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EDITORIAL

2008: a typical year for inter-country adoption? 

By taking a look at the events that shaped the world of adoption in the course of last year, it is striking to notice how much 2008 mixed important items of progress and, at the same time, developed ominous initiatives. The following is a brief overview in the form of a balance sheet.

The development of inter-country adoption throughout the world presents the observer with two very opposite aspects: on the one hand, numerous steps forward and encouraging initiatives punctuated last year, on the other hand bad practices and abuse continue to mar many procedures. These two contradictory movements seem to be the result of an evolution that at the same time views States of origin better defending the interests of adoptable and adopted children, while receiving States are desperately trying to juggle with the number

of applicants for adoption, while launching measures to better regulate the procedures.

Encouraging progress

As part of the good news for 2008, the entry into force of The Hague Convention in the United States is unquestionably an essential step towards a better framework for procedures throughout the world (Bulletin 4/08). Even if there are still plenty of unanswered questions, even if several of the major countries of origin - in terms of the number of children adopted by Americans are from non-signatory countries

to the Convention, it had become essential that the first country in the world (in overall numbers) join the multilateral conventional system of child protection. It should be noted that in 2008 The Hague Convention also came into force in the Seychelles.

Among the positive initiatives, let us recall the introduction of obligatory training for inter-country adoption in Sweden, the elaboration of Guidelines for post-adoption services by ChildONEurope, (Bulletin 1/08), the approval of a new adoption law in Spain and Guatemala (Bulletin 2/2008) as well as the new European Convention on Matters of Adoption (Bulletin 6/ 08 and 11-12/08).

At a more political level, 2008 saw several States of origin take, sometimes drastic, measures to better manage adoptions. Thus, Congo, Zambia, and Togo imposed total or partial restrictions to limit or even suspend adoption procedures. Latvia, the Philippines and Hungary have for their parts honed the profile of children who are adoptable at the international level. This type of decision which tends to multiply itself, underlines the fact that countries of origin are assuming more command of their choices and taking the necessary measures to defend them.

Worrying trends

The 2007 statistics clearly showed an increase in the number of potential States of origin throughout the world, with a sharp increase in the number of countries on the African continent (Bulletin 7/8-/08). If the proliferation of legal, social and cultural settings represents an important challenge for the receiving countries, "exploring" new countries, which by definition have little or no experience in inter-country adoption matters can raise fears of abuse. What is more, we note too that more "traditional" countries (Ethiopia, Vietnam, Cambodia, Nepal, and Guatemala) continue to undergo unbearable pressure to resume or increase the number of inter-country adoptions. Other fragile countries in terms of child protection, also experience exaggerated demands, like Liberia, Haiti or Kirghizstan

for example. If the community of international organisations (UNICEF) and non-governmental organisations (Save the children, Terre des Hommes, ISS) have agreed to make great efforts in support of these States in the implementation of an appropriate system of child protection, we can only repeat that it is right for receiving States to assume their share of the responsibility in supporting these countries in their reforms and in allowing them the time to put them in place.

An endless paradox

Inter-country adoption is a fascinating area, because it rules out simple solutions and easy thinking. Its day to day practice reminds each of us of this paradox which recalls that if the world were perfect, inter-country adoption would lose its purpose. Extraordinary progress has been made over a relatively short period for such a complicated field, and each year brings sources of satisfaction. What can we expect from the year to come? Some developments under way are signs of good omens. So, for example, after numerous years of irregular practices in adoption, Guatemala has recently undertaken major reforms of its protective system for children deprived of family that it will have to implement during the year (see p 5) Furthermore, the ISS/IRC is already committed to major projects aimed at supporting reforms in several countries of origin. There remain nonetheless recurrent questions, such as the protection of neglected children, and the role of domestic adoption in the receiving countries, the image of inter-country adoption promoted by the media, or the raising of the adoption candidates awareness of the realities in the countries of origin and of the needs of adoptable children still remain delicate, which are all subjects that will require our commitment and our enthusiasm!

With our best wishes for the New Year

The ISS/IRC Team

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.

- **Iceland:** This country has updated the contact persons of its Central Authority.

