



**Monthly Review N° 9/2006  
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EDITORIAL

**Conference of Brasilia, 9-11 August 2006** 

*A decisive step towards the adoption of the United Nations Guidelines for the Protection and Alternative Care of Children without Parental Care.*

**F**rom 9 to 11 August 2006, and upon the initiative of the Presidency of the Brazilian Republic<sup>1</sup>, about forty governmental delegates, which came from all regions of the world, met in Brasilia. The aim of the conference was to review the *Draft UN Guidelines for the Protection and Alternative Care of Children without Parental Care*.

As a reminder, this project is the result of a joint initiative between UNICEF and ISS, launched in early 2004 (see Editorial of Monthly Review 72-73). Thereafter, under the coordination of ISS, a working group within the NGO Group for the Convention on the Rights of the Child, drawing together several international NGOs involved in children's rights, elaborated a first draft of the Guidelines, which received the

support of, and was validated by, the United Nations Committee on the Rights of the Child. On the occasion of its annual General Discussion Day in September 2005, the Committee recommended that this work be pursued in order to submit the draft for adoption by the United Nations General Assembly.

A preliminary text has therefore been drafted, on the basis of a large international consultation process. The Conference of Brasilia was the first opportunity to submit this document for consideration by a group of governmental experts.

**A text which must respond to the needs of every situation**

As a priority, the Draft Guidelines aim at preserving the family structure (prevention of

separation, reintegration of the separated child into his/her family) and, where this is not possible, at offering an appropriate form of alternative care to every child. With this in view, it provides that any measure must be based on a prior evaluation of the child's situation, subjected to planning and regularly reviewed. Each decision must be adopted on a case-by-case basis, by qualified individuals, in consultation with the child. Furthermore, the project thoroughly defines the minimum conditions which ought to be met by any form of alternative care. It also provides some mechanisms designed to support children and young adults who no longer benefit from this type of service.

The tools offered by the future Guidelines will be of use to various actors, including political decision-makers, social services, as well as bodies and individuals directly responsible for children. They concern as much the public as the private sectors.

In relation to the implementation of these principles, it will be a matter of showing flexibility, as it will depend upon the economic, social and cultural conditions of each country and, according to the case, will be carried out progressively.

### A fundamental step

Beyond the essential questions which were discussed during the Conference, this has undoubtedly marked a decisive step on the long road, which must lead to the adoption of the Guidelines. The delegates have acknowledged that this future text will respond to a real need and have, very clearly, expressed their willingness to carry this project through to completion. Although the Convention on the Rights of the Child and other relevant international instruments provide a general legal framework for the protection and care of the children concerned, numerous questions remain open and, quite obviously, require new

developments. The debates which will surround this text over the next months will have to fill these gaps.

### A process which must be supported on the long term

Even though the commitment expressed at the Conference of Brasilia is encouraging, the efforts provided at all levels since the beginning of the project must be pursued. It is now a matter of mobilising all the States, so that a larger international debate may take place. Without strong political support, this text may never come into being...

A new version of the project, which will include the conclusions of the Conference of Brasilia, will be available before the end of the year. All governments will be requested to examine this new text in detail, and to share their comments with Brazil, which now leads on this project. It will then be a matter of achieving a satisfactory text for all, with a view to its final adoption at the United Nations General Assembly's session, which will be held at the end of 2007.

On the longer term, issues will be raised in relation to the implementation of the Guidelines and the strategies which will need to be developed with that aim in mind. It will be a question of integrating the new principles into the legislations and practices, so that the reality of every country may really be transformed.

The IRC Team

<sup>1</sup> In addition to the efforts provided by the Brazilian Presidency, this event has also been made possible thanks to the financial contributions of the Canadian International Development Agency (CIDA) and UNICEF.

The text of the Guidelines in its current version is available in English at the following address: <http://www.mj.gov.br/sedh/ct/spdca/cuidados%20parentais/Draft%20Guidelines%2030.06.06.doc>.

For further information on this process, see [http://www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/tronc\\_di\\_pro.html](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_pro.html); <http://www.ohchr.org/english/bodies/crc/docs/discussion/recommendations2005.pdf>.

