

Fact Sheet N° 18

Adoption GENERAL PRINCIPLES

In accordance with article 3 of the Convention on the Rights of Child (CRC), the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. This principle, reiterated in article 21 CRC in relation to adoption, implies a case-by-case appreciation of the interest of the child, and conflicts with a general approach which considers the adoption of a child as beneficial for him in all cases. Also, one should not lose sight of the fact that the interests of the child may be perceived differently depending on the culture, and that its respect does, inevitably, not lead to the same solutions as those commonly admitted in Western societies.

The child first

This “primary consideration” underlines the importance of placing the child and his needs at the centre of decisions concerning him. It is incumbent upon all actors involved to guarantee its respect. However, it is also a matter of safeguarding other opposing interests, whether the right of the child not to be separated from his parents and to be cared for by them, or that of the biological parents to maintain a family life, for example, when it appears that adoption occurred against their wish or without their consent.

The pursuit of the best interest of the child is the foundation of adoption, from which ensue two equally essential principles: subsidiarity and adoptability, which in fact represent two means of application.

Subsidiarity

Respect for the principle of subsidiarity – which requires that adoption should only be considered once all measures to maintain the child in his biological family

have been exhausted – must be amongst the questions that must be raised before deciding on a child’s adoptability. Given that the competent authorities of the country of origin must first examine all possibilities for the child’s placement in his state of origin, and given that adoption is in itself a subsidiary child protection measure, intercountry adoption thus becomes twice subsidiary.

A concrete implementation of the principle of subsidiarity naturally encourages domestic adoption. This approach already exists in many countries of origin, but it naturally implies a political will and budgetary efforts which are not always combined. When it is implemented, it often results in an increase of the average age of internationally adoptable children, as the younger ones are more easily adopted by local couples.

Adoptability

Currently, poverty raging throughout the world may be considered as the main factor for abandonment if it is considered it

its wider sense, i.e. including its direct consequences such as illiteracy, lack of access to primary healthcare, conditions for economic survival and, sometimes, social obscurantism. However, although poverty is indeed a cause, it should not in itself justify the adoptability of a child, nor his removal from his family environment. Although Western societies have abandoned the systematic application of such a policy (even though some placements still occur on grounds of negligence, a term which may, in reality, often cover economic distress), there is no reason for such an evolution to be denied to the poorest countries. It goes without saying that the parents' impossibility to take upon themselves the care of the child may lead to his abandonment or placement; however, in parallel, the weak means granted by states to provide support or alternatives too often prevent from curbing significantly this phenomenon. Nonetheless, ethics compels to combat this *de facto* situation. This is the responsibility of states and adopters.

The concept of abandonment is, also, not perceived in the same manner across the world: street children are not all without a family and children placed in institutions

are not all orphans. The temporary placement of children in the extended family, with acquaintances, or in a state institution is a widespread phenomenon in numerous societies worldwide: parents entrust the child they cannot care for, without, however, wishing to abandon him. Similarly, in several African cultures, for example, the placement or movement of a child amongst members of the extended family is not necessarily linked to the loss of the biological parents and takes on very different social meanings. Finally, Islam, which only recognises blood ties, does not know the legal ties created by adoption, but favours the placement (often within the family) as a response, even as a means, to prevent abandonment (institution known as kafalah).

It follows from these few examples that the concept of "adoptability" varies in accordance with the socio-cultural context. The definition and the declaration of abandonment must therefore be in line with these realities, and consequently be a matter of the law relating to the adoptee rather than to the adopter.

ISS/IRC August 2006

For more information:

Ethical Guide: The Rights of the Child in Internal and Intercountry Adoption - Ethical Principles - Guidelines for Practice - ISS/IRC - 1999/2004 - Human rights ethics and principles should govern adoption and practice must ensure they are implemented.
http://www.iss-ssi.org/Resource_Centre/Tronc_DI/tronc_di_eth.html

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!

The ISS/IRC would like to thank the Canton of Geneva, Switzerland, for its financial support for this Fact Sheet project and the Committee for Inter-country Adoption of the Presidency of the Council of Italy for its funding of the Handbook "The Best Interest of the Child and Adoption", which is the basis of several Fact Sheets.