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SPECIAL EDITION ON THE PRINCIPLE OF SUBSIDIARITY

EDITORIAL

What scope should be granted to the principle of subsidiarity?

The principle of subsidiarity, fundamental to adoption mainly conceived and understood as an obligation of countries of origin raises complex issues as intercountry adoption develops.

The contemporary context of intercountry adoption is a place of many constraints and not limited in paradoxes. In order to introduce the topic of this special issue which is dedicated to the principle of subsidiarity, let us take the example that led us to initiate this reflection: if a receiving country which carries out several thousands of intercountry adoptions each year, is also a country of origin for part of 'its' children, does this country respect the principle of subsidiarity? In other words, should a Western country's children without permanent family care benefit, as a priority, from a domestic adoption before this country's potential adopters look abroad? Could one go as far as imagining that the latter may be 'obliged' to consider a domestic adoption, with a view to responding, as a priority, to children's needs?

Of course, and as usual, it is not possible to offer standard responses to these questions. However, given the 'global village' era, the contexts of adoption are so diverse that it becomes necessary to think about our views about adoption and its underlining principles.

A view of the world?

As evidenced by the historical analysis of the instruments (United Nations Convention on the Rights of the Child – CRC -, Hague Convention on Intercountry Adoption (see page 4), the regulation of intercountry adoption has been based on a relatively simple model, which brings together 'poor countries of origin' and 'rich receiving countries'. Even though this assumption may be well understood given the initial developments in intercountry adoption, the evolution of societies, the ease of international displacements and the access to information slowly has blurred this dual view. The practical cases outlined on page 5 intend to illustrate this evolution, and fuel reflection, which may be applicable to an increasing number of cases in a not-so-distant future.

From the child's perspective

If one approaches this reflection from the child's position, it is clear that the principle of subsidiarity imposes on countries of origin, the need to search for domestic care solutions first, prior to considering an intercountry adoption. This obligation is

imposed on States and responds to the protection needs of the children. A receiving country should therefore also assume this same obligation, and ensure that the children who are adopted at home by other countries have not found parents likely to adopt them. This would entail, among other consequences, that the State take the necessary measures to promote domestic adoption, depending on the profile of children deprived of a family, to support the adoption of children with special needs, to develop the mechanisms, which would allow a comprehensive picture of the number and profile of adoptable children compared with the number of adoption applicants, etc. In short, to do what is requested from countries of origin...

In this context, let us remember that article 21.b of the CRC provides that the States Parties '*recognise that intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin*'. However, this instrument is indeed applicable to all signatory States, without distinguishing between countries of origin and receiving countries. This issue is particularly important in the case of adoption of children with special needs, for whom efforts must still be undertaken with a view to promoting their domestic adoption.

From the perspective of the adoption applicants

Given that the implementation of the principle of subsidiarity is imposed on States by virtue of the legal nature of the instruments which enshrine it, it is difficult to foresee that it may be imposed directly on adoption applicants. However, the obligation to promote domestic adoption should further encourage the latter to consider the adoption of a child from their country prior to looking abroad.

One may also note that, even though in some 'traditional' countries of origin, this may lead to a considerable development of domestic adoption, the initiative has sometimes experienced such a success that domestic applicants are now put on waiting lists, given the lack of children. It is therefore not impossible that the nationals of these same countries may one day contact Western countries in order to adopt...

An odd brain-teaser

The creation of this special issue has opened a field of complex reflection and resulted in sessions of particularly stimulating intellectual exercise among our editorial team. We hope that our readers will appreciate our legal and philosophical circumvolutions and we look forward to your remarks and comments, which we will be happy to share.

The ISS/IRC team
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