IN BRIEF

The Philippines approves a new law to accelerate the adoption of abandoned children:

Last December, the Philippines adopted a new law which permits the acceleration of adoption of abandoned and neglected children. Nowadays, children are considered abandoned or neglected if they have not been cared for by their parents/guardians or if their basic needs have not been met for a continuous period of 3 months. Beforehand this period had been fixed at 6 months. Elsewhere, the law transfers the responsibility of implementing the Family Court procedures for declaring a child adoptable with the Department of Social Welfare and Development. This Department is now responsible for declaring that the child is abandoned according to law which then results in adoption being an option available for the child. It should be noted that the law still needs to be signed by the President before it is in force.

Quality4children- Q4C: Finalisation of the Q4C Toolkit and start of the Latin American Q4C

Since the 22nd of December 2008, the Q4C Toolkit is available electronically. It aims to support people or organisations working with the Q4C Standards providing them with a compilation of documents such as advocacy recommendations, the planning and research of the Q4C Standards, all the language versions. Furthermore, in 2009, the Latin American office of [SOS Children's Villages](#), together with [RELAF](#) (Latin American Foster Care Network) and [REDLAMYC](#) (Latin American and Caribbean Network for the Defence of the rights of children and adolescents), will conduct Q4C Latin America. For more information, see Monthly review 2007/8.

Source: Quality4Children Standards for Out-of-Home Child Care in Europe,
www.quality4children.info/navigation/cms.id.176.nodeid.176.country.at.language.en.html.

PRACTICE

Debate on the introduction of an individual complaints mechanism to the 1989 Convention on the Rights of the Child

This article examines the current debate concerning the creation of an individual complaints mechanism for the Convention on the Rights of the Child (CRC). A variety of favourable and negative arguments for its implementation contribute to the complexity of the theme.

The Convention on the Rights of the Child was approved in 1989 by the General Assembly of the United Nations and remains the most ratified treaty in the world. According to article 44 the member's states are obliged to report within 2 years of ratification and every five years thereafter to the Committee on the Rights of the Child information about the advances of implementation of children's rights at national level. After its analysis of the country situation, the Committee publishes its concluding observations including recommendations addressed to the state party. Currently, this reporting procedure is the only tool to ensure the implementation of the CRC and the Committee is the only treaty based body without a complaints mechanism in the pipeline and this failure is currently the object of debate.

Panorama of individual complaints mechanisms in human rights treaties

In the UN system there are 5 human rights treaties that provide individual complaints procedures: the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, the Convention against Torture and Cruel and Human Degrading Treatment or Punishment, the Convention on Elimination of all forms of Discrimination against Women and the International Convention on the Protection of the Rights of all Migrant Workers and their Families (not yet entered in force). The individual complaints mechanisms allow human rights treaties to accept communications involving violation of human rights by the member states of the convention. Before relying on these treaties

national measures must be exhausted and notably the decisions are not legally binding.

Trend toward implementation of individual complaints mechanisms in human rights instruments

In June 2008, the United Nations Human Rights Council approved the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR). In accordance with this new optional protocol the states recognised the competence of the UN Committee on Economic, Social and Cultural Rights to receive and consider individual communications. The protocol also creates an inquiry procedure providing the committee with the power to implement interim measures. Given the position adopted by the International Commission of Jurists the approval of this optional protocol has brought the possibility of international justice, placing the justice closer to millions of people that were excluded. The recent approval of this optional protocol shows the international trend for the inclusion of an individual communication mechanism in human rights treaties, providing people an important tool to access international justice in trying to remedy violations committed by member's states at a national level.

Arguments in favour of the individual complaints mechanism to the CRC

The defenders of the inclusion of an individual communication procedure stress that this mechanism will be a tool to demonstrate the irregularities occurring in a certain states and puts pressure for compliance of their responsibilities within the Convention on the Rights of the Child. Another advantage is that it will make it possible for issues regarding the violation of children's rights to be examined by a committee of experts who are familiar and sensitive with child rights issues. Once established the new mechanism, will also be a tool to reinforce the recognition that children are subjects of rights, therefore deserving the full respect with the right to use all remedies to ensure their well-being. The mechanism will also be useful as a preventive measure in order to monitor the states respect of human rights encouraging the improvement of their domestic legal context.

