriate family provides. This makes it difficult for the future tie-making between the child and his adoptive parents, as well as the full development of the child.

In Chile, the legal procedural conditions that add themselves to the unavoidable difficulties (see Editorial) lengthen, probably in a debatable fashion, the time frames of the pre-adoption process.

- This happens for example in studying the proceedings that have to be followed by the parents who want to consent to adoption of their child and in the cases where there is no contentious process over such a decision. Are legal proceedings for *adoptability, with the*

*inclusion of multiple time frames* (see the diagram below), *really necessary*, when adoptability could be declared legally by means of the court's registering the parents' consent after a period for reflection – as in most countries?

- We also wonder if we couldn't gain time and legal security, if, as in other legislation, the AAB – *which is a professional body supervised by the State – had the power to decide on matching*. Many countries do not consider it necessary for the judge to have the systematic power (except in cases where a proven problem in the adoptive family) of being able himself to choose between three couples of applicants presented by the AAB.

The role of the judge should be to declare the adoption and check the positive adaptation of the child with his/her adoptive family. Would it not be sufficient, as in most countries, to have a sole legal intervention at the end of the psycho-social process instead of three (decision of adoptability, the transfer of the child and adoption)? Adoption requires legal and psycho-social work. There should be close co-ordination between the psycho-social and legal circles to avoid that the latter duplicates the work of the former. This co-ordination already exists in most countries, including in domestic adoption procedures of the receiving countries.

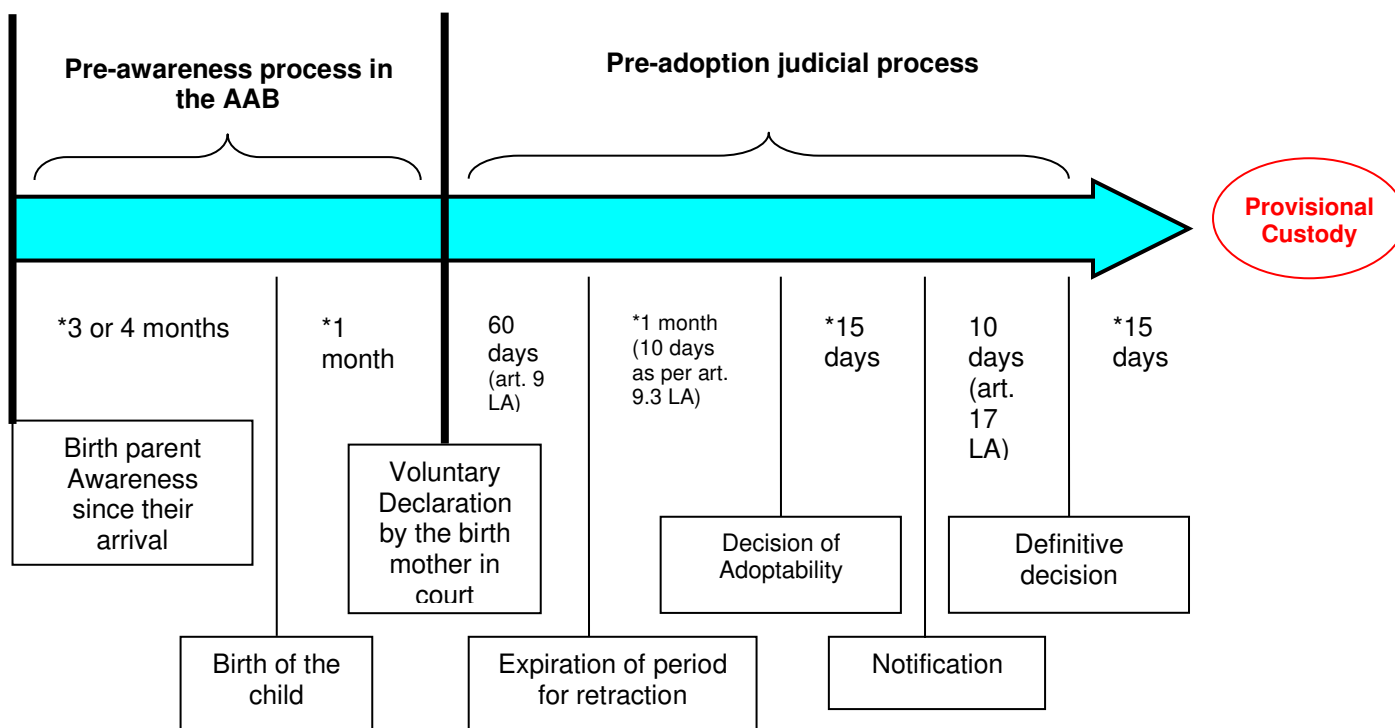
The Chilean situation shows the importance of psycho-social support for the mothers of origin who wish to put up their child for adoption. It also bears witness to the importance of having legal provisions that offer all the guarantees for the rights of children and parents of origin. Without forgetting the necessity to accelerate the process and the co-operation between the AABs and the courts, in order to provide the child, in the shortest possible time frame, the security of an adoptive family.

