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Editorial:
The principle of subsidiarity and the extended family as caregivers

The principle of subsidiarity and the priorities in the examination of solutions for taking children into care

Among the millions of children around the world who have been taken into care outside their home most live with their grandparents or other members of their family. This form of support, which depending upon the case, takes the form either of kinship care, or foster care, and even occasionally, of real adoption, constitutes the commonest solution for "substitute care provision" in many countries.

These interventions, like any assistance measure for children deprived of their parents, should not be perceived for their specificity alone, but should rather be assessed globally. International law foresees, in fact, an order of priorities among the different measures applicable to this type of situation with a view to promoting those which most correspond to the best interests of the child.

The United Nations Convention on the Rights of the Child (CRC) envisages, for example, that family solutions must be envisaged as a priority (Preamble). The Hague Convention of 1993 (THC-1993) precises particularly that these solutions must ideally aim at reintegration within the family of origin (Preamble). According to the most widespread interpretation, the latter consists largely of father and mother, and failing that, as long as it is in the child's interest, other members of the family liable to take the child into their care. Similarly, **domestic measures must be given preference over those that may be available outside the country** (see article 21b CRC: principle of subsidiarity).

Furthermore, **children in temporary placement must benefit from the search for a permanency planning** (see the Editorial of Bulletin 66, www.iss-ssi.org/Edito.66.eng.pdf). Placement with a foster family or in an institution is generally considered temporary, whereas reintegration in the family of origin and adoption are final solutions. In certain situations, however, placement can constitute the most suitable permanent solution for a child. When the child cannot live with his/her father and mother, it is best to take into account of the reality of the filiation ties, which the child has really lived through or experienced with regard to his parents of origin, even if they are missing, or, on the other hand, to take account of his/her need for new filiation attachment ties in the form of adoption. In certain intrafamily situations, moreover, adoption by a member of the family who is too close (a grandparent or brother or sister, …) can be harmful, since it cuts through the child's genealogical attachments and disrupts his/her family references, even making the child a stake in a family conflict. Unlike adoption, placement must be subjected to periodic review (article 25 CRC).

The dilemma of the principle of subsidiarity.

Sometimes the criteria of evaluation contradict each other. What happens, for example, when a child without parents has a chance of either being placed with an aunt outside the country or in an unrelated family living in his own country? Does priority have to be given to the child's family ties abroad or to the continuity of

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his/her education, as well as ethnic, religious, cultural and linguistic origins (article 20 CRC)? Consequently should the child be placed with the aunt, running the risk of creating in him/her a sense of being uprooted, and putting his/her emotional development in jeopardy, or choose a domestic solution, to the detriment of his/her family ties? This situation raises the question of the place allotted to the extended family as caregivers within the range of assistance measures for children deprived of their family. Implicitly, it also raises the question about the means of harmonising the priority to the family of origin and the principle of subsidiarity, when they risk leading to incompatible solutions.

A few lines of thought.

It is vital to recall, from the outset, that this dilemma not be solved in the abstract in absolute fashion. **Each specific case should be studied individually, so as to devise a permanency planning in keeping with the principle of the child's best interests.**

Only a careful examination of each case, carried out preferably by a group of professionals with varied training (social assistant, psychologist…..), should make it possible to take the appropriate course of action. It is a matter, first of all, of taking into consideration all the personal characteristics of the child (his/her history and that of the family, his/her age, the state of physical and mental health, his/her character traits, the nature of his/her current family relations and friendships, religion, cultural bonds, adaptive capacities, etc.). To the extent possible, it is also desirable to take into account the views of the child as well as those of the father and mother, if possible, and to prepare the child for the solution agreed upon. Finally the caracteristics of the potential care environment must be assessed. It means particularly to see how the child will be integrated in the social group or the society where he will be placed. It also means to bear in mind the alternative solution which was not choosen, that is either in his/her country of origin, or with his/her relatives living outside the country. In other words, it entails proceeding to weigh up the interests with a view to identifying the solution that best responds to the child's needs.

In this regard, given the frequency of such cases, it is also wise to specify that if the choice is between a member of the family in the country of origin and another member of the family outside the country, preference will be given to the former, unless the duly established interest of the child dictates otherwise.

In the event of international displacement of the child, it is also appropriate to underline the importance of not overestimating the "chances" that Western countries could offer children from countries in transition or developing countries. We all know how difficult it can be for a child or an adolescent to integrate successfully in a very different society. Families of origin should benefit from specialized professional advice when they consider placing an under age child with one of their family members living abroad, and that decision should be assessed by the authorities in giving due consideration to the best interests of the child. *In all cases, filiation ties are not sufficient to justify an international adoption project by a member of the extended family.* The Hague Convention of 1993 does not foresee any exceptions in this respect : the suitability of all prospective adoptive parents has to be assessed (See also the Editorial of Monthly review 2005.2 on the principle of subsidiarity). At the same time, the choice between placement with a member of the family living abroad and adoption by the latter should be made in the interests of the child and not out of consideration for the imperatives of the receiving country's immigration policy.

The issue raised in this editorial illustrates, if need be, that the principle of the best interests of the child cannot be defined just in legal terms. It is indispensable for the practitioners of child protection to know how to adopt a pragmatic approach so as to identify, case by case, the solution best adapted to the child, taking into account his/her specific emotional needs, as well as the risks inherent in each option. This is what the professionals of the ISS network pay particular attention to in the international cases brought to them.

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