

**Monthly Review N° 10/2009
October 2009**

TABLE OF CONTENTS

Editorial

p.1 [State ordered separation: terminating parental authority in whose interests?](#)

Actors in matters of adoption

p.2 [Czech Republic and Portugal](#)

In Brief

p.3 [Ethiopia, Eastern Europe and Central Asia](#)

Practice

p.3 [Another alternative care option: Cluster foster care in the South Africa](#)

Special Series on Guidelines on the Alternative Care of Children

p.5 [United lobbying efforts places pressure on Governments to adopt the Guidelines at the UN General Assembly in New York](#)

Reader's Forum


p.7 [Adoption practices down under: Expert interview with Mary Griffin, Director of NSW Central Adoption Authority](#)

Forthcoming conferences, seminars, symposia and courses

p.8 [France and United Kingdom](#)

EDITORIAL

State ordered separation: terminating parental authority in whose interests?

When States terminate parental authority, there are a number of competing interests at stake, some of which are not easily reconcilable and can be of particular importance in the adoption process. 

Prima facie, when children are separated from their parents due to conflict, natural disaster, migration etc, it is widely accepted and even promoted that the State should be actively involved in reuniting families. Yet when the State, by way of its social welfare administration is at the genesis of the child's separation from his family, the justification of its involvement can be less obvious.

Article 16(3) Universal Declaration of Human Rights 1948 (UDHR) states that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'. Despite this privileged position, the family environment may be dysfunctional and even detrimental to the child, a situation which is foreseen in article

9(1) Convention of the Rights of the Child (UNCRC) where children may be separated from their parents in their best interests. The UNCRC identifies cases such as 'one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence' as being situations where it may be necessary for the child to be separated.

Approaches to State ordered separation

The international standards dealing with State ordered separation (mentioned above) are often reflected in the legal framework of individual countries, although not in the same manner and sometime inadequately. The issue involves one of the most fundamental

components of a society (the family) where States responses are deeply influenced by their social conceptions of the family. For some countries, biological ties should be severed as soon as possible to give the child a better chance to build a “new” life. For others, filiation is the foundation of society and its severance should only be in exceptional cases.

In some countries, the legal provisions allow for the separation of the child from his parents and identify the court as having the sovereign decision making authority to permanently sever ties. Yet one sole judge may not dare to make such a weighty decision, sometimes to the detriment of the child. To avoid such a situation, it is necessary to ensure that the judicial decision is based on a previous assessment undertaken by social workers assisting the court and partially sharing the burden to determine when it is necessary to sever ties based on objective criteria.

In practice, there are many situations where the judiciary is reluctant to permanently sever ties. As a result, the child can be placed under the protection of the State, usually by way of foster or institutional care with the ideal hope of being reintegrated back with their families of origin. Meanwhile, the reality in many countries is that thousands of children are left under the protection of the State without having permanency plans and perhaps are adoptable, had the filiation tie with their biological families been severed (see Monthly Review 3-4/2009).

In an effort to avoid this situation of limbo and indecision, countries such as Australia (see page 5), Quebec (see monthly review 6/2009), Denmark, United Kingdom and USA have introduced laws that place time limits for when the court must make a decision to sever ties. The laws in these countries require that efforts must be made to reintegrate the child back with his family of origin and after a certain time limit (usually between 6 months and 2 years), the court will make a decision as to whether it is in the best interests of the child to make a definitive order cutting the filiation tie of the child with his biological family. Thus, time becomes an essential element in the decision, providing a solution to the binary dilemma.

Debates about the need to permanently sever ties

The criterion by which the court bases its decision to permanently sever ties in practice is diverse and can be a source of great debate among various stakeholders. At the root of such debates is the fundamental question about the role of the State in private family matters.

In an effort to identify the boundaries of State interference, strict laws exist to protect the private sphere from unnecessary interference (article 12, UDHR and article 8 European Convention of Human Rights etc). Such laws are an absolute necessity given that some State actions can have disastrous effects. For example, the European Court of Human Rights (ECHR) in the case of *Wallová and Walla v. Czech Republic* there was an over and serious interference by the Government. In this case, the children were removed from their family and placed in an institution due to the parent’s lack of resources, accommodation and employment stability. The ECHR pointed out that the State had failed its obligations to support the family as it was not obvious from the facts of the case that the child protection authorities had genuinely made important efforts to support the parents in remedying their difficulties, and in trying to get their children back as soon as possible. Clearly the State has obligations in preventing the need for separation (see Part IV Guidelines on the Alternative Care of Children), prior to making momentous decisions to permanently terminate parental authority.

