Adoption and the Best Interests of the Child

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Introduction

Having lived for several years in developing countries, where I was able to observe the conditions in which poor families have to survive, in which numerous children live and are looked after in institutions, and where I had the opportunity to meet professionals involved in child welfare from both local NGOs and governments and having worked for some time on matters relating to intercountry adoption while living in receiving countries, I can appreciate the complexity of the issues involved when considering the bests interests and the rights of the child in international adoption.

At present, speaking of children's rights when talking about intercountry adoption forces us to confront a highly uncomfortable situation. In the name of the child, everyone raises his or her banner and simplifies the issues to the extreme, whereas in this field the rights of the children concerned are not always so clear-cut and obvious. The passions the topic unleashes, in both countries of origin and receiving countries, distort information, confuse people's thinking and make action difficult and risky. Often there is a tendency to consider only one aspect of the problem, filtered through the prism of the side of the planet on which one lives. Often ideology darkens judgement and is given priority over a real consideration of the best interests of the child. Often personal or organisational interests are masked under humanistic speeches. Everyone defends his or her personal convictions or interests, forgetting that at stake are the lives of human beings, and young and particularly vulnerable ones at that.

One might start by making two statements in terms of the interests of the children concerned. Adoption can offer a permanent and appropriate family to children who have been definitively deprived of their family environment or cannot, in their own best interests, be allowed to remain in it. Adoption is, then, an opportunity that should be offered to such children when it appears to be the right solution for them. Often, however, these two irrefutable statements are reinterpreted and transformed into the following highly questionable conclusion, one that can be used to cover up a host of practices that are contrary to the child's best interests: "Since there are many children suffering in institutions in developing countries and many families keen to adopt in more privileged countries, international adoption should be encouraged and promoted."
We are indeed facing a paradoxical situation.

Institutionalisation of children

On the one hand, many thousands of children at present live in institutions in conditions that give great cause for concern. In a great number of developing countries, the physical condition of the institutions is highly worrying and has direct consequences for the children. Many institutions lack basic material necessities: buildings are unadapted; there is a shortage of clothes, beds, adequate food, heating, games, etc. The number of staff is insufficient and those employed are often poorly paid, inadequately motivated and not trained for the tasks they have to undertake. Moreover, the institution – even when material conditions are adequate - does not favour the human development of the child.

A child is a being who exists by virtue of relationships. The satisfaction of his/her material needs is not sufficient to secure his/her development. From his/her birth, the child is a person. For his/her human

development, he/she needs: to be able to look to a small number of adults who care for him/her permanently and on a long term basis; to be loved, stroked and stimulated; to be personally recognised; and to be integrated into society as soon as possible in his/her life. Very few institutions are able to meet such needs. In an institution the child has scarcely the opportunity to attach to an adult in a stable, permanent, reassuring and positive manner. The relationships which are developed between the staff and the child are frequently not sufficiently personalised and affectionate. The excess of children in relation to the staff and the absence of awareness of the staff with regards to the importance of their attitude towards the children can often lead to a situation in which there is almost no personalised human attention to the children. Continuity in relationships and personal attention is not secured and children are often moved from one institution to another as they grow up.

The child who lives in an institution generally does not receive any explanation with regard to his/her situation. As a consequence, he/she then can develop the feeling that he/she has no value and has never been desired and loved, which is a destructive feeling for his/her personality. This feeling can be excerbated in those institutions where prospective adoptive parents are allowed to enter and to select their child: the children who are not chosen are sent back to their feeling of abandonment. In an institution, it is difficult for the child to develop a sense of belonging or being valued, or to perceive the respective roles of the man (often absent from the institutions) and the woman, of the parents and the children, as well as the mode of relationship between themselves. It will then be difficult for a child who grows in an institution to become a spouse or a parent. It will also be most difficult to develop his/her capacity to integrate into the society. Consequently, in an institution, the emotional, psychological, social, intellectual – and sometimes physical - development of the child runs a high risk of being impoverished or even halted. Only a family is able to secure a normal and satisfactory progress for children.

For a proportion of these children, adoption (domestic and intercountry) is an option that ought to be implemented because they are in need of a permanent family environment. However, for many reasons, many remain in institutions and in a large number of countries there is no real political incentive to remove children from institutions and provide them with a family environment (whether in their own family or a foster home). There are several reasons why this may happen: in some countries, institutions are considered proper systems within the cultural or political tradition (this was the case in Eastern Europe, China, etc.); staff working in these institutions may fear losing their job; professionals involved often do not face up their individual responsibilities in the exercise of their duties and take refuge in bureaucratic attitudes; many of these abandoned children come from a sector of the population rejected by society, often as a result of religious or racial prejudices ; or there is a fear of giving priority to the rights of abandoned children over those of abandoning parents.

