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EDITORIAL

Unaccompanied minors are also children without parental care 

As part of a joint UNICEF-ISS project, the Monthly Review will include a series of articles on the protection of the best interests and the rights of unaccompanied children.

In June 2006, ISS's General Secretariat initiated a joint project with UNICEF's Geneva-based Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS). A major part of this project related to an assessment of the current status and efforts to reform the childcare systems in Armenia, Albania, Azerbaijan, Bulgaria and Moldova, with the subsequent development of a set of policies and recommendations for the governments to accelerate the reforms in these countries. In addition, it has become apparent to both organisations that child displacement across borders in the region as well as across

continents raises a number of child-rights issues, which require additional assessment and promotion. Thus, this series of articles is intended to promote the rights and the effective protection of unaccompanied children in countries of origin and in countries of reception through focused policy, legal, social and practical articles.

Children without parental care include unaccompanied children

The situation of unaccompanied children in relation to their family environment and development is directly linked to their particular

vulnerability, the potential trauma of their displacement, and their personal background. Whilst some aspects of their care and protection will raise similar issues to that of other children without parental care, others will be very specific to their individual situation and background. Thus, this project intends to emphasise the particularities and characteristics of the situation, rights, care, support, and protection of unaccompanied children.

Main issues of the protection of unaccompanied children

The above-mentioned articles, which will be published in every Monthly Review until December 2007, will address the following aspects : (a) a general overview of the situation of unaccompanied children, presented in this Review (page 6) ; (b) an introduction to the legal and policy documents – regional and international – designed to protect the rights and best interests of unaccompanied children ; (c) the protection of unaccompanied children upon arrival in the receiving country (assessment of the situation, rights, care...) ; (d) the evaluation of the child's best interests (current situation in the family and the country of origin vs. current situation of the child in the country of reception) ; (e) the assessment of measures, which are required in the country of origin, in cases of return to and reintegration into the family and country of origin (support, preparation of the child and parents, cooperation with community


services...) ; and (f) the responsibility of the receiving State, should it be decided to fully integrate the child into the receiving country (care, protection, support, services...).

Advocacy through policy, legal and practical inputs

Each article will be designed to include a general approach to each aspect of the protection of unaccompanied minors, whilst also incorporating additional practical information and specific examples, which will be based on the expertise, casework, programmes and collaboration of the ISS network worldwide, and on those of other organisations and initiatives in this area. This should enable ISS and UNICEF to promote a child-rights perspective in matters of child migration, to offer positive practical approaches to ensuring the best interests of the unaccompanied child, and to support existing advocacy initiatives in this area. It is hoped that an important number of partners will share their experiences and expertise and will contribute to the development of this advocacy tool, in particular in informing the network and the readers of the profile of unaccompanied children, the successes and failures of the systems concerned, the problematic aspects of the protection of these children, and of any good practices in this context.

The ISS/IRC Team

IRC NEWS

- **Project on distance training and exchange of experiences – New Fact Sheets on the ISS/IRC website**  : Two new training Fact Sheets (N° 35 and 36) have been issued. They address adoptions amongst Hague and non-Hague countries, as well as the principle of subsidiarity. These are available from the ISS/IRC website: http://www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_fic.html.

ACTORS IN MATTERS OF ADOPTION

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

- **Australia and Canada:** These countries have updated the information relating to the contact persons in their regional Central Authorities of New South Wales (Australia) and British Columbia (Canada).
- **Belize:** This country has named its Central Authority: Department of Human Services of the Ministry of Human Development.
- **Germany:** This country has updated the contact details of its accredited bodies.
- **Mauritius:** This country has named its Central Authority: National Adoption Council.

CAMBODIA: Ratification of the HC-1993

To date, there are 72 States Parties to this Convention.

Cambodia has ratified the HC-1993 on 22 January 2007. The Convention will enter into force in this country on 1 August 2007. However, the Draft Law on Intercountry Adoption has not yet been approved by the Cambodian Council of Ministers. The Ministry of Social Affairs, Veteran and Youth Rehabilitation (MoSVY) is currently reconsidering various options with respect to the final approval of authorities. Once this issue will have been decided, and the legal provisions revised accordingly, the bill will be resubmitted to the Council of Ministers. Furthermore, last February, the MoSVY issued a regulation on the

accreditation of adoption agencies, entitled “Prakas NO: 06 of 26 February 2007 on the Accreditation of Intercountry Adoption Agencies”.

In addition, UNICEF is now closely working with the Ministry, with a view to improving the Cambodian child protection system, in particular with regards to adoption. We will keep you informed of these developments in a forthcoming Monthly Review.