Arguments against the individual complaints mechanism to the CRC

The implementation of an individual communication mechanism is seen by some practitioners as a tool that will not guarantee the full respect of children's rights and thus protect individuals from acts of violation. The non-binding aspect of the decisions pronounced by the committee will place children and youths in a vulnerable situation, since states are not obliged to follow the above mentioned decisions. Another argument against the complaint mechanism is related to the risk of duplication of the existing mechanisms, such as the Inter-American Court of Human Rights, African Committee of Experts on the Rights and Welfare of the Child etc. The defenders of this argument believe that the existing mechanisms are already able to receive complaints involving children's rights, without the necessity of creating an individual communication mechanism for the CRC. Another important argument against the mechanism is the necessity of improvement of national remedies. According to this view an appropriate response at national level will be more effective, providing a faster solution to the problem, in special cases involving children in urgent situations. For the Committee on the Rights of the Child the concern is related with the workload of the treaty body given that the reporting process already demands a lot of work and the introduction of a system to receive complaints will contribute to increase the workload. An alternative to avoid the future workload for some persons is the creation of a joint procedure, establishing one communication structure grouping the competences and issues that are today divided amongst the different individual complaints systems created by the UN treaty bodies.

Conclusions

Despite these arguments, the Committee on the Rights of the Child at the end of its 48th session in June 2008 expressed their support in favour of a complaint mechanism to the CRC. This decision was largely due to the campaign launched by non-governmental organizations, that ISS is already a part of. The CRC Committee strongly encouraged member's states to start the analysis of having the possibility of having a complaints mechanism. It's important to note that the

drafting of an optional protocol dealing with an individual complaints mechanism for children is advancing. The communication tool will reinforce the child rights provisions contained in the CRC and place pressure on States to comply with their obligations or risk having a complaint against them at international level.

Sources:

Day of Reflection and Discussion: Individual Complaint Mechanism, 30 May 2008, DEMPSEY Colm ; MUSKINJA, Mila ; OGUAGHA, Nneka ; RUIZ, Daniel ; SACINO, Sherry ; SCHEFFEL, Birgit; Children As strong As Nations, Kindernothilfe, <http://en.kindernothilfe.org>; Office of the High Commissioner for Human Rights, www2.ohchr.org/english/bodies/petitions/index.htm; International Commission of Jurists- ICJ, Legal Resource Center, 19 June 2008, www.icj.org/news.php3?id_article=4310&lang=en.

GUATEMALA: Development and strengthening of the protection system

The Adoption Law of Guatemala has brought with it a stronger child protection system, as well as the development of alternative care measures, which better respond to the best interests of the children and the needs of their families.

In the context of the approval and entry into force of the Adoption Law and the Hague Convention on 31 December 2007, the child protection system has benefited from a renewed focus directed at the development and implementation of a range of temporary and permanent alternative care measures, for children separated from their families, or at risk of so being.

Measures aimed at preventing separation

With a view to preventing the abandonment of children, the Secretaría de Bienestar Social (SBS, Social Welfare Secretariat) and the Consejo Nacional de Adopciones (CNA, National Adoption Council) are offering support and guidance to biological families in order for them to continue caring for their children. On the one hand, the SBS, through its Family Benefits programme, is currently providing financial support, as well as family capacity-building and psychological support to both children in extreme poverty or with a disability, as well as their families.

On the other hand, the CNA is involved in offering guidance to biological families when they express a wish to relinquish their child for adoption. The support offered by the CNA focuses on psychological and social aspects, and does not include material or financial support. It consists amongst others in orientating the family towards strengthening family and community ties, offering psycho-social support, research and guidance towards

the required kind of support and explaining the implications of a final relinquishment of the child.

Temporary family-type options

When the prevention of the separation of the child from his biological family is not possible, children may now benefit from new alternative options directed at the deinstitutionalisation of children placed in state or private homes. When faced with a temporary family separation, an emergency separation, or whilst a decision is being made on a permanent measure, children may be cared for in foster families, which is a program developed by the SBS. The capacity-building process of the families in the regions is currently being undertaken, and the program has been considerably strengthened thanks to a team integrated with psychologists and social workers, located in the regional delegations of the SBS.

Domestic permanent protection

Among permanent care measures for the children that could not be reintegrated into their biological family, priority is now given to domestic adoption that has been strengthened since the entry into force of the Adoption Law and thanks to the establishment of the CNA, responsible for centralising all adoption proceedings. There is currently a high number of Guatemalan families wishing to adopt (See Monthly Review 09/2008), which reflects a new

cultural perception of adoption, as shown by a recent study.

