



## Monthly Review N° 01/2013 January 2013

*As a reminder, this Review is directed, uppermost, at professionals in the field of adoption and child protection worldwide. It is not aimed at being directly shared with prospective or current adoptive parents, as its content and editorial line often raise a sensitive issue, which sometimes requires adequate support for their understanding.*

### EDITORIAL

## Are the best interests of the child always best?

*This Monthly Review covers multiple articles that show, to some degree, how the best interest principle can be misunderstood and misconstrued, resulting in grave consequences for the children in question.*

**T**he best interest of the child is one of the four pillars of the Convention on the Rights of the Child (CRC). Without doubt, the principle has become part and parcel of child protection jargon, so that hardly one meeting, event or publication can go by without it being mentioned. Yet, as this Editorial briefly shows, how the term is interpreted and is applied has not always been the best for each child – particularly in alternative care matters.

### What do international standards actually say?

Article 3.1 of the CRC states that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The child’s best interests must be considered but not as the overriding rule as argued by some.

In only two matters are the best interests of the child to be *the* paramount consideration, being when considering separating a child from his parents (article 9 of the CRC) and in adoption cases (article 21 of the CRC).

With specific regards to matters where children are deprived of their family, the best interest principle is scattered throughout the Guidelines

for the Alternative Care of Children, highlighting its due importance.

### What does this mean in practice?

Whilst there is relative unanimity on the importance of the principle, its implementation has been less straightforward. History has shown the manipulation of the principle to the detriment of children’s global rights depending on who determines the best interest and their motivation.

In the recent past, Governments have made decisions to separate aboriginal children from their families of origin in countries in what they thought was the best for these children. Often this has resulted in the unnecessary break-up of families and much heartache. Indigenous groups have since been demanding the right to become the decision-makers within their communities and to identify solutions for their children – *prima facie* a reasonable request (see article p. 3).

Yet, having communities as the sole decision-makers can also be problematic. This can be seen with the prevalence of harmful traditional practices, such as child brides and exchange of children in lieu of debts in certain countries (see article p. 5). Such practices are a form of violence against children and can lead to their unnecessary separation from their families (see article p. 7).

But even when there are joint decision-makers – such as the Government with the community determining the best interests – if the overall child protection system is weak, and there is widespread corruption, the rights of children may still be overlooked. Regrettably, this has occurred in many intercountry adoption cases, where the system has functioned for the interests of third parties and not for children (see article p. 6).

One can therefore conclude that it is not simply about who makes the decision, but how the best interests are determined. A helpful tool for this end was developed by the UNHCR in its model Guidelines on determining the best interests of the child (see *Monthly Review* 10/2008).

### **Importance of including the child**

Optimally based on the UNHCR Guidelines, to truly achieve the best interest of the child, multiple decision-makers should be involved in an open process. The child – who has the right to participate in decisions that affect his future – must be consulted.

As this editorial has shown, the best interest principle can be easily misinterpreted. Thus, it is with great interest that the ISS/IRC looks forward to the finalisation of the General Comment on the issue as it is currently being drafted by the CRC Committee.

The ISS/IRC team  
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