Difficulties with the State permanently severing ties

In the realm of unnecessary State interference, practical difficulties have surfaced including the creation of legal orphans. Ideally the aim of provisions terminating parental authority would be to facilitate the creation of a new filiation tie with an adoptive family. However in practice, some courts are terminating parenting authority without having identified a permanent family solution for the child in question, placing him in another type of limbo of being a ‘legal orphan’.

Moreover, it is essential to identify what the termination of parental authority means to the child given there are situations, especially in the case of older children,

where they do not agree with the filiation tie being terminated. In such situations, questions should be raised about whose interests are being met with the termination of parental responsibility. In the limited cases where despite the child's opposition, termination is in their best interests, it is important that options such as open adoption and post adoption contact agreements are investigated.

Balancing competing interests

The State has a huge interest in ensuring that children do not remain in foster or institutional care for endless periods of time until they reach the age of majority and move out of care. Studies have shown that children who find themselves in this situation are at high risk of homelessness, unemployment, early pregnancy and criminal involvement. At the same time, families as the fundamental unit of society have an interest in caring for

their own children and should be supported in undertaking this role. Yet the interest that must be given the greatest weight is that of the child. Given the enormous implications when terminating parental authority, especially for the child, the ISS/IRC stresses the importance of having the best interests of the child as the primary goal. It is imperative that the child's views are considered when making any such decision and if appropriate, ways should be investigated to ensure that children can maintain contact with their birth families.

This debate must be kept in mind when discussing intercountry adoption issues. When children are declared adoptable as a result of the termination of parental rights, international standards dictate that the question should be raised as to whether this decision was necessary or not, and for whose interest it was taken.

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.

- **Czech Republic:** This country has updated the contact details of its Central Authority.
- **Portugal:** This country has updated the list of its accredited bodies.

IN BRIEF

Ethiopia adopts Guidelines for the Alternative Care of Children: September 2009


The Ethiopian Ministry of Women's Affairs has updated in 2001 Alternative Childcare Guidelines, releasing a 2009 version in Addis Abba last September. The updated Guidelines deal with community based childcare, reunification and reintegration programs, foster care, adoption and institutional care service. A specific section deals with adoption, both domestic and intercountry, including, inter alia, definitions of illegal acts, roles and responsibilities of adoption service provider organisations, role of central adoption authority and eligibility criteria for prospective adoptive parents. It also details the adoption procedure for an intercountry adoption, preparation of the child, matching, follow up procedures and clearly states that as an effect of adoption, filiation ties are not severed with biological families.

Eastern Europe and Central Asia: UNICEF launches Guidance Note on Intercountry Adoption for the Region

UNICEF has prepared a Guidance Note primarily designed to assist UNICEF offices in the region when dealing with intercountry adoptions. UNICEF makes specific remarks on a number of key issues relating to intercountry adoption which is of great assistance to professionals aiming to comply with their obligations according to international law. The Guidance Note provides a brief background on the development of intercountry adoptions in the region, followed by subjects, including, inter alia, moratoria, adoptability of the child, agencies, independent adoptions, bilateral agreements and trafficking.

Note: To access the publication, please contact UNICEF Regional office CEE-CIS at ceecis@unicef.org

Another alternative care option: Cluster foster care in South Africa

Jacqui Gallinetti, Senior lecturer at the Law Faculty University of the Western Cape, South Africa has kindly provided her insights into the legal and practical implications of cluster foster care. 

The legislation which presently governs the child protection system in South Africa is the Child Care Act 74 of 1983. This was adopted at the height of the apartheid years and as such was highly problematic as it was designed without taking the situation of the majority of South African children into account. In 1997 the South African Law Reform Commission (SALRC) was therefore tasked with undertaking a review of the provisions of the Act and completed this task, having drafted an entirely new piece of legislation that essentially codified laws relating to children. This law reform effort has resulted in the Children's Act 38 of 2005 and the Children's Amendment Act 41 of 2007.(1)

In its investigation into the new child law, the SALRC recommended that provision be made for various forms of substitute family care, which should include short-term and long-term care by relatives and non-relatives.(2) In addition to the traditional form of foster care, kinship care and informal kinship care, cluster foster care was considered by the SALRC and included in their recommendations.(3) However the proposals relating to court ordered kinship care and informal kinship care did not find their way into the Children's Act. The Act only provides for foster care, which includes the possibility of cluster foster care.