*It is now a matter of mobilising all the States, so that a larger international debate may take place.*

### IRC NEWS

#### • Project on distance training and exchange of experiences – New Fact Sheets on the ISS/IRC website



Two new Thematic Fact Sheets (N<sup>os</sup> 19-20) have been issued. These address the general principles of adoption and the objectives and responsibilities related to the adoptability of the child. All Fact Sheets are available on the ISS/IRC website: [http://www.iss-ssi.org/Resource\\_Centre/Tronc\\_DI/tronc\\_di\\_fic.html](http://www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_fic.html).

## 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); Department for Education and Skills, United Kingdom : <http://www.dfes.gov.uk/intercountryadoption/>; Mission de l'Adoption Internationale, France: [http://www.diplomatie.gouv.fr/fr/les-francais-etranger\\_1296/conseils-aux-familles\\_3104/adoption-internationale\\_2605/actualites\\_3230/nepal-02-08-2006\\_39658.html](http://www.diplomatie.gouv.fr/fr/les-francais-etranger_1296/conseils-aux-familles_3104/adoption-internationale_2605/actualites_3230/nepal-02-08-2006_39658.html)

- **Australia:** This country has updated the contact details of its Central Authority (NSW).
- **Sweden:** The contact details of the Central and competent Authorities as well as of the accredited bodies have been updated.
- **Canada:** Canada has updated the contact details of its Central Authority and accredited bodies.
- **China:** According to the Department for Education and Skills (United Kingdom), the China Center for Adoptions Affairs (CCAA) moved. Their new address is: No. 16 Wang Jia Yuan Lane, Dong Cheng District, 100027 Beijing, China.
- **Nepal:** According to the Mission de l'Adoption Internationale (France), given a series of problematic adoption files, and various negative reports by adoptive parents, prospective adoptive parents are categorically advised against engaging in proceedings with the following orphanages, « **Swastik** » and « **Nepal Children's Organization** », also called « **Bal Mandir** ». Testimonies report that outrageous financial requests have been issued, and that there is wide opaqueness and unexplained slowness throughout the adoption proceedings carried out by these orphanages.

## LEGISLATION

### MAURITANIA: New legislation protects children in criminal matters

*The first part of Ordinance N° 2005/015 of 5 December 2005 constitutes the criminal code for children. The second part serves as the code of criminal procedure for children.*

The protection of Mauritanian children in criminal matters has been better safeguarded since the beginning of this year. In fact, on 5 December 2005, this West African country adopted its Ordinance N° 2005/015 relating to their protection in criminal matters. The first part of the document constitutes the criminal code for children, detailing the principle of mitigation of the minor's criminal responsibility, as well as the consequences of any crime and offence committed against him/her. The second part of the Ordinance serves as the code of criminal procedure for children. It also regulates prosecutions, the assessment of offences which he/she has committed and the enforcement procedures of sanctions. The document concludes with several provisions relating to individuals, institutions and services accommodating young offenders.

#### **Punishment for child abandonment and anyone acting as in intermediary in the adoption process**

Under the heading of offences against the child, the Ordinance punishes the abandonment of a child, unless the circumstances of the abandonment have made it possible to ensure the child's health and safety (art. 29). Punishment is all the more important if abandonment has resulted in serious

consequences (for example, a permanent disability). This would also apply if the father or mother shirks his/her legal duties to the extent of seriously jeopardising their child's health, safety, morality or education (art. 41). Furthermore, the act of provoking - either through financial gain, or a gift, promise, threat or abuse of authority - the parents or one of them to abandon a newborn child or one about to be born, is punished by a term of one or two years of imprisonment and a fine (art. 77). Punishment is similar for anyone who intervenes between an individual wishing to adopt a child and a parent wishing to abandon his/her newborn child or one who is about to be born (art. 78). It is worth noting that, in accordance with the first article of the Ordinance, the adoption of a child has no legal validity and produces no effects on filiation, in conformity with the principles of Islamic law in force in Mauritania.