*Readers can also consult, in Bulletin 68-69, the article on the Philippines which shows another example of practice where more time is granted for work with the family and for searching for a family within the country before the child is adoptable at the international level.*

Source: Paula Arroyave, lawyer, Foundation San José for Christian family Adoption, Santiago, Chile, [paulaarroyave@fundacionsanjose.cl](mailto:paulaarroyave@fundacionsanjose.cl).



## Previous court proceedings (8.a The Adoption Law): voluntary relinquishment



\*Average time frames in practice.

## CHINA: A country of origin where domestic adoption and foster care seem to be progressing 🏠

*The advent of the middle-class in China, the influence of the West, changes of mentality, and legislative improvements are just some of the factors that contribute to the increase in domestic adoption and foster care in China.*

According to an article by Sarah Schafer, published on 25 July in *Newsweek International*, the number of domestic adoptions in China is reported to have tripled between 1996 (with 14,800 children adopted) and 2003. Furthermore, an even greater number of family placements were recorded.

### Social, economic and legislative evolution

The cultural blockages (the shame of infertility, worries about what others would say, charity begins at home) and the economic difficulties which were a brake on adoption in China would therefore seem to have diminished. Moreover, the reform of the adoption law in 1999 would also have contributed to the increase in domestic adoption. *Prospective adoptive parents, who already have a child, henceforth can adopt an orphan or an abandoned child living in an institution and whose biological parents cannot be traced.* Thus, this reform

makes it possible to compensate for the one-child policy that already came into force at the end of Mao Tse-Tung's presidency in 1979. This policy aims at reducing the birth rate in China by limiting the number of children per family to one. However, these days its sometimes strict application, seems to have been softened.

### Towards a lasting family solution for children in institutions

*A considerable number of children live in institutions in China: 50,000 according to Sarah Schafer's article; "16 000 orphans and infants in care in State-run municipal and public institutions, in December 1993", according to the 1995 Report of China to the United Nations Committee on the Rights of the Child. Living conditions in such institutions can sometimes be very harsh.* The United Nations Committee on the Rights of the Child expressed its concern in this regard in its concluding observations in 1996. It has thus observed "that the very high

mortality rate in such institutions is a cause for serious alarm". It has also recommended measures "to ensure the effective supervision of staff and the periodic review of the treatment provided for children in such institutions".

According to Sarah Schafer's article, it happens for several years now that Chinese families have begun to integrate institutionalized children. In cities such as Beijing, Shanghai, Guangzhou and Tianjin, 10,000 children have been placed in families. For many of them this placement was later converted into adoption. According to Sarah Schafer's article, the Chinese Government encourages these movements. In particular it has reportedly created an independent organisation that aims to reform the system of institutions for children. *In 2002, this organisation is said to have launched a campaign intended to convince the Chinese population that children in placement did not belong to the institutions, but should instead be able to benefit from a family environment.*

### **Development of family care in other countries of origin**

China is not the only country of origin where an adoption and family care culture is being developed at the domestic level. A similar experience can be observed, for example, in Brazil (see Bulletin 65). This illustrates the significant progress that certain countries of origin are witnessing, where the protection of children has a tendency to develop in the

direction of *providing family care for children, at the political, legal and cultural levels.*

This trend usefully implements *the subsidiarity principle of inter-country adoption* guaranteed by art. 21-b of the UN Convention on the Rights of the Child, para. 3 of the preamble and art.4-b of The 1993 Hague Convention. Consequently, in the long term, it would have the particular effect of reducing the number of young healthy children who are eligible for inter-country adoption (on this subject see the article by Nigel Cantwell, *Inter-country adoption - A Comment on the Number of "Adoptable" Children and the Number of Persons Seeking to Adopt Internationally*, [http://www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/documents/CantwellInterCountryAdoptionENG.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/CantwellInterCountryAdoptionENG.pdf)). This policy also makes it possible to avoid uprooting children and ensure as far as possible the continuity of their upbringing within a cultural and family environment adapted to their needs.