Source: Ministry of Foreign Affairs and International Cooperation of the Kingdom of Cambodia; UNICEF Cambodia.

GUATEMALA: The HC-1993 is finally part of its legal system

The Decree, which confirms that the HC-1993 is part of the country's internal legal order, will enter into force on 31 December 2007.

On 22 May 2007, the Congress of the Republic of Guatemala approved Decree 31-2007, which confirms that the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption is part of the country's internal legal order. This Decree will enter into force on 31 December 2007. The ISS/IRC welcomes this important step in the development of a legal framework for the protection of children deprived of family care, in particular of those who are adoptable. The next steps should be the appointment of a Central Authority for the country, and the development of instruments designed to implement this

Convention, such as a specific law on adoption, which would regulate all aspects of the adoption process, with a view to solving current problems of trafficking of children for adoption. In its forthcoming Reviews, the ISS/IRC will inform you of, and analyse, the legal and practical progress, which, we hope, will enable a successful implementation of the Convention in this country.

Source: Boletín informativo del Congreso de la República de Guatemala (Informative Review of the Congress of the Republic of Guatemala), 23 May 2007, www.congreso.gob.gt/gt/ver_noticia.asp?id=3868.

PRACTICE

NEPAL: Suspension of intercountry adoptions

According to the U.S. Department of State, the Nepali Government has given no indication as to when the suspension might end.

According to various sources, the Nepalese authorities have decided to discontinue all intercountry adoption procedures from mid-May. As far as we know, the Minister and the Legal Secretary have requested that all pending files

at the Ministry be returned to the Chief District Offices (CDOs), pending new laws and regulations. This implies that all files currently at the Ministry – amounting to approximately 400 in total – might now be subjected to new rules, which the Ministry and its cabinet could adopt in

coming weeks. This information has been confirmed by the U.S. Department of State, which has stated on its website that 'the Nepali Ministry of Women, Children and Social Welfare (MWCS) has informed the U.S. Embassy in Kathmandu that the Government of Nepal has suspended all intercountry adoptions pending approval of reforms of the adoption process by the Nepali cabinet. The Nepali Government has

given no indication about when the suspension will be lifted'. The question as to the processing of pending files therefore remains open. The ISS/IRC is in contact with professionals in Nepal in order to monitor the situation.

Source: U.S. Department of State, http://travel.state.gov/family/adoption/country/country_3238.html.

READERS' FORUM

Interview with Elva Leonor Cárdenas Miranda, from Mexico

Name and surname: Elva Leonor Cárdenas Miranda

Place of residence and work: Mexico, D.F. (Federal District).

Professional title/responsibilities: Doctor in Law, Teacher, Conference Speaker, former Director of Legal Assistance of the Sistema Nacional para el Desarrollo Integral de la Familia (DIF – National System for the Integral Development of the Family), former Deputy-Director-General of Social Assistance and Integration of central DIF, Director-General of Niños Tras el Mundo A.C.

Has your country ratified the 1993 Hague Convention on Intercountry Adoption (HC-1993)?

Yes, its promulgation decree was published in the Official Journal of the Federation on 24 October 1994 and entered into force on 1 May. It is worth mentioning that Mexico was one of the first countries to ratify it.

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

1. What are the necessary conditions to enhance the chances of success of an adoption?

With regards to domestic adoption, it is necessary to be able to rely on multidisciplinary staff, qualified and specialised in matters of adoption, who, on the one hand, reviews the conditions of bio-psycho-social and legal adoptability of children placed for adoption, and who, on the other hand, undertakes an adequate assessment of the prospective adoptive parents, seeking those parents most suitable parents for a particular child, taking into consideration at all times the best interests of the child, given that the issue is to give a family to a child, not a child to a family.

On the other hand, in cases where the mother, the father, or both, consent to the adoption, they must be sufficiently informed of the consequences of their decision, drawing

particular attention to the fact that no form of remuneration must have been provided for this consent, in addition to having been provided freely and not under coercion.

In relation to intercountry adoption – in addition to the above-mentioned issues – it will be necessary to take account of the provisions enshrined in international conventions to which Mexico is a State Party, such as the Convention on the Rights of the Child (1989), the Inter-American Convention on Conflict of Laws concerning the Adoption of Minors (1984), and the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993).

In line with these international guidelines, which are part of the national legal system, intercountry adoptions will be undertaken in accordance with the principles of subsidiarity, international cooperation, and the best interests of the child. Additionally, when implementing the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, it will be required to comply with the procedure established in it, via the Central Authorities, which have been designated for this purpose. In Mexico, these Central Authorities are: the Legal Advisory Service of the Ministry of Foreign Affairs for receiving documents and certifying intercountry adoptions; the National DIF System, with jurisdiction in the Federal District and a subsidiary role in the Federated Entities, and DIF's State Systems, with exclusive jurisdiction in the concerned federative entity.