Definitions of foster care

The terms 'foster care' and 'foster parent' were not defined in the Child Care Act of 1983. However, with the advent of the new comprehensive children's legislation far more attention is paid to foster care. Cluster foster care is defined in section 1 to be 'the reception of children in foster care in accordance with a cluster foster care scheme registered by the provincial head of social development for this purpose'.

What is cluster foster care?

However, despite very formalistic definitions of foster care and cluster foster care, the latter remains a rather vague notion for practitioners at present. In recommending

cluster foster care as an option for foster care, the SALRC stated that it should be 'understood to imply a grouping of caregivers who are linked together to provide mutual support in the care of a number of children, and who receive some form of external support and monitoring'.(4) The idea is therefore to provide for some form of community foster care. In addition, the point of not providing a too rigid definition of the concept, and rather referring to a registered scheme means that there can be various models of cluster foster care; provided the scheme meets the requirements for registration, it can provide foster care services. This ensures that cluster foster care can be fluid and flexible, depending on the needs and circumstances of particular children and communities. It also provides an alternative to institutional care where there is a shortage of individual foster care parents who foster children in the traditional sense.

The bulk of the provisions of the Children's Act relating to cluster foster care focus on the management of cluster foster care schemes. In addition, the Regulations to the Act deal with the registration of cluster foster care schemes; requirements with which organizations managing or operating cluster foster care schemes must comply; requirements with which a scheme must comply; contents of the written plan, agreement or articles of association in terms of which the scheme must be operated or managed; and the functioning of a cluster foster care scheme. These technical provisions represent an acknowledgement that the operationalisation of this new type of foster care requires careful scrutiny due to the fact it deals with large scale placement of children in communities as an alternative to institutional care. Therefore the procedures contained in the Act are meant to mitigate the risks and dangers associated with such placements.

Despite practitioners' unfamiliarity with the concept of cluster foster care and its vague formulation in the Act, it holds much potential to provide a viable alternative to institutional

care for children who are unable to be placed in traditional foster care.

References:

(1) These two Acts have not yet been put into operation, though it is anticipated that they will be promulgated shortly, and so the Child Care Act is still the legislation governing this area.

(2) *Report on the Review of the Child Care Act and Children's Bill*, Project 110, The South African Law Commission, December 2002, p 215 (hereinafter SALRC Report), p 215, available at <http://www.doi.gov.za/salrc/reports.htm>

(3) SALRC Report, note 1, p 217-218.

(4) SALRC Report, note 1, p 217.

SPECIAL SERIES - GUIDELINES ON THE ALTERNATIVE CARE OF CHILDREN

United lobbying efforts places pressure on Governments to adopt the Guidelines at the UN General Assembly (UNGA) in New York

Across the world, various actors are undertaking efforts to lobby their Governments to adopt the Guidelines for the Alternative Care of Children, often in conjunction with 20th anniversary celebrations for the UNCRC.

United and diverse efforts across the globe will hopefully result in a UN document with a desirable set of goals to fully protect children in alternative care, known as the Guidelines for the Alternative Care of Children. These efforts are aimed at encouraging Governments to adopt the Guidelines at the General Assembly for the 20th anniversary of the UNCRC. To complement such efforts, a lobbying tool has been developed that explains the necessity of the Guidelines as well as a short background of the process to date (see monthly review 7/2009).

Across the globe, activities are multiplying of which a few are presented here. ISS, SOS Kinderdorf International, PLAN International and Save the Children have distributed the text and lobbying factsheet to all their regional and national offices. The NGO Group for the CRC and CRIN have also updated their websites to include lobbying activities at the UNGA. Relevant documents have also been shared with the other international stakeholders such as the Better Care Network (BCN) steering committee, World Vision, World Youth Assembly etc.

Asia-Pacific region

In Asia, UNICEF has distributed the Guidelines to all its offices resulting in various individual country office responses. For example, UNICEF Vietnam in cooperation with Health Rights International and PACT supported the Ministry of Labour, Invalids and Social Affairs to organize a National Symposium on Foster Care for Orphans and Vulnerable Children in late August. UNICEF

Vietnam has also translated the Guidelines into Vietnamese and distributed it at the aforementioned Symposium, which targeted numerous government counterparts.

EveryChild will undertake some lobbying activities with the Indian Government. In Australia, NGOs such as the National Children and Youth Law Centre are in the process of discussing ways to lobby for the adoption of the Guidelines including a letter signed by various stakeholders to the Prime Minister's wife who is interested in matters relating to children.