Subsidiarity of intercountry adoption

In this context, intercountry adoption is now a subsidiary measure to family reintegration and domestic adoption, which reflects an important change. However, in those cases in which it is considered necessary, intercountry adoptions will be processed via the CNA, which is the Central Authority of adoption, and will be done upon the latter's request. The CNA will send the child's file to the Central Authority of the country, in which it is considered appropriate to search for a family. The Central Authority of the receiving country will undertake an initial selection of a limited number of potential families, for their subsequent evaluation and final matching by the CNA. This procedure intends to limit the pressure imposed by the evaluation and review of a high number of files of foreign applicants by the CNA, and it is considered a good adoption practice at the international level (156 families in September 2008).

Deinstitutionalisation process

In those situations in which it has not been possible to reintegrate children into

their biological families nor to integrate them in foster or adoptive families, a working group on deinstitutionalisation which includes the relevant authorities, UNICEF and Holt International are drafting a pilot plan, which aims to strengthen children's homes, to improve the conditions of individual care of institutionalised children and to develop other care alternatives within the community.

The SBS and the CNA also are closely collaborating in order to undertake the evaluation, authorisation and supervision of children's homes. This initiative is based on the provisions of the Adoption Law, which allocated joint responsibility to both authorities for the periodical monitoring of child care homes. This process and the previously mentioned programs have allowed for the strengthening of inter-institutional relations among the authorities responsible for child protection.

The entry into force of the Adoption Law and the efforts of the authorities have allowed for the reform and the reinforcement of the protection system which is based on an approach orientated towards the adequate protection and the right to a family at national level.

Source: UNICEF-Guatemala,
www.unicef.org/guatemala/spanish/.

SPECIAL SERIES – DRAFT UN GUIDELINES FOR THE APPROPRIATE USE AND CONDITIONS OF ALTERNATIVE CARE FOR CHILDREN

GLOBAL PERSPECTIVES: Implementation of the principle of the child's right to participate in the context of alternative care

This article seeks to share a few examples of the implementation of the principle of the child's right to participate from a recent desktop review conducted by ISS/IRC around the world.

Article 12 of the UN Convention on the Rights of the Child is dedicated to the principle of the child's right to participate in decisions affecting him. The participation principle is considered one of the four core principles of the Convention. Its importance is revealed by the fact that the next General Comment of the UN Committee on the Rights of the Child will be on this thematic issue and published soon. Not surprisingly, the Draft UN Guidelines for the Appropriate Use and Conditions of Alternative for Children as a

text that elaborates on the principles already in the Convention also promotes child participation as one of its underpinning principles as outlined in Article 6. That is all decisions in the context of Alternative Care 'should respect fully the child's right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities...'

This review cites some of the relevant articles in the Draft UN Guidelines relating to the child's right to participate and is illustrated by a few global practices. Although these

practices have not been evaluated and are not exhaustive, ISS/IRC believes that the child's right to participate is nevertheless promoted by these efforts.

Article 6 of the Guidelines: A holistic approach (Australia)

The CREATE Foundation provides an example of a service providing a holistic approach concerning the participation of children in all the different phases in the care system through activities, programs, training, research and policy advice. CREATE believes in the spirit of youth participation and as such is run by, with and for children and young people in care. CREATE provides opportunities for children to participate in decisions by providing children with tool kits to equip them and by providing forums so that they can interact with each other sharing their ideas and experiences.

Article 77 of the Guidelines: Development of Alternative Care policies (England)

In England, a National Voice is an organisation run for and by young people who are or have been in care. Its goals include ensuring young people from care have a say in all decisions that affect them and to inform and influence central and local government decisions about the care system in England. It helps young people from all over England to set up and join in local in-care/aftercare groups; helps young people change the care

system for the better; helps young people speak up and have an effect on decisions about the care system.

Article 107 of the Guidelines: Encouraging caregivers to take into account the child's views in daily decisions (Canada and Spain)

The Federation of British Columbia Youth in Care networks have published Building Relationships Guide and Activity Book which is designed to help young people build healthy relationships with their caregivers and/ or adoptive parents and other significant adults in their lives, with Chapter 8 specifically focusing on child participation in alternative care. In Spain, the Red Cross's program for children separated from their parents encourages children within Institutions to develop their own projects, participate in daily decisions and plan future Institutional policies.