2. Intercountry adoption increasingly involves children with special needs. Are there special precautions to be considered in the adoption of these children? If so, which ones and why?

Of course: adequate preparation is required when adopting children with these characteristics. Indeed, the basis is that, for all

adoptions, whatever the child's age or health situation, physical, mental or sensory disability, the prospective adoptive parents must be able to rely on prior preparation. In the case of children with special needs, the multidisciplinary team should even further reinforce the psychosocial preparation of the adoptive parents.

In Mexico, we have promoted *schools for adoptive parents* with special enthusiasm. Their aim is to guide prospective adoptive parents, and to provide them with the necessary bases, in order for them to be able to rely on the required tools for dealing with diverse situations, which they may encounter. The programme is carried out by psychologists, social workers, doctors and lawyers specialised in adoption, who are responsible, in their respective areas, for guiding those who wish to adopt. In the case of siblings, these must not be separated, and should be placed for adoption with the same family. This has been done successfully.

3. Would you have any recommendation in relation to the support to adoptees, adopters, and the adoptee's family of origin throughout this process?

Yes, I would like to emphasise that the support provided to adoptees, adopters, and the child's family of origin, is essential.

One should start from the basis that the child must be cared for by his/her own parents. When this is not possible, the family of origin requires psychosocial support when facing the difficult situation of consenting to his/her adoption, in addition to being duly counselled on its legal implications, given that it severs the pre-existing family ties.

Adopted children also require the support of specialised professionals, who are responsible for preparing them for their future family life. Similarly, as mentioned earlier, adoptive parents must receive an integral preparation, which enables them to know and recognise the reasons, which led them to make this decision, as well as that to tackle the diverse challenges, which may arise as a new family member will be integrated.

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

In Mexico, every federative entity has legislated differently and in contradictory occasions on matters of adoption. This explains the important diversity of legal provisions and criteria. This even complicates the implementation of international conventions, including those to which our country is a State Party.

There is no national database, which would allow for knowing the number of adoptable children. This has often resulted in long waiting lists of potential domestic and intercountry adopters.

Myths remain about adoption and its implications. A culture of adoption is merely starting, despite the efforts, which have been undertaken to promote it. As a result, it is difficult to promote the adoption of older children, or those who are ill or disabled.

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

There are various measures, which may be taken, including the following: to harmonise domestic legislation in matters of adoption; to establish a country-wide database of adoptable children; to draft a general manual of good practices, which could be based on what may be approved by the Special Commission of the Permanent Bureau of the Hague Conference; to strengthen domestic and intercountry adoption follow-up reports; to promote the system of cooperation and collaboration amongst Central Authorities designed to implement the HC-1993; to appoint private not-for-profit entities as intercountry adoption accredited bodies; to design an effective system of alternative protection for children separated from their family; to strengthen the promotion of adoptions of older, ill or disabled children, and who, due to these conditions are fated to remain institutionalised; to prepare reliable statistical data on completed adoptions; and to implement a global policy for children and the family, which would allow for the development of an adequate and global protection of children deprived of family care.

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

Yes, it responds to my needs for information. It is a fantastic publication prepared by outstanding professionals to whom, today as always, I convey my warmest congratulations for their laudable efforts.

7. Do you have any message, which you would you like to share with our readers?

Abandoned childhood is a problem, which affects a large number of Latin-American countries. It would be desirable that we all together, governments and civil society, promote public policies designed to prevent it. We still have much to do in providing a proper protection

of the rights of children; it is essential to progress from talk to action. It is imperative that we recognise that adoption is a means of providing a family to a child, and not a child to a

family, based on the best interests of the child which supports it, and which must govern the entire process.

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 to irc-cir@iss-ssi.org.

SPECIAL SERIES

Overview of the situation of the world's unaccompanied minors

The first article in this series devoted to unaccompanied minors is intended to present a general overview of this specific issue of children deprived of a family. Although the situations of the children concerned are very diverse, there remains no doubt that their protection asserts itself as an important theme for our contemporary societies.