#### **Under-15s may not be detained in prisons**

In relation to offences committed by children themselves, the Ordinance defends the principle whereby a child under the age of seven is presumed incapable of breaking criminal law. If nonetheless proof of an offence is established, the court for children summons and informs the child's parents or the persons who are

responsible for him/her (art. 129). If the child is between seven and 15 years of age, he/she may only be subjected to protective measures (placement in an institution or a public or private educational, professional training or medical care establishment ) (art. 130). It is only if he/she is over the age of 15 that the child may be placed in a supervised or corrective educational institution, in a boarding school for delinquent school-age children or in a specialised detoxification centres for the treatment of drug addicts (art. 131).

However, an intervention aimed at halting the effects of the judgement's criminal sanctions may take place at any time, unless the child has committed a crime. Moreover, all institutions or persons who accommodate these children on a regular basis must obtain a special authorisation from the guardianship authority (art. 185). Furthermore, the Ordinance envisages numerous provisions which allow it to closely supervise these institutions.

## PROCEDURE

### **INDIA: Government takes steps to promote domestic adoption**

*With the Juvenile Justice Act of 2000 amended, and licenses of accredited bodies revoked, India shows its commitment to the best interests of the child*

**R**ecent amendments to the Juvenile Justice Act, the law in India addressing adoption, seek to further promote domestic adoption and serve to combat trafficking and the illegal buying and selling of children through adoption. According to the bill which was passed recently, it is now possible for all Indians regardless of religion to adopt, a privilege previously exclusive to Hindus. This move in itself will help expand the number of domestic adoptions. While intercountry adoptions have not been renounced, Parliament recognises the need for the further monitoring of the process, and has reinforced the guidelines and monitoring system put forth by the Central Adoption Resource Agency (CARA), India's Central Authority. CARA has, since India ratified the Hague Convention on the Protection of Children and Co-operation in Inter-country Adoption (HC-1993), taken a number of initiatives to ensure that intercountry adoption practices are monitored and carried out in the best interests of the child. For example, foreign adoption applications have to go through coordinating agencies as well as scrutiny bodies before being reviewed by the Supreme Court.

#### **Profiteering via adoption**

Such measures are even more important today, as certain accredited bodies were exposed on Indian National TV in July this year because of their malpractices. Adoption organisations have been accused of charging prospective adoptive parents exorbitant fees, giving preference to parents who are willing to 'pay' more money for a child, as well as the inadequate care of its children. Such allegations

have led to the suspension of the licence of one of the oldest adoption agencies, Preet Mandir in Pune. CNN reports accused the organisation of targeting foreigners as statistics in the investigation have shown that in the year 2005, 100 foreigners were granted adoption versus 62 Indians. This counters the principle of subsidiarity outlined in the HC-1993, as well as the guidelines established by CARA which state that agencies have to find in descending order, Indian citizens, non-resident Indians, parents of Indian origin living abroad, before looking for foreign parents.

It seems that it is predominantly via foreigners that organisations such as Preet Mandir, seem to extract such high fees for adoptions, under the pretence of 'donations'. Further to the HC-1993, CARA's guidelines for intercountry adoption outline what should be covered under the costs from legal to medical fees, and in addition reiterates the fact that no profit should be accrued to the adoption agency. A maximum fee of US \$ 3,500 should be made payable by the parents to either an agency or the central authority for intercountry adoptions. According to the director of Preet Mandir, and he insists that, the fees stipulated by the government are not enough to run a child rehabilitation centre with adequate trained staff and personnel.

#### **In perseverance of good practice**

The case of Preet Mandir is unfortunately not unique; in the state of Andhra Pradesh in 2002, there were a number of shutdowns of agencies accused of selling children. The act of demanding donations in addition to the basic adoption fees is a common practice, and without



the existence of concrete intercountry adoption laws in India, it has been hard to monitor what constitutes “reasonable” fees. Until uniform law is implemented, the role of the Central Authority in monitoring intercountry adoption agencies is paramount. Via CARA, India has shown a commitment to implementing good practice and promotion of a child-centric approach to

adoption, thereby safeguarding the best interests and the rights of child.