*Sources: Central Authority of China, China Center of Adoption Affairs, <http://www.china-ccaa.org/zxwj/030209pgzd-english.htm>; United Nations Committee on the Rights of the Child, [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.56.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.56.En?OpenDocument); [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.11.Add.7.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.11.Add.7.En?OpenDocument); verbal information from some Central Authorities of receiving Countries; « China: Charity Begins at Home », by Sarah Schafer, *Newsweek International*, 25 July 2005, [msnbc.msn.com/id/8598730/site/newsweek/](http://msnbc.msn.com/id/8598730/site/newsweek/).*

## INTERDISCIPLINARY APPROACH

### **In certain societies, inter-country adoption is confronted by more traditional forms of « adoption » or « family placement »**

*The collective work entitled «Adoption: different practices of filiation», co-ordinated by Isabelle Leblic, sheds light on the multiplicity of forms of filiation, placement and adoption around the world.*

**T**o say « my father », « my mother », « my son » or « my daughter » does not have the same implication in all parts of the world. In the West, the lines of filiation are generally exclusive and mostly founded on a biological tie – each child has only one father and one mother, usually the two beings who have conceived the child – this conception is not universal. In numerous societies, a child can have several fathers and mothers. This kinship is called

*classificatory, that is to say that it is based upon criterias of social relations, which neutralise the distinction between immediate parents and collateral parents (uncles, aunts...).*

Do these multiple conception of filiation have an influence on the practice of adoption or placement (the authors talk of transfer/circulation of children) ? Are there forms of filiation that lend themselves more than others to these practices ? Such are the questions that are explored by the authors of the book "De

l'adoption: des pratiques de filiation différentes" (Adoption: different practices of filiation) written in French and co-ordinated by Isabelle Leblic. What emerges from it, in particular, is a confrontation between traditional «adoption» and inter-country adoption. This last concept is very Western, as repeatedly emphasised in the work on anthropology quoted above, to which specialists from different continents have contributed, including Muslim societies.

### Several fathers, several mothers

*In Brazil for example*, there is a long local tradition of placing children, especially in poor neighbourhoods. Claudia Fonseca points out in her article that in 120 families contacted in the course of research carried out between 1985 and 1990, some one hundred people had spent their childhood in the house of different mothers: biological mothers, godmothers, grandmothers and other *criação* mothers (child raising mothers). The children thus shared between different *families acquire new parents and new brothers and sisters without it necessarily bringing about a breakdown of previous relationships, on the contrary*. The *criação* mother in particular is never confused with the biological mother.

*This informal practice, today clearly in retreat, finds itself confronted by official practices of domestic and inter-country adoption, provoking sometimes situations of total incomprehension*. These misunderstandings were especially frequent in the 1980s, at the time of the development of residential institutions. Lots of biological parents placed their child there as they would have done with the mother de *criação*, that is to say thinking that they could always take the child back. Several of them were therefore amazed to learn that their child had been adopted when they came back to take him/her home, sometimes several years later. Today, however, full adoption practised in Brazil, remains very far removed from the traditional Brazilian concepts of child placement, which presuppose *the continuity and the perpetuation of various social links that have been woven around the family*.

This extension of kinship and the continuity of the ties thus created doesn't only exist in Brazil. Thus, among the *Kanaks paicî in New Caledonia, all the paternal uncles of the child are "fathers" and all the maternal aunts are « mothers »*, explains Isabelle Leblic.

*In Haiti, according to Chantal Collard*, local and informal family placement is an integral part of the culture, but a part of these children are placed as servants (the *restavecs*), often in the house of a godfather or godmother. The biological parents always feel free to contact and take their children out as they deem necessary or appropriate for a given situation, particularly for economic reasons.

### Several possible reasons for traditional adoption

In numerous populations, *adoption or traditional family placement* – where the distinction is very Eurocentric, points out Claudia Fonseca in her chapter devoted to Brazil – thus do not find only their basis in abandonment or the loss of parents. Depending upon the population, they can respond to the economic needs, serve as compensation for a couple's infertility, seal a friendship pact, mend a prejudice, compensate for a debt, contribute to the training of the child. The placement of children becomes henceforth a genuine regulatory social system. For example in Polynesia and in Reunion, the *placement of children follows this logic and is a key element of the social structure*, according to Jean-Vital de Monléon and Laurence Pourchez.

The forms of filiation, placement and adoption are thus multiple around the world. From here onwards, according to Claudia Fonseca, in societies where traditions and inter-country adoption coexist, it seems important to *respect the forms of traditional placement and to recognise them as alternatives within modernity*.

*Furthermore, according to UNICEF and the ISS, these informal practices of providing family care must of course be focussed on the priority search for the best interest of the child which should be protected against all forms of exploitation which sometimes they open the way to*. Even if these practices often present important advantages for the children who benefit from them, they should be subject to international and national minimum standards concerning their support, their follow-up and their supervision (see Editorial of Monthly Review 72-73, [http://www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/documents/Edito.72-73.eng\\_000.pdf](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/documents/Edito.72-73.eng_000.pdf)).