The simple definition of unaccompanied minors (UMs) is a difficult exercise, since the positions diverge according to regulations, guidelines or practices on this matter at the national, regional or international level. Thus, the Committee on the Rights of the Child's General Comment N° 6 offers a definition, which distinguishes UMs from separated children. It defines the former as children who have been separated from both parents and other relatives, and are not being cared for by an adult who, by law or custom, is responsible for doing so. In accordance with this document, separated children are those who have also been separated from their parents or from their primary caregiver, but who may be accompanied by other adult family members¹. At the European level, the Statement of Good Practice of the Separated Children in Europe Programme (SCEP) offers, for its part, just one definition for these two categories of children².

As raised by the lawyer Akila Amellou in an article published in the Service social d'aide aux émigrants's review *Accueillir* (SSAE, Social Assistance Service to Emigrants - France), these definitions, however, are not systematically used at State level³. Some use a broad interpretation of the concept of UMs – similar to the approach taken by the Statement of Good Practice of the SCEP – while others apply a more restrictive definition, excluding children who travel with an adult. Yet, others exclude children over the age of 16.

Partial statistics

These different approaches greatly complicate the statistical evaluation of the migratory flows of UMs across the world. Indeed, the figures are always partial, depending whether one adopts

one perspective or another. Thus, in 2003, about 12,800 unaccompanied children submitted a request for asylum to the national authorities of 28 European countries, i.e. approximately 4% of all asylum seekers in Europe⁴. For the above mentioned reasons, it is nonetheless difficult to know which children were included in these statistics. Moreover, these figures only include one part of all UMs. They do not take into account isolated children with no documents, children living without a legal status in the receiving country, living on the streets or victims of trafficking. However, in the opinion of all experts, these children could be extremely numerous. Thus, in 2004, the SCEP estimated that in total, approximately 100,000 separated children were living in Europe. According to the estimates, 8,000 UMs arrive in Italy every year, between 3,000 and 4,000 in Spain and between 5,000 and 6,000 in France, Holland, and Belgium⁵.

UMs originate as much from Africa and Eastern and Central Europe, as from Asian and Latin-American countries. Europe is not their only destination. Contrary to common ideas, the majority of migrations take place between developing or transitional countries. As the minors often do not have the means or the network of contacts necessary to undertake the journey in an organised manner, they generally stop in a country⁶ close to their country of origin, often even within the same region. Thus, several Central and Eastern European countries face an important number of asylum requests submitted by UMs (in 2003: 704 for Slovakia, 217 for Poland, 129 for the Czech Republic, 152 for Bulgaria, 34 for Slovenia, 21 for Romania, 10 for Macedonia, and 6 for Croatia...⁷). For their part, the United States and Canada receive an

important number of children from Latin America. Africa is also faced with the regional migration of isolated children. Indeed, there are tens of thousands who migrate each year within the Western African region only⁸.

Conflicts and socio-economic factors often at the root of the migratory phenomenon

What are the reasons, which press these children to leave their country without their family? Most often, they are fleeing a conflict or a chaotic situation prevailing in their country of origin. In such contexts, many are sent abroad by their parents for their protection, others are separated from their parents or become orphans and seek refuge in a more stable country.

Socio-economic factors obviously play an important role. Originating from economically fragile countries, with limited professional perspectives and access to good quality studies, minors often emigrate in the hope – and that of their parents – of finding work and a better future. These children dream of a hypothetical ‘welfare state’ – a belief often reinforced by the media and by the very subjectively

interpreted stories of compatriots⁹. Most commonly, these children also carry with them the expectations of their entire family, which has put together the funds to enable them to go to an industrialised country. Thereafter, they are indebted to their relatives and friends, which creates an additional psychological pressure, which is difficult to bear¹⁰, in addition to the

trauma relating to the separation from their family. Some minors also try to study or receive training, always with a view to building a better future.

Furthermore, a number of these minors are victims of various forms of trafficking. According to a study carried out by ChildONEurope¹¹, a great number of trafficked children find themselves involved

in networks of sexual exploitation, others work as ‘domestic slaves’, or in illegal workshops, others still are used as drug traffickers or for committing other crimes. This situation may have serious consequences for the treatment they should be provided with, given that their status changes from that of migrant/victim to that of delinquent, and that they risk being treated as such, although they would require a specific treatment.

All vulnerable children in need of protection

UMs therefore constitute a very heterogeneous group of children from diverse social, cultural and educational backgrounds, who have migrated for equally heterogeneous reasons. However, one common point unites them: they are

all children in an extremely vulnerable state, and who require special protection. Their care, however, must be sufficiently flexible to respond to the needs of each individual in an adapted way. The main elements of this provision of care will be addressed throughout the forthcoming articles of this special series on UMs.

THE STORY OF DORIN, AN UNACCOMPANIED MINOR

Dorin* was found by the police sleeping in a bus station; he was a young adolescent and had no identity papers on him. He was therefore placed in a specialist centre caring for young people who had recently arrived in the country. He told the carers that he was 14 years of age and had been living in the host country for over a year.