Sources: Pune Newline,  
<http://cities.expressindia.com/fullstory.php?newsid=190055>;  
Central Adoption Resource Agency (CARA),  
<http://www.cara.nic.in/adoptionfromindia.htm>;  
<http://www.cara.nic.in/carahome.html>;  
Frontline,  
<http://www.hinduonnet.com/fline/fl2211/stories/20050603006700400.htm>.

## INTERDISCIPLINARY APPROACH

### Every child is Special: Placing disabled children for permanence

*With this new good practice guide published by the British Association for Adoption & Fostering (BAAF), Jennifer Cousins tackles a delicate and underresearched matter and gives very practical answers on how to avoid generalized stereotypes and marginalization of disabled children and provide them with an adequate permanent placement.*

In Jennifer Cousins' words, every child is special and some children need particular resources arising from their impairment. These words are the cornerstone of her good practice guide. Thus, disabled children are not a separate group of children and should not be stereotyped by society, social workers, and foster or adoptive parents.

#### Placement for disabled children in perspective

As for all children, disabled children are better off living with their family and within their community. However, it is three times more expensive to raise a disabled child than a child without impairments and some families may have financial problems. For that reason, support to families of disabled children should be enhanced in order to avoid placement outside the family in residential settings.

For those needing placement, research shows that fostering works well and that adoption is successful for most disabled children. In practice, it is however really difficult to provide these children with a permanent placement. Few prospective adoptive families intentionally come forward for children with disabilities. Disabled children can then wait longer for placement, especially boys, children over 2½ with severe medical problems, and learning-disabled children. As a result, it is vital to be more innovative and open throughout the process which leads to permanent placement of disabled children.

#### Assessment - a key step for permanency

Planning for a child has to be based on a full *assessment*. To be able to assess thoroughly, a social worker needs a full history of the child's

experiences. Disabilities, in particular where there is a learning disability and communication impairment, can make this assessment a highly specialised task. One should consider the direct impact of a child's impairments, any disabling barriers that the child faces and how to overcome such barriers. The social worker should observe and understand this particular child and, rather than highlight the disability, describe any impairment in the context of the whole child.

As it is recommended for all children, involving disabled children in the assessment is crucial and has many advantages – the most relevant being a greater understanding of the child and a better outcome to planning.

This detailed assessment will allow the social worker to write a pertinent *profile*, which has to be a realistic and up-to-date description.

#### Matching and the use of innovative methods

A three-step process is recommended:

1) the social worker assesses the *suitability* of the adult as an adopter/carer; 2) the prospective carer identifies a possible *link*; 3) the social worker assesses the *compatibility* of this child and this adult.

In assessing suitability, a wider understanding of the word “family” should be accepted. Other applicants (single, disabled, gay and lesbian ...) may be good carers or adopters and should be included. In addition, asking prospective adopters at this early stage what ‘kind of child’ they could rear is unproductive and reduces the opportunity for an open approach to a wide range of children. It is more important to assess in general terms the critical capacities of these applicants – mainly their empathy, reliability and ability to manage difference.

Although similar to the current way of working, Jennifer Cousins suggests that during the next part of the process (the 'linking' stage) the prospective family should be given the key role in identifying a child – rather than this being controlled by social workers matching 'categories' of families with 'categories' of children. She believes that this 'falling in love' method increases the chances of finding permanent placements for disabled children. This second stage is crucial and some creativity is required. Besides the common method which consists in advertising through family-finding newspapers, more innovative ways are spreading, such as the use of Families for Children Events, the controversial Activity Days or the Internet.

Once the link is made, compatibility can be assessed with a specific child in mind. Is this family able to manage the impairments or difficulties of this particular child and what kind of support will be needed?

### **Adoption vs. Fostering**

Even though adoption is seen as a first best option in permanent placement, a flexible approach to either fostering or adoption may be the best solution. Evidence showed that temporary foster care arrangements often become permanent and even lead to adoption. According to Jennifer Cousins, the recognition of a creative continuum between fostering and adoption may reduce the barrier to permanence for some children.