Many children, who are not orphans, live in abandonment or de facto abandonment in institutions; they are not eligible for adoption in the legal sense and cannot be because of absent or non-consenting biological parents. Often there are gaps in the legislation covering this type of situation, which prevent such children becoming “adoptable”. Generally speaking all this due to a lack of understanding or a failure to recognise the needs and the rights of the child. Furthermore, most developing countries do not have adequate structures, financial means and personnel, nor enough trained professionals to carry out the necessary investigations to determine and implement proper social and legal measures for the protection of these children.

The pernicious "right to a child"

On the other hand, adoption, and particularly intercountry adoption, is the field of very questionable practices where the child is not always considered as a person with human rights and sensitivity.

Thousands of couples or individuals from “receiving” countries regard intercountry adoption as the only solution left at the end of a long, painful road that has typically included unsuccessful fertility treatment, applications for domestic adoption turned down or placement on a long waiting list. In the

last two decades, intercountry adoption has progressively changed. From its initial purpose of providing a family environment for children, it has now become more demand-driven. Increasingly in industrialised countries, intercountry adoption is viewed as a way for childless couples to satisfy their desire for a child. Growing numbers of intercountry adoptions, in fact, involve countries where children can be found who correspond to criteria set by prospective adoptive parents: very young children whose physical appearance is as similar as possible to their own, and who have no physical or mental disabilities or serious illness. This trend has contributed to the development in the West of a pernicious philosophy of "a right to a child", which often goes so far as to violate the rights of the child.

To meet the demand for children, abuses and trafficking flourish: absence of support to the birth families at risk; psychological pressure on vulnerable mothers; negotiations with birth families; adoptions organised before birth; false maternity and paternity certificates; abduction of children in maternity hospitals or even in the street; children conceived specifically for adoption; political and economic pressure on governments …

Indeed, a booming trade has grown in the purchase and sale of children in connection with intercountry adoptions. It originates with the continuous pressure exerted by couples in economically advanced countries and the fact that they frequently can be induced to pay very large sums of money to satisfy their desire to have a child. All too often in these cases, adoption, whether intercountry of domestic, becomes an act of selfishness, an expression of an inability to accept being thwarted, a way of resolving a frustration by putting the burden on others who are less economically privileged. This trade also depends on the venality of officials, professionals and intermediaries who see adoption as a way of getting rich quick, either through corruption or by overcharging for services rendered. And it is fuelled by the lure of profit in populations destabilised by poverty or the breakdown of their societies.

The child whose rights are being stepped on has become an object, a tradable commodity. It is apparent that a growing number of children who have been adopted were not in need of a substitute family: children sought directly in their birth family, who may or may not have passed through an institution; children who could have continued growing up in that family had it been given modest support - or had the demand from adoptive parents and the money they are prepared to pay not exerted pressure on birth parents and encouraged the development of abuses or other criminal acts; even children who would not have been conceived were it not for the lure of money to be gained through intercountry adoption.

Certainly, the great numbers of children placed in institutions and kept there for years is one of today's most poignant tragedies. But adoption, and particularly intercountry adoption, can also turn into a tragedy for a certain number of children involved and their birth families. That is the reason why it is impossible to support the postulate that intercountry adoption, per se, should be encouraged and promoted as being the solution for the many children suffering in institutions in developing countries.

Facing the challenges

Things are not so simple. When aiming at the best interests of those children, we have to face the following challenges:

- How can we ensure that those children who really need it can benefit from adoption? That is to say:
    1. How to ensure that child are not left without any prospect of family life?
    2. How to avoid a situation in which children are placed for intercountry adoption, when a solution could be found within their own biological family or their own community?

- How can we ensure that children who are placed in an institution do not stay there for a long period and that a plan for permanent placement is implemented which enables the child to

return as soon as possible – with all necessary safeguards - to his or her birth family or, if this proves impossible, to be placed in an alternative family setting?

- How can we move children out of institutions and offer each of them a family environment which sees him or her first of all as a human person, with all that entails, and which meets his or her individual needs and characteristics?

We have to be aware of a host of factors.

The majority of those who wish desperately to adopt would prefer to adopt a very young and healthy child. However, many of the children currently in institutions do not fulfill these requirements : they are not babies; they have experienced a succession of traumatising situations which will require a lot of intelligence, comprehension, patience and solidity from the adoptive family; they often suffer from physical, psychological or mental health problems, generally related to their history. Moreover, a lot of institutionalised children are not legally adoptable. Some biological parents have disappeared or have never made a declaration of abandonment or given their consent to adoption. Others entrusted their child to the institution but did not totally severe their link with him or her, still contacting them periodically or exceptionally. It is far from the truth that all the children who are presently cared for in the institutions are adoptable, either because the legal procedures to free them for adoption have still to be completed, or because the families who are able to take care of them and to accept them such as they are, represent only a limited percentage of the prospective adoptive parents.