*With regard to the specific practice of inter-country adoption, it is all the more important that the protagonists inform the families of origin correctly, so that they know clearly what their abandonment or their consent implies. Their*

preparation must in particular be carried out with special care, as well as that of the children put up for adoption and their adoptive family.

Source: *Adoption: Different practices of filiation*, Under the direction of Isabelle Leblic, Clermont-Ferrand, University Press Blaise Pascal, coll. Anthropology, 2004, 340 pp.

#### FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Canada:** *Professional workshop on the adopted child and his family*, Le Monde est ailleurs (The World is elsewhere), Montreal, 28 November - 2 December 2005. "Le Monde est ailleurs" team (see Bulletin 63) offers, in French, a new programme of basic and clinical knowledge and of preventive and therapeutic intervention: a training workshop produced and thought out especially for Canadian and foreign professionals who work or will work with adopted children, as well as with their family during inter-country pre- and post-adoption. *Themes:* theoretical and practical knowledge about providing health care, nutrition, growth, upbringing, attachment, personality, learning stages and child / adolescent identity, and this from a dynamic and family perspective. Resource persons: Dr Jean-François Chicoine, paediatrician, Mrs Johanne Lemieux, social worker, Mrs Patricia Germain, a nurse, Mrs Christiane Bastien, physiotherapist, Mrs Renée Séguin, researcher in psychology and other collaborators. *Contact:* Mrs Julie Leblanc, Le Monde est ailleurs, 18, rue Claude, Pointe-des-Cascades (Quebec), J0P 1M0; tel.: 1-450-424-2491; fax: 1-450-424-4038; [julie.leblanc@meanomadis.com](mailto:julie.leblanc@meanomadis.com); [www.meanomadis.com](http://www.meanomadis.com).
- **France:** *Les adoptions tardives: aspects psychologiques, juridiques et cliniques* (Later adoptions: psychological, legal and clinical aspects, COPES in partnership with MAI and DGAS, Paris, 14 - 18 November 2005. This workshop is run by Omblin Ozoux - Tefaine, psychologist, with the participation of several specialised protagonists. Themes addressed: adopted foreign children, like children in care in France, are more and more often older at the time of their adoption; are late adoptions desirable and possible?; making the connection in later adoptions implies the collaboration of all the partners of the child; the social workers are confronted with abandonment, but more often with gradual neglect; the difficult question of resorting to the courts; the arguments that will justify a court order compatible with the interests of the child; the follow-up and the treatment of the family circumstances after a late adoption; the late adoptee's search for origins. This workshop is intended for protagonists in adoption and child services (Aide sociale à l'enfance – ASE). *Contact:* 20 rue de Dantzig, 75015 Paris; tél.: +33 1 53 68 93 40; fax.: +33 1 53 68 93 45; [formation@wanadoo.fr](mailto:formation@wanadoo.fr); [www.lecopes.com](http://www.lecopes.com).
- **The Netherlands:** Reminder of the Conference (see Monthly Bulletin 3/2005) *100 Years of Child Protection, a National and International Perspective. Recommendations for the Future* Amsterdam University 28-30 November 2005, [www.childprotection2005.nl/index.php](http://www.childprotection2005.nl/index.php).
- **United Kingdom:** *Caring for troubled children. What works in training parents and carers to become more effective?*, British Association for Adoption & Fostering (BAAF), London, 24 November 2005. Theme: Fostered and adopted children often present a range of distressing and challenging emotional and behaviour difficulties, resulting from adverse experiences and disrupted relationships. It is clear that even the most sensitive and committed caregivers may need help with parenting strategies to meet the diverse needs of such very troubled children. Aims: to promote a national debate about the diverse parenting interventions relevant to foster care and adoption; to explore the theoretical foundations for different parenting strategies; to learn from the research messages about how each works best in practice – and with which groups of children; to think about how these interventions can be used in practice by foster and adoptive families; to launch a discussion on how such interventions could be delivered/supported by a range of disciplines in a range of agencies. For Adoption professionals, adopted people, adoptive parents, birth relatives and foster carers. Contact for registration: Kay Mirza, BAAF, Skyline House, 200 Union Street, London SE1 OLX; tel: +44 020 7593 2074; fax: +44 020 7593 2001; [Kay.Mirza@baaf.org.uk](mailto:Kay.Mirza@baaf.org.uk); [www.baaf.org.uk](http://www.baaf.org.uk).

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