In the view of ISS/IRC, in some *exceptional* cases justified by the child's best interests, the foster family can become the adopting family. However, it is important to understand that foster care cannot be considered by the foster family as a 'back door' to adoption. Even less as a

"child testing" period before adoption, or as a way to adopt a child without complying with the adoption procedures in force in the country.

### **Preparation and support is the key for a successful placement**

Several introductory visits, observation, listening to the child and sensitive monitoring are all very crucial components of a successful placement, in particular for an adoption. Furthermore, it is vital that prospective adopters or carers know that they will be supported after the order or the placement is granted. Complete ongoing support must be specified right at the start when prospective adoptive parents are considering adoption.

Jennifer Cousins suggests that a key worker should be appointed to co-ordinate the various services which may be necessary after the placement – a practice which does not currently apply to many children.

### **"Think disability"**

In order to give disabled children the attention they need, the author recommends all social services and child care agencies to "think disability". Also, a range of training would enhance social workers' awareness. Finally, a major effort to increase the pool of carers and adopters for disabled children is needed.

Only then will disabled children get a placement which responds to their needs and be considered first as "children", who happen to have special needs.

*Every child is special: Placing disabled children for permanence*, by Jennifer Cousins, published by the British Association for Adoption & Fostering (BAAF), 2006.

Fact sheet N°17, *Temporary Placement*, ISS/IRC.

## READERS' FORUM

### **Interview with Inge Päcké de Colima from Venezuela**

*Inge Päcké de Colima, an independent Consultant in Social Affairs and, among other positions, former Director of the Venezuelan ISS Commission, granted us this interview.*

**Name, Surname:** Inge Päcké de Colima

**Place of residence and work:** Caracas – Venezuela

**Professional duties / responsibilities:** Retired. Independent Consultant in Social Affairs, Lecturer, Researcher, Conference Speaker, former Director of the Venezuelan ISS

Commission and former Coordinator of the Office for Intercountry Adoption of the Executive Direction of the National Council of Rights.

**Your country has ratified The Hague Convention of 1993 on the protection of children and co-operation in matters of intercountry adoption:** Yes, it has been a "Ley de la República" (Republican Law) since 8 October 1996.

**Type of adoptions carried out in the country:**  
Domestic and intercountry adoptions

**1. What are the conditions required to maximise the chance of success in adoption?**

The existence of a System of Protection which considers adoption as an option of last resort; the proper application of international treaties and conventions when granting intercountry adoption; ascertaining the bio-psycho-social and legal adoptability of adoptable children and/or adolescents, with the accepted subsidiarity in the case of intercountry adoptions; security in the knowledge that people who are to give their consent have been advised and informed of the legal and personal consequences of their consent, and that their consents have not been withdrawn; proof that the child and/or adolescent has been appropriately advised and duly informed of the consequences of adoption and that his/her consent to adoption, when it is necessary, has been given freely and in writing, taking into account his/her wishes and opinions; the enquiry into the bio-psycho-social and legal suitability of the prospective adoptive parents has been completed; the key stage of matching, by joining two life plans, that of the child and that of the family, has been well developed; monitoring the probationary period of both domestic and intercountry adoption, in order to supervise the child's adaptation to his/her new family; and considering providing special assistance to adoptive parents who need it, throughout the adoption cycle.

**2. Intercountry adoption increasingly concerns children with special needs (older children, sick children, disabled children, groups of siblings...). Does the adoption of these children require specific precautions? If yes, which ones and why?**

If we deal with adolescents, they will require a personalised preparation, which enables them to accept, or not, their opportunities for a family; and to gain information on the receiving country, its culture and its people.

With these teenagers and adolescents, future adoptive parents must be prepared to successfully overcome possible independent and rebellious attitudes, intended to achieve their own identity, and admit that they will need specialised professional assistance.

For sick and/or disabled children, it is very important to select a family who can, not only be available, but also has the capacity to guarantee

the best bio-psycho-educational attention.

With regard to sibling groups, it is essential to consider the individual differences which future adoptive parents must understand and learn to manage. Under no circumstances can one consider splitting up a group of brothers and/or sisters, even though one of them may be disabled or does not accept the adoption. The institutionalisation of the whole group of siblings may be necessary until a new option is found.