Article 132/134 of the Guidelines: Participation in inspections (England)

In England, 10 young people were recruited to become team members of LILAC (Leading Improvements for Looked After Children) and later developed some pilot standards to measure levels of 'participation' within service providers. Two pilot LILAC inspections have been carried out by these young people previously in care in local authorities

across England. The aim of the inspections was to determine how well young people are

<p>In addition to Article 6 in the Guidelines, other Articles promoting the participation principle in the same instrument:</p>
<ul style="list-style-type: none"> ▪ Children should be fully consulted about decisions regarding their removal or reintegration (art 41) ▪ Children should be involved with the assessment team who decide whether the reintegration of the child in the family is possible (art 50) ▪ Determination of most appropriate form of care should involve the child at all stages (art 58) ▪ Children should be provided with all the necessary information about the alternative care options to make an informed decision (art 66) ▪ Children may request that other important persons in the child's life be consulted (art 67). ▪ Children should be fully involved in regular and thorough reviews of the appropriateness of his/her temporary care arrangement (art 69) ▪ Process of identifying and assessing care practices in developing policies should include children (art 77) ▪ All carers should promote and encourage children to develop and exercise informed choices (art 92) ▪ Children in care should have access to a known, effective and impartial mechanism whereby they can notify concerns regarding their treatment or conditions of placement. Young people with previous care experience should be involved in this process, due weight being given to their opinions (art 97) ▪ In designating an individual vested with both the legal right and responsibility to make daily decisions, this individual must consult with the child so that the child's views are taken into account by decision-making authorities (art 107) ▪ Children in care should be able to participate in the inspections of their agencies, facilities and professionals providing care (art 132 and art 134) ▪ Children leaving care should be encouraged to take part in the planning of after-care life (art 136).

involved in decision-making over their choice of school and home.

Article 136 of the Guidelines: Planning of after-care life (Kazakhstan, Bulgaria and Canada)

"Zhuldyz", in Kazakhstan helps children in the planning of after care life by helping them with finding jobs. The International Social Services, Swiss branch launched CLIP (Care Leavers Integration Program) a program in Bulgaria to help children in care about to embark upon independence when leaving care institutions. Children are equipped to make informed decisions about the future. In Canada, Voices is a youth-driven program, which provides support, encouragement and advocacy for youth as they move from wards of the government, to youth transitioning to independence, and continue growing into young adults building their lives and futures.

Encouraging signs but more progress needed

It is encouraging to see many groups or organisations run by or involving children in care, through which they are able to meet, exchange experiences, ensure that their voices are heard and contribute to the development of relevant policies and

programmes in compliance with the right of the child to participate. Despite the existence of these examples, from ISS/IRC's desktop review, there was sparse information about the active participation of children in determining the form of their alternative care, projects encouraging the full involvement of children in regular and thorough reviews of the appropriateness of his temporary care arrangement and more importantly how the participation principle is implemented in countries of origin.

Sources: CREATE (<http://www.create.org.au/>), A National Voice <http://www.anationalvoice.org/>, British Columbia Youth in Care Network http://www.fbcyicn.ca/youth_participation, Voices Canada <http://www.voices.mb.ca/>, LILAC <http://www.anationalvoice.org/news/newslet2.htm#lilac> Red Cross Spain http://www.cruzroja.es/portal/page?_pageid=659.12331083&_dad=portal30&_schema=PORTAL30, ISS Switzerland http://www.ssiss.ch/pages_f/Projets/C2.html

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES

- **Argentina** (reminder): *Seminario Anual de la Red Latinoamericana de Acogimiento Familiar- RELAF (Annual seminar- RELAF)*, 16-18 March 2009, See website: www.relaf.org.
- **United Kingdom**: *The future of child placement practice – Messages from research*, BAAF, 26 March 2009, London. For more information see www.baaf.org.uk/res/training/details/090326_se_conf.shtml
- **Saudi Arabia**: *The 3rd Arab – ISPCAN Regional Conference on Child Protection, Child Protection in Arab Countries: Working Towards Safer Childhood*, International Society for Prevention of Child Abuse and Neglect (ISPCAN), 01-04 March 2009, Riyadh. See www.arabcanconf.org/aboutconference.asp
- **France**: *Sensibilisation à la question de l'adoption (Raising awareness about adoption)*, COPES, 12-13 March 2009, Paris. See www.lecopes.org, E-mail: copes-formation@wanadoo.fr, tel: +33 (0)1 53 68 93 40.

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

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