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*'In a family, we are bound
together by invisible strings,
which tie us up, even when they
are cut.'*

Jean-Michel Guenassia
French writer [Unofficial translation]

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EDITORIAL

Intrafamilial intercountry adoption: Is the child always at the heart of the process?

As recommended by the [Convention on the Rights of the Child](#) (UNCRC, Arts. 3, 8 and 20) and the [Guidelines for the Alternative Care of Children](#) (Guidelines), in situations where a child can no longer be cared for by his or her parents, priority should be given to a placement within the extended family, in order to maintain some continuity in 'upbringing and (...) the child's ethnic, religious, cultural and linguistic background' (UNCRC, Art. 20). Unlike national contexts where these placements can be informal, at international level, it often becomes essential to formalise them due to immigration requirements for the child to be able to cross borders. There are many legal and administrative mechanisms for this, including intrafamilial adoption, which currently seems to be the preferred route. However, is this always the solution that best meets the interests of the child? How can we ensure that intrafamilial intercountry adoption remains a child protection measure and not a way of circumventing tighter immigration procedures? Should these adoptions be subject to simplified procedures or rather additional scrutiny?

Intrafamilial intercountry adoption: Is the socio-cultural obligation always compatible with the rights of the child?

Although, in some cultures, a child is seen as originating only from the parental couple, this view seems to ignore the many other cultures, in which the child belongs to the line of descent or even the community, such that there is a real system of child circulation ranging from temporary care to donation of a child¹ (see Monthly Review No. 228, January 2019). In these cultures, family solidarity often means that parents have a responsibility both to 'give' a child to a family member, who cannot have children, and to look after the children of close relatives, who cannot do so themselves. Does this not make these individuals more likely, due to socio-cultural obligations, to use placement methods, such as intrafamilial adoption (see Monthly Review 03-04/2011)?

Having said that, although there must be respect for the traditional values described above, do states not also need to make sure that these planned intrafamilial intercountry adoptions are still child protection measures compliant with those international standards that most of them have ratified? In the same vein, do their obligations under treaties such as the UNCRC or the 1993 Hague Convention not entail that they

need to ensure these adoptions do not result in irregular practices or even the sale of children in the sense of Articles 3.5 and 2(a) of the Optional Protocol to the UNCRC on the sale of children?



Intrafamilial intercountry adoption: Always in the best interests of the child?

In the spirit of the UNCRC and the Guidelines, where there is any possibility of the child remaining in or being reintegrated into the family, or there is a solution available that would not sever family bonds, no (full) adoption should be considered. Also, faced with the cross-border placement of an older child, a child whose biological parents are living, or a child from a country that does not recognise adoption, should the application of the 1996 Hague Convention (see Monthly Review No. 196, November 2015) not take precedence over that of the 1993 Hague Convention, as pointed out by the Hague Conference on Private

International Law in Paragraph 518 of its [Guide to Good Practice No. 1: The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention](#)? Rather than dismissing the potential benefits of intrafamilial intercountry adoption, it should be assessed on a case-by-case basis, and where necessary, a different protection measure, which is more appropriate to the needs and profile of the child, should be preferred.

In addition, although intrafamilial intercountry adoption promotes some continuity in the child's life, is there not a risk that this continuity will be jeopardised by the legal effects of adoption? For example, it means that many biological bonds are severed and reconstituted in legal terms, such as the child's grandmother or aunt becoming his or her mother. How do the other members of the family then fit into this uprooted family tree? This type of adoption therefore raises various psychological and legal issues that are yet to be resolved. Could simple adoption or open adoption (see Monthly Review No. 194, September 2015) – which are still too rarely used – provide avenues for response?

Intrafamilial intercountry adoption: Should procedures be relaxed or tightened?

As shown in the comparative study about to be published by the ISS/IRC, many countries have adopted legislation specific to these adoptions, with the aim either of making them easier or of establishing adapted procedures to manage them. Relaxing certain criteria or stages in the process – such as accepting applications from single persons, or reducing the probationary period where there were already close bonds between the child and the relatives involved – is in the interests of the child. However, it is important not to omit the assessment of the motivations and capacity of the potential adoptive parents, which could expose these adoptions to a greater risk of failure. Assumptions that tend to favour an adoption simply because it is intrafamilial therefore need to be questioned.

It is crucial to examine the motivations for these plans and to provide support. In other words, it is essential to check: who initiated the plan; the reasons for the proposed separation; that all parties involved fully understand the significance and implications of intrafamilial intercountry adoption; and whether there is really no potential for the child to stay in his or her own country and, if applicable, with his or her biological parents. In conducting its study, the ISS/IRC was able to identify several promising practices in this area, *e.g.* introducing a preliminary analysis of the adoption plan, carrying out a concrete analysis of the needs of the child and the capacity of the PAPs to meet these, and checking that recognition of these adoptions is compliant with the 1993 Hague Convention. Should all the countries involved not consider such practices to ensure the rights of the children concerned are upheld?

In the ISS/IRC's view, where a child is deprived of parental care, intrafamilial intercountry adoption may be a good protection measure that safeguards the child's right to some continuity in his or her social, cultural and family life. However, these adoptions are no exception to the basic principle that the child should be at the heart of the process and that his or her interests must be prioritised above all others. Thus, once again, there is a need for shared responsibility between receiving States and States of origin, to jointly ensure that intrafamilial intercountry adoptions are not conducted outside the international legal framework they share. In this respect, the ISS/IRC emphasises the key role that the Guidelines and the 1996 Hague Convention may play in determining the most appropriate protection measure, including at international level. The ISS/IRC hopes that its forthcoming study will provide countries with food for thought on establishing procedures centred on the rights of the child.

The ISS/IRC team, May 2020

References:

¹ Delaunay, V. (2009). *Abandoning Children versus Child Care in Africa: A Central Issue for Child Protection*. In: *Mondes en développement*, 2009/2 (No. 146), pp. 33-46. Available at: https://www.cairn-int.info/article-E_MED_146_0033--abandoning-children-versus-child-care.htm.

² 'Other factors may be relevant. For example, the child may not know the relatives; the child may be the subject of guardianship orders and adoption or intercountry adoption is not necessary; some cases could be dealt with under the 1996 Child Protection Convention and transferred abroad. The formal adoption of an older child may not be necessary and permanent care arrangements would be satisfactory; a change of country may be more difficult for an older child to adjust to; sometimes there is pressure on families in the State of origin by the family in the receiving State to allow the intercountry adoption.' See: HCCH (2008). *Guide to Good Practice No. 1: The implementation and operation of the 1993 Hague Intercountry Adoption Convention*, at pp. 114-115. Available at: <https://assets.hcch.net/docs/bb168262-1696-4e7f-acf3-fbbd85504af6.pdf>.

