



Fact sheet N° 36

Intercountry Adoption

THE PRINCIPLE OF SUBSIDIARITY

The principle of subsidiarity is a central issue in the protection of children deprived of their family, and its respect should guide the preparation of every life plan, respectful of the best interest and rights of these children. Its implementation implies that assistance measures for children deprived of their parents should not be perceived within their sole specificity, but should rather be assessed globally, in accordance with the individual situation. International law indeed foresees a principle of priorities among the various measures designed to support children separated from their parents, with a view to promoting those, which best respond to their best interests.

In principle, priority should be given to solutions enabling the child to remain in the care of his/her family of origin

The United Nations Convention on the Rights of the Child (CRC) provides, among others, that family solutions must be envisaged as a priority (Preamble). The Hague Convention of 1993 (THC-1993) states particularly that these solutions must ideally aim at enabling the child to remain in the care of his or her family of origin (Preamble). According to the most common interpretation, the latter consists largely of father and mother, and failing that, and 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 should 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 permanent life plan (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 permanent solutions. In certain situations, however, placement may constitute the most suitable permanent solution for a child. When the child cannot live with his/her father and mother, it is important to consider the reality of family ties, which the child has experienced or felt in relation to his/her parents of origin, even if they are missing, or, on the other hand, to take account of his/her need for new family attachment in the form of adoption.

The dilemma of the principle of subsidiarity

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

detriment of his/her family ties? This situation raises the question of the place given to the extended family as caregivers, within the range of assistance measures for children deprived of their family. Implicitly, it also requires questioning the means of harmonising the priority to the family of origin and the principle of subsidiarity, when these may lead to incompatible solutions.

Only a careful examination of each case makes it possible to take the appropriate course of action

It is vital to recall, from the outset, that this dilemma may not be solved in the abstract in an absolute fashion. Each specific case should be studied individually, so as to devise a permanency plan, in line 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, 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 characteristics of the potential care environment must be assessed. In particular, it includes exploring how the child will be integrated in the social group or the society where he/she will be placed. It also means bearing in mind the alternative solution which was not chosen, which 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.

The issue raised in this fact sheet illustrates, if need be, that the principle of the best interests of the child cannot be defined merely in legal terms. It is indispensable for child protection practitioners 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 to each option. This is what professionals of the ISS network pay particular attention to in international cases brought to them.

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For more information:

BARTHOLET, Elizabeth. *International Adoption: Current Status and Future Prospects*. Adoption, VOLUME 3, NUMBER 1 - SPRING 1993

SCHMIDT-TIESZEN Ada; "Children who wait: long term foster care or adoption?", in *Children and Youth Services Review*, vol. 20, n° 1; 1998, Los Angeles.

We are interested in your opinion! To tell us your experiences, ask us your questions about the themes addressed in this file, or to send us your suggestions for changes, don't hesitate to write to us at irc-cir@iss-ssi.org. We also invite you to share this file with other interested persons in your country. Thanks in advance!

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