Latin American region

In Latin America, Relaf with the Organizing Commission of the Meeting for the event "XX años de la Convención de los Derechos del Niños" held in Buenos Aires initiated 'Guideline' activities. Norberto Liwski (former UN Committee member) provided great support to the initiative. During the two days, the organisations promoted the Guidelines, its context and the principles within the document. The event targeted various Children's Rights Organizations from different Latin American countries as well as included the participation of approximately 50 youth. As a result of this, a letter formulating support for the adoption of the Guidelines was signed by Latin American organizations and youth which will be sent to the relevant Government bodies.

African region

In Africa, the Guidelines were presented at the African Network for the Prevention and Protection Against Child Abuse and Neglect

(ANPPCAN) First International Conference in Africa on Family Based Care for Children during 28-30 September 2009 in Nairobi, Kenya. Earlier in September, ISS also presented the Guidelines at a seminar held by the University of the Western Cape, in Cape Town, South Africa.

Middle East region

In Turkey, the International Children's Center Bilkent University, Ankara and Ankara Child Rights Platform members have organised to send a model letter, fax and e-mail to the Turkish Ministry of Foreign Affairs, UN Permanent Delegation in NY, Social Services and Child Protection Agency. The University is also in the process of having the Guidelines translated into Turkish. The Guidelines were also presented at a conference in Istanbul where there were a number of interested stakeholders.

Europe region

In the United Kingdom, a letter has been sent to the Secretary of State for Foreign and Commonwealth Affairs encouraging the Government to adopt the Guidelines which was signed by EveryChild, UNICEF UK, World Vision, Plan UK, Child Hope, Consortium for Street Children, CRAE, Railway Children, WarChild, the Children's Legal Centre and International Children Trust. The Secretary of State responded quite favourably to the letter and is at least now aware of the importance of the text.

EveryChild is also planning to launch a policy briefing on children without parental care on 19 November. This may also be a good opportunity to promote the implementation of the guidelines (assuming they have been adopted) and raise their profile among UK decision makers and the media.

New York and the General Assembly

BCN and SOS Kinderdorf International are co-ordinating NGO efforts in New York. Together they have prepared a briefing paper for Missions based in New York about the consultation process and brief overview of the regional positions. Save the Children, UK has also met with the Indian, Chinese, UK and Swedish Missions in New York to discuss and lobby for the adoption of the Guidelines.

UNICEF (NY) is supporting the Brazilian mission who has decided to opt for a stand alone resolution in the General Assembly. The idea is not to open the text to discussion, but to hold informals on the draft resolution itself. Brazil is leading the 'group of friends' in New York.

The multiplication of such activities in different regions of the world certainly favours the conclusion of negotiations and the adoption of the guidelines by a stand alone resolution.

Source:

http://www.un.org.vn/index.php?option=com_content&task=view&id=1072&Itemid=283 and <http://www.iss-ssi.org/2009/index.php?id=25>

READER'S FORUM

Adoption practices down under: expert interview with Mary Griffin, Director of NSW Central Adoption Authority

In September 2009, the ISS/IRC was privileged to welcome Mary Griffin to its resource centre in Geneva where we were able to hear first hand the adoption experiences in her state, New South Wales, Australia.

Name, surname: Mary Griffin.

Place of residence and work: New South Wales (NSW), Australia

Professional position: Director, Adoption & Permanent Care Services, Department of Community Services (NSW)

1. How would explain the current adoption culture in Australia?

The number of prospective adoptive parents (PAPs) is far greater than the number of

children needing adoption placements, which is a common global trend. In 2008-09 (financial year), there was a total NSW caseload of 867 families wanting to adopt and from that number there were 84 intercountry adoption placements.

2. Have you observed any trends with respect to this high demand for adoptions?

In the last few years, we have seen a rising number of families turning to other options for

creating a family, including a willingness to consider permanent (foster) care. There has also been an increase in families who have had a child by surrogacy and have come to the Department wanting to adopt the child.

3. What efforts does the Department of Community Services (DOCS) make to meet this high demand?

The NSW Central Adoption Authority (highest populated State in Australia) regularly provides information to families about other options for creating a family like the needs of children in foster care. Parallel to these efforts, the Permanency Planning Policy introduced in our state in 2006 ensures decisions are made quicker for children coming into the care system so placement stability is achieved for them as soon as possible. For example, for children under 2 years old, a decision must be made within 6 months as to whether the child can return home and if not, alternative care solutions are identified for the child. NSW adoption law does provide for a parent's consent to adoption be dispensed with if it is in the child's best interest.