A certain number of adopters idealise adoption, wishing to believe that love will solve any problem, but love does not appear automatically in a parent-child relationship and is not a long quiet river. Many of these prospective adopters refuse to admit that adoptive parenthood has to face additional difficulties with comparison to biological parenthood and that this requires wider capacities and requires from the adoptive parents the previous resolution of their emotional problems related to infertility, celibacy or bereavement. All those who want to adopt are then far from able to be appropriate parents for those children who are really in need of a substitute family.

Children's best interests and rights in intercountry adoption

If children are to be set at the centre of all measures aimed at protecting them and respecting their rights, then several lines of action seem to me to need priority for children at risk or in a situation of neglect or abandonment.

1) Preventing abandonment and fighting for social justice nationally and internationally

Neglect and abandonment of children are mainly the consequences of poverty and destitution manifested in various forms : lack of education, absence of birth control, the breakdown of the nuclear family, a weakening of the role of the extended family, intrafamilial violence, alcoholism and drug addiction, health problems, and so on. From a human rights perspective, it is impossible to be satisfied with considering adoption as the answer for neglected or abandoned children. It is imperative that action be taken so that children are not abandoned but can remain with their families.

Prevention of abandonment must be given high priority. This means:

- psycho-social support services and /or financial support for mothers or families in difficulty
- conscious and responsible sex education and family planning
- raising awareness of the importance of the father's role for the development of his sons/daughters
- training for parenthood and raising social awareness of the needs and rights of the child
- the promotion and upholding of women's rights

- fair incomes and access to employment.

Implementing children's rights means fighting for national and international policies which bring about social justice, that is those which improve the economic and educational level of impoverished populations and reduce global economic imbalances.

2) Favouring permanent family-based alternatives instead of institutionalisation

Throughout the world, and particularly in low-income countries, placement in institutions often constitutes the automatic response to children in need of care and protection. This is not only the fact of those countries: when arriving in a country in crisis, the first action taken by a lot of charities or NGOs from the industrialised world is to create institutions. This must be changed. It is clear that institutional placement has very adverse effects on the child's development, particularly when the placement is prolonged several years.

Priority must be given to favour family alternatives. Instead of creating new institutions, temporary foster care or economical, psychological and social support to the biological families must be given a key importance. The institution must be considered only as a temporary answer, which offers a protection to the child while his/her personal and family situation is clarified and plans are developed for a permanent placement in a family-based environment.

De-institutionalisation must become a main preoccupation in child welfare policies: searching for solutions within the nuclear and extended family of the child; developing the national foster care system in order to offer a temporary measure better adapted to the child's needs than the institution care; establishing obligations, delays and priorities for action in order to quickly study the personal situation of the children cared for in institutions and to propose a project of life for each of them and particularly the youngest. As soon as a baby or a very young child seems at risk of being abandoned in a maternity or an hospital, preventive measures must be taken and as soon as he or she enters in an institution, a study must be undertaken in order to clarify his or her situation and to look for appropriate solutions.

Legislation should be modified in order to facilitate the legal adoptability of those children whose social and personal need for adoption has been established: - in my opinion, this is equally applicable to industrialised countries where a certain type of open or semi-open adoption could allow more de facto abandoned children to benefit from a permanent and reassuring good family care without suffering a total severing of his/her relationship with his/her biological family.

We should also first be promoting domestic adoption - but a domestic adoption of quality -and taking the necessary steps to improve the quality of intercountry adoption by improving legislation, ratification of the 1993 Hague Convention, control of intermediaries and a clear definition of reasonable fees and costs.

Some professionals are afraid to be involved in intercountry adoption because of the bad reputation it has acquired, preferring to accept maintaining children in institutions and without a future with a human face. But intercountry adoption is not bad in itself. When it is well done, it can be a very satisfactory solution for the child. Others are fiercely opposed to intercountry adoption on the grounds that children have a right to be brought up in their own communities and in their own culture. In the name of this right, they are prepared to accept a situation in which children languish in institutions where the right to remain in the culture and community is retained, but this is merely a theoretical embracing of these "rights" - we can honestly ask ourselves what culture does an institutionalised child enjoy ? – and where their other fundamental rights are often ignored or violated. In such cases, fear, nationalistic or political considerations rank before children's rights.

In a world where population movements are increasing, where intercountry adoptees are well accepted, isn't it more respectful to offer a child a family that will help him or her to develop, in whatever country, rather than condemn that child to an "orphanage" culture ? I consider that maintaining children

for years in institutions without searching for a permanent family-based alternative is a violation of the rights of those children.

