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'What is important for children is important for humanity'
Alejandro Cussiánovich, an eminent Peruvian pedagogue

EDITORIAL

Call from above? Above the law?

This brief Editorial examines the question of religious-based institutions providing alternative care and adoption services, as well as the nature of the States' ongoing responsibilities, if any, to such children.

Motivations for working with and for children are as varied as the individual children themselves. Nevertheless, one recurring motivation in alternative care and adoption is the higher calling. Whether it be, for example, Buddhist monasteries, Catholic or Evangelical-based care, Koranic schools, etc., the question arises as to whether such service provision should be removed completely from the scrutiny of the State. A delicate balance of respecting such work must be found, whilst ensuring that the State continues to ensure the full protection of children in receiving these services.

Subject to laws of lands?

International standards, such as the UNCRC and the Guidelines for the Alternative Care of Children, decree that, when a child is separated from his or her family, the primary responsibility for providing care is on the State. Yet, this responsibility is sometimes delegated, and, at times by default, provided by religious bodies. Despite international standards dictating that 'the provision of alternative care should never be undertaken with a prime purpose of furthering the political, religious or economic goals of the providers', in practice, tradition, culture and religion can turn the blind eye to this requirement. Should religion trump international standards? On what basis would one effectively weigh such primary motivations? Some may even argue, albeit naively, that we should be comforted that such



children are at least being cared for by these 'higher' institutions, receiving an education, etc. This argument becomes even more acute especially when the State does not have the

capacity or the willingness to provide such care.

Subject to laws of the land?

Should religious laws surpass national outworkings of international standards? Shall we leave the child to the 'religion' of the land, for better or for worse? Perhaps an affirmative to such a question would be reasonable, and to a certain degree, compliant with international standards, when the child professes the same faith. For example, Paragraph 88 of the Guidelines notes that 'children should be allowed to satisfy the needs of their religious and spiritual life, including by receiving visits from a qualified representative of their religion, and to freely decide whether or not to participate in religious services, religious education or counselling...'. The answer becomes trickier in cases where the child expresses a different faith contrary to that of the land. Even more challenging are situations when service provision escapes completely from the scrutiny of the State, resulting, for example, in abuse, child labour and sexual exploitation. It is for this reason that the ISS/IRC welcomes the 2018 study by the Ministry of Social Affairs, Veterans and Youth Rehabilitation in Cambodia, which

examines, for the first time, community-based care, including in 'Pagodas'¹, and which notes both progress and areas for improvement to avoid such situations (see p. 13).

Subject to one law?

Irrespective of religious laws and customs, the child and his or her family merit utmost protection. The exploitation and harm to children in religious-based institutions or through their activities generally occurs contrary to their very own religion. In principle, no religion encourages a violation of children's rights. The Guidelines, at Paragraph 75, helpfully notes that 'cultural and religious practices regarding the provision of alternative care, including those related to gender perspectives, should be respected and promoted to the extent that they can be shown to be consistent with the rights and best interests of the children. The process of considering whether such practices should be promoted should be carried out in a broadly participatory way, involving the

cultural and religious leaders concerned, professionals and those caring for children without parental care, parents and other relevant stakeholders, as well as the children themselves'. Therefore, States should continue to have a role in ensuring that faith-based actors provide alternative care and adoption services consistent with the best interests of children.

The value added of the UNCRC is its promotion of an integrated child protection system, where the State, with robust coordination between all actors, provide services to children (see p. 5). In practice, this requires that the State accredits and supervises all services providers, including those that are faith-based. All are under one law, the full enjoyment by children of all their rights.

The ISS/IRC team,
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