**3. Would you have recommendations to make in relation to the support provided to adoptees, adopters and families of origin throughout the adoption process?**

The family of origin should receive comprehensive counselling from the multidisciplinary team, before granting consent.

A life plan which considers adoption should be drawn, implemented and reviewed with the participation of the children and adolescents, in accordance with their age and level of maturity.

For prospective adoptive parents, the information and motivation will help them in overcoming the disadvantage of not being biological parents and having to face a process which will

certainly be full of tensions and conflicts.

**4. What are the main challenges, difficulties which you encounter in your daily practice?**

Underestimating existing bio-psycho-social and legal provisions governing domestic and intercountry adoptions and the disrespect for the rights of children and adolescents, expressed in simplistic terms by people from different sectors, including NGOs, who believe that with so many homeless children, they should be placed with whoever wants them. It regularly happens that there is no will to understand that not all children are adoptable. This is the case when they have a family and are only subjected to measures of protection or temporary placement. The same is true in relation to prospective adoptive parents, of whom not all are suitable; and if they are, a bio-psycho-social and legal assessment by qualified professionals is still necessary in order to ensure their suitability.

Street children who are adoptable but who, due to various prejudices, are not considered in the search for adoptive families.

Capacity-building for all professionals in Adoption Offices and for the multidisciplinary teams of the Child Protection Courts, which should be permanent, systematic and progressive.

*It regularly happens that there is no will to understand that not all children are adoptable.*

**5. Based on your experience, what is required to improve the current practice of adoption?**

To manage that all the countries which have ratified the Convention on the Rights of the Child and the 1993 Hague Convention on this subject go as far as establishing common criteria in the implementation of the provisions of both Conventions, adapting their legislation and establishing the professional profiles of the teams' staff and, based upon these, to proceed with their selection.

To systematically and progressively build the capacity of all professionals involved in the adoption process.

To organize capacity-building sessions for the staff of the care entities which welcome the children.

To have a national and international monitoring programme which would contribute to optimising adoption proceedings.

**6. Does the ISS/IRC Review meet your needs? Do you have any suggestions for change?**

It is a very good specialised publication and the project of thematic training fact sheets is a good supplement.

By way of suggestion: it would be interesting to gain comprehensive statistical information on domestic and intercountry adoptions in the last 10 years.

**7. Do you have any message for our readers? Any comments or suggestions?**

I would like to reiterate that children, who live in exceptionally difficult circumstances, require special consideration, and it is only when we are fully convinced that adoption is the last option for them which we must keep in mind throughout the process, that we are assuming the role of God in deciding upon the best family for them.

*If, after reading this interview, some of our readers would also like to share their experiences, please do not hesitate to reply to the above seven questions, and to send us your answers at [irc-cir@iss-ssi.org](mailto:irc-cir@iss-ssi.org)*

**FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES **

- **Netherlands:** *3rd Annual World Conference on Children Without Parental Care*, The Hague - Amsterdam, 23-26 October 2006. With representants of 100 countries, this international conference aims to be an open forum to debate, identify new approaches and initiate the construction of practical solutions and reforms of child protection policies. The following topics will be addressed: reunification and child-soldiers, foster care and kinship care, domestic and intercountry adoption, and residential care. For further information: International Advocates for Children, Fax: +31 20638 0072; E-mail: [info@iachildren.nl](mailto:info@iachildren.nl) ; [heymanioke@arnet.com.ar](mailto:heymanioke@arnet.com.ar) (for Spanish speakers).

*As a reminder, this Monthly Review is distributed to a selected network of Authorities and professionals. It is not aimed at being posted on an internet website without the authorisation of ISS/IRC.*

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[www.iss-ssi.org/Resource\\_Centre/Resource\\_Center\\_EN/About\\_ISS-IRC/about\\_iss-irc.html](http://www.iss-ssi.org/Resource_Centre/Resource_Center_EN/About_ISS-IRC/about_iss-irc.html).

*See Activities.*

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