



Fact Sheet N° 49

Specific cases

RELATIVE ADOPTION

Relative adoption is the adoption of a child by a member of the extended family. It mainly refers to the adoption of a child by his grand-parents or uncles and aunts (adoption of the spouse's son/daughter is considered a special case). Today, this type of adoption is widespread and, in some cultures, it is even dominant, on the whole in an informal manner. By its very nature, relative adoption can more easily avoid the controls and procedures generally in force. Thus, particular attention has to be paid to ensuring that the rights of the child adopted this way are guaranteed to the same extent as those of other children.

Formal and informal adoption: advantages and disadvantages

In its spontaneous form, the placement in the extended family is, in many cultures, closely related to adoption. This informal provision of care makes it, in particular, possible for the child to maintain his family ties and to provide him with an instantaneous and natural response. Moreover, it enables avoiding repetitive placements of the child pending a lasting family solution. These advantages, however, do not always guarantee the protection of the child. Indeed, there is a number of risks and problems associated with this type of adoption, of which the main one is the absence of any control and no form of supervision. Thus, these children are more exposed to instances of exploitation (forced domestic labour, sexual abuse...) since they may more easily fall through the net of protection mechanisms for children deprived of their family.

When relative adoption is formal (i.e. when it is framed within a legal procedure), it provides the same advantages as informal adoption, but guarantees a better protection of the child. The procedural aspect may, however, become an obstacle if the steps taken are too lengthy and complex enough to

induce prospective parents to abandon their plan.

On the basis of these elements, one must weigh up the different interests in order to find the best solution for the child.

Intercountry relative adoption

Intercountry relative adoption refers to the care of a child by his extended family living abroad. In this case, the placement may also be either formal or informal, the second one being more common. The latter may also evade control even further, given that the child leaves the country. However, whatever its nature, cross-border relative adoption raises a number of risks linked to the child's change of location. On the one hand, the child is cut off from his community and loses his marks. On the other, the ties he maintains with members of the family overseas may be limited or inexistent.

From this perspective, it is important to consider this type of adoption like any other intercountry adoption and to ensure respect for all the usual stages of the procedure. Ascertaining the suitability of the adopters and their preparation, in particular, must be strictly carried out in accordance with the model promoted by the HC-1993.

The issue of the law applicable to this type of provision of care is equally difficult: depending on the country, its nationals living abroad may follow the domestic adoption procedure. Thus, the protection mechanism for a child placed abroad after his adoption will not apply, thereby weakening his position.

Difficulties in applying the principle of subsidiarity

The application of the principle of subsidiarity to these adoptions is not, however, without difficulty. In fact, what happens, for example, when a child deprived of parent has an opportunity to be placed either with his aunt overseas, or in an unrelated family resident in his own country? Does one have to do give priority to the child's family bonds abroad or to the continuity of his education by taking into account his ethnic, religious, cultural and linguistic origins (article 20 CRC)? Is it therefore essential to place him with his aunt and to raise the risk of uprooting him and thereby threaten his affective development or to select a domestic solution to the detriment of his family bonds? This case raises the issue of the role of the placement within the extended family within the wider panorama of assistance measures for children deprived of their family. Only a careful study of this situation, preferably undertaken by an interdisciplinary group of professionals, could enable a decision on the appropriate measure.

It is first a matter of taking into consideration all the personal characteristics of the child, his opinion, and possibly, also those of his father and mother. Furthermore, the characteristics of the potential placement

environments have to be assessed. It is particularly important to determine to what extent the child will be able to integrate in the social group of the society, in which he will be placed. The child must also be able to maintain some bonds with the option, which will remain; i.e either with his country of origin or with his close family living abroad. In other words, it is a matter of proceeding to considering the interests at stake, with a view to identifying the solution, which best responds to the needs of each child.

The legal nature of relative adoption

In order to respond best to the interests of the child, it is also appropriate to inquire into the simple or full nature of these relative adoptions. Whereas relative adoption encourages a certain degree of continuity in the child's life, this continuity is at risk of being weakened if these adoptions are carried out as full adoptions. Indeed, a considerable number of biological family bonds find themselves undone and rebuilt at the legal level: the grandmother, the aunt, the mother's cousin or the child's step-sister may become his mother. If such is the case, how can other members of the family be included in this scrambled genealogy?

Thus, relative adoption raises several issues, which are of a psychological and legal nature, and which remain unsolved. Simple adoption, or even open adoption, may constitute initial responses, even though, to date, they are only applied by a very limited number of countries.

ISS/IRC, December 2007

For more information:

CRUMBLEY Joseph (Ed.), *Relatives Raising Children: An Overview of Kinship Care*, USA, Child Welfare League of America, 1997, 124 pp.

Penelope L. Maza. *Patterns of Relative Adoption*. National Resource Center for Special Needs Adoption. United States. Children's Bureau, 2006, Vol. 20, No. 1, p. 1, 7-9

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.