Dorin was one of eight children and his family had serious economic difficulties. When he was about 10 years old, Dorin was persuaded by another family to stay with them for a while. He was then held captive and induced to steal for this family. The boy was eventually caught by the police and placed in a rehabilitation centre. After his release, he was again threatened by the robbers who wanted him to return to their group. Dorin therefore decided to leave his country in the company of a friend.

The two boys arrived in the host country and travelled around carrying out casual work but Dorin says that, as they had no papers, the employers took advantage of them by paying very little and telling them to leave after just a short time. Dorin was frequently picked up by the police and stayed in different residential facilities. He used a number of pseudonyms and always escaped from these centres.

At the current centre, Dorin told the workers he could not read or write, and would like to stay in the host country to go to school and later help his family. ISS was asked to locate the boy’s family and provide a social report on their situation and their hopes and plans for Dorin’s future care.

When the social worker met with the family, the mother was away working abroad and she only returned home every few months. An adult sister confirmed that Dorin had been taken by a group and taught to steal, she said during this time, the boy was beaten and forced to carry out these crimes. The sister said the family would welcome Dorin back and that he regularly telephoned them, but the boy had told them he did not want to return home due the precarious living situation of the family. The sister confirmed the family was under notice to be evicted from their home due to outstanding debts.

Dorin remains in care in the host country and continues to receive professional support due to his ongoing problems as a result of his past experiences.

* Fictive name

¹ Committee on the Rights of the Child *General Comment N°6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*.

² Separated Children in Europe Programme, *Statement of Good Practice* (2004), available at the following webpage: www.separated-children-europe-programme.org.

³ AMELLOU Akila 'Les mineurs étrangers en Europe sans représentants légaux' (Foreign minors in Europe without legal representatives) in *Accueillir*, N° 240, SSAE, Paris (<http://www.ssaie.net>).

⁴ UNHCR, *Trend in Unaccompanied and Separated Children seeking Asylum in industrialised countries, 2001 - 2003*, available at the following webpage: www.unhcr.org/statistics/STATISTICS/40f646444.pdf

⁵ Opinion of the Committee of the Regions of the European Union: The situation of unaccompanied minors in the migration process – The role and suggestions of regional and local authorities, 12 October 2006.

⁶ DEL MAR BERMUDEZ Maria 'La complexité de l'immigration infantile' (The complexity of child immigration', *in op. cit.*, fn. 3.

⁷ CANTWELL Nigel *The protection of children moving across borders*, Background paper for the Intergovernmental Conference 'Making Europe and Central Asia fit for children', Sarajevo, 13-15 May 2004.

⁸ DEL MAR BERMUDEZ Maria, *in op. cit.*, fn. 5.

⁹ For further information, see the project of the Swiss Branch of ISS on the social and professional reintegration of isolated migrant minors in West Africa: www.ssiss.ch/pages_f/Projets/C4.html.

¹⁰ VITE Sylvain *Unaccompanied minors in Switzerland*, presented at the Regional Conference 'Migration of unaccompanied minors: actino in the best interest of the child', Torremolinos, Malaga, 27-28 October 2005.

¹¹ SMITH Terry *Overview on European Union law and policy and comparison of national laws and policies of European Union countries*, at the seminar on 'Unaccompanied foreign children: Best practices on national policies and programmes on welcome, integration and family reunification', organised by childONEurope, 4 December 2003.

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Luxembourg:** *Université d'été autour des droits de l'enfant: La citoyenneté et la participation de l'enfant* [Summer university on children's rights : Citizenship and child participation], 16-20 July 2007, Echternach. This French-speaking training – organised by the Institut International des Droits de l'Enfant, the Institut Universitaire Kurt Bösch, as well as the Ministry for Family and the University of Luxembourg – offers to analyse the participation of children in professional practices, current research and in a range of contexts, by addressing the following issues: the definition of concepts; child participation in matters of justice, placement, family and social life, school and work; citizenship of the child and political action. For additional information and subscription, please contact : Ministère de la Famille et de l'Intégration [Ministry for Family and Integration], Droits de l'enfant – c/o Madame Nathalie Keipes, L-2919 Luxembourg; Tel : +352 478 6552; Fax : +352 24 18 88; E-mail : nathalie.keipes@fm.etat.lu; www.fm.etat.lu. Further information is also available on the website of the Institut international des droits de l'enfant: www.childsrightrights.org (see *Trainings*).

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.

Table of contents of the Bulletins 1997 - 2007:

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

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