4. In practice, how does DOCS work with PAPS to explore other options than adoption?

We explain the reality of intercountry adoptions such as long waiting lists, fees and also the needs in foster care. Due to the introduction of the Permanency Planning Policy, over the last three years we have seen an increasing number of children in need of permanent (foster) care and they can be very young. We have a special training and assessment procedure for families to explore fostering as an option. It is important to note that families can be approved for both fostering and adoption at the same time (dual authorisation).

5. With these assessments, are all families found suitable? If not, why not?

In about 5-10% of cases we would find candidates unsuitable. The reasons for why candidates may not be suitable include their lack of insight about the complexity of adoption issues and for intercountry adoption, inadequate comprehension of cross racial issues. Before making our final decision, we give candidates an opportunity to respond to our concerns. If a family is found to be unsuitable they have a right to appeal this decision.

6. For PAPS, who are assessed as suitable, how do you manage their expectations?

We give them full information about the number of applications we have received, the number that are processed each year and in what timeframes so they fully understand their chances of successfully adopting. We try to support them as much as we can and encourage them to join a support group. We have a clear law that states that there is no right to adopt a child.

7. Is there pressure on the Government to find new countries of origin?

We receive questions regularly about why we do not have intercountry adoption programs with certain countries. I usually explain that the Government has fixed standards before feeling able to work with countries of origin. For some countries, there are insufficient guarantees that adoption practice is compliant with the principles in THC-93 and for other countries, they have told us that they do not have a need for intercountry adoption applications. Australia supports countries developing adequate national solutions to care for their own children.

8. How does the Government choose countries in which they want to undertake adoptions?

The Australian Government has a Strategic Plan that sets out the approach to the establishment and management of intercountry adoption programs. Some of the factors considered are whether the overseas country has children in need of adoptive families and whether its practices are compliant with the Hague Convention on Intercountry Adoption. A copy of the Strategic Plan can be found on the Attorney-General's Department's website <http://www.ag.gov.au/intercountryadoption>.

9. What are the types of barriers that would prevent Australia from adopting children in a certain country?

The conditions or barriers may include significant concerns regarding compliance with Hague Convention standards, difficulties existing in relation to establishing whether children are legitimately and legally in need of adoption, significant civil unrest or conflict exists, lack of appropriate infrastructure, including legislation, to conduct intercountry

adoptions, eligibility criteria is too restrictive (such as residency requirements) etc.

10. What is the Government's approach to providing humanitarian aid linked with adoption?

The Australian Government recognises that it is appropriate for receiving countries to support the development of child protection systems in countries of origin where this can be done in a transparent manner. The Australian Government currently provides assistance to other countries to implement the Hague Convention through the Intercountry Adoption Technical Assistance Programme administered by the Permanent Bureau. The provision of such assistance must be independent of decisions concerning a child's need for intercountry adoption.

11. Are there any other features of the Australian adoption system that you think are different from other countries?

Australia has very open adoption practice. The NSW adoption legislation ensures that all adopted children have a right to access documents relating to their origins and supports contact between birth and adoptive parents. For intercountry adoptions, once a child has been matched to a family, we provide the adoptive family with all the reports/materials provided to us by the country of origin.

FORTHCOMING CONFERENCES, SEMINARS, SYMPOSIA AND COURSES 

- **France:** *L'accueil familial des enfants à temps complet, Rôle et dynamique du placement familial*, COPEs, Paris, 18-21 January and 7-10 June 2010. For more information: www.lecopes.org.
- **United Kingdom: a)** *Is there a crisis in adoption and permanent post placement support? Lessons and learning from a one year Project*, London, 19 January 2010. For information: www.baaf.org.uk and **b)** EveryChild is launching new report on the Children without Parental Care in International Development Policy to coincide with the 20th anniversary celebrations, London 19 November. For more information, chloe.kay@everychild.org.uk

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 - 2009:

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

The ISS/IRC would like to express its gratitude to the governments (including certain Federal States) of the following countries for their financial support in the realisation of this Monthly Review: Andorra, Australia, Belgium, Canada, Cyprus, Denmark, France, Germany, Iceland, Ireland, Italy, Luxembourg, Monaco, New Zealand, the Netherlands, Norway, South Africa, Spain, Sweden and Switzerland.