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'There is no cause which merits a higher priority than the protection and development of children, on whom the survival, stability and advancement of all nations - and, indeed, of human civilization – depends.'

Plan of Action of the World Summit for Children
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EDITORIAL

2019: Heading for the child as a subject of rights

On the 30th anniversary of the Convention on the Rights of the Child (UNCRC) and the 10th anniversary of the [Guidelines for the Alternative Care of Children](#), 2019 is conducive to a look back on one of the greatest steps forward of humanity: the recognition of the child as a subject of rights, an element that must be placed, once again, at the heart of the debates.



The protection of children without parental care, adoption, children on the move or surrogacy, all are hot topics abound with legal, political, social and ethical debates, often at the expense of the child. Despite the complexity of some of these issues, the ISS/IRC believes the year 2019 is a true blessing to recall, to the public opinion, political decision-makers and other professionals, what the respect for the child, their words and their rights entail in practice. Thirty years after the adoption of the UNCRC, have the child's voice and their rights found a proper place?

Right of the child vs right to a child

'There is no right to a child, but truly a right of a child to grow up in a family environment.' This leitmotif – considered as a gain in the field of adoption in particular – appears, nonetheless, questioned in the context of adoptions still taking place in inadequate contexts, such as in emergency situations (see Monthly Review No. 08/2010 of August 2010), adoptions undertaken by some expatriates (see Monthly Review No. 210 of March 2017) or in cultural contexts, in which adoption happens in a logic of exchange and donation (see the Kanak society in New Caledonia, p. 8), which are just a few examples. Even though the numbers are much lower since the 1993 Hague Convention, some adoptions continue to get round the official channels and to be guided

mainly by the satisfaction of a wish or as a response to a humanitarian impetus¹.

Furthermore, this right to a child reappears strongly with the expansion of medically assisted reproduction, such a surrogacy, even more so when it has an international element to it. On the one hand, the debates are largely dominated by persons hoping to have a child or the defenders of the right of women to do what they wish with their body on the one hand, or against any form of exploitation, on the other. Furthermore, does the issue of the resort to adoption in this particular context – which intends to create a parentage between the child born from a surrogate and the non-genetically linked intending parent – not result in a denaturation of the institution of adoption? Does the latter not fill a lack of legal

solutions for a practice prohibited in many countries? Thus, the child, despite being the main party, is not only absent in the debates, but also has his or her rights at risk, in particular when the surrogacy agreements represent a true case of sale of children². Whilst recognising the correlation of the interests and rights at stake, the ISS/IRC advocates for the rights of children born thanks to this method to be respected through the development of international principles on the subject (see p. 10).

Right of the child vs unsuitable systems

As addressed in Monthly Review No. 225 of September-October 