Implementing children's rights and caring for his or her best interests means fighting to raise awareness and to promote policies and promulgate legislation that favour family-based alternatives for children; limiting the role of the institution to temporary care aimed at facilitating the reintegration of the child into his or her family as a priority or, if this cannot be achieved, at seeking permanent placement in a substitute family; promoting and improving in-community and in-country adoption; and also monitoring and improving intercountry adoption procedures.

3) *Reinforcing good practices in adoption and fighting against abuses and trafficking*

Adoption, and particularly, though not only, intercountry adoption, can involve practices that generate high risks for children and their birth families (especially their mothers), abuses, trafficking and criminal acts such as the sale and purchase or abduction of children. All too often adoption is a means for couples and individuals (national and foreigners) to satisfy their desire for a child, but without giving paramount attention to the child's bests interests. Direct adoption arrangements from one individual or family to the other must be banned, except under extraordinary circumstances. In that case, they must be supervised by child protection services who care for the child's best interests. Adoption is not an arrangement made between individuals. *It is a social and legal protective measure for children.* It should be considered and authorised with this sole aim in view and must be under the responsibility of the State. Adoption must be concerned with the children who are in institutions, not those who are living with their family.

The psychosocial and legal adoptability of the child must be established before starting the procedure of adoption. It has to be based on a study of the situation of the biological family (mother, father, siblings, grandparents, etc.) and sometimes of the community this family is part of, as well as an assessment of the personal situation and needs of the child. This study must result in the definition of a project of life for the child, giving the priority to the reintegration of the child in his or her family (or community) by bringing the necessary support to that family. The adoptability of the child should be confirmed only if it appears that the family of origin does not meet the conditions that ensure the psychosocial development as well as the physical and emotional integrity of the child. And importantly, poverty alone should not be a criterion for severing a child's bonds with his or her family of origin.

The psycho-social and legal eligibility to adopt of the prospective adoptive family must be established before starting the procedure of adoption. It has to be based on an assessment of the individuals wishing to adopt and their family and social environment. The potential adopters must benefit from a thorough preparation to adopt *before* and after the elegibility procedure, in order for them to consider adoption first as an answer to the child's needs and to be aware of possible problems the adoptee may experience and of the necessary abilities and commitment to manage them.

The matching between a given child and a given prospective adoptive family must take into account the characteristics and specific needs of the child and the characteristics and apparent ability of the family to answer those needs and to adapt to the child's characteristics in a durable and satisfactory manner. The matching has to be based on both a detailed report on the child and his or her biological family, and a detailed report on the prospective adoptive parents, reports produced at the conclusion of the investigations mentioned above.

The periods of waiting and uncertainty that the child lives through must be reduced as much as possible. Continuity must be insured in the care given to the child and transition between one situation of life to another must be prepared and carefully supported in order to avoid disruption and distress. The way any decision about adoption becomes official has to be established in law and must be respected. Where the adoption involves persons from two different countries and one or both of these countries has not ratified the 1993 Hague Convention, it is important to check that there are no contradictions between the national legislations of each country before proceeding with the adoption.

When private bodies or professionals are involved in some of the procedures related to adoption, they must be accredited to do so and supervised by competent authorities of the State. Criteria for accreditation must be reinforced and the good intermediaries supported. All the steps related to the preparation and the implementation of adoption must be entrusted to professionals and services competent in child and family welfare, with an ethical code compatible with human and children's rights. As far as possible, those professionals must receive training in understanding what are children's rights in adoption and what this means for their practices.

Rules must be established at national and international levels to monitor material aspects of adoption, and particularly of intercountry adoption. The International Social Service (ISS) considers it essential that the following be quickly proposed and periodically updated in both receiving countries and countries of origin:

- a list of the steps involved in adoption procedures, or linked to adoption, that could justify a payment;
- scales of emoluments, fees and the cost of services in adoption that could be considered reasonable.

Sanctions must be considered in the law and put into practice with regards to bad practices and unreasonable material gain.

Implementing children's rights involves the following :

- fighting against the growing philosophy biased towards the "right to a child";
- opting for adoption only when it is in the best interests of the child;
- improving ethical criteria;
- being exacting when accrediting and monitoring intermediaries;
- implementing procedures that ensure that the prospective adoptive parents match the child's needs and characteristics;
- improving laws and practices;
- training staff and judges involved in the procedures;
- creating psycho-social services to prepare prospective adoptive parents for adoption and to assist biological and adoptive parents as well as children after the adoption took place ;
- developing the exchange of information and experience throughout the world ;
- taking very drastic measures to fight against profit-making in adoption-related matters and against the abduction of, sale of or trafficking in children.

All this is the responsibility of the receiving countries as well as of the countries of origin. The situation must improve in both types of country. Even more, the receiving countries must offer support financially and, when needed, professionally to the countries of origin for the implementation of global policies where priority is given to the prevention of abandonment and where procedures of adoption are organised in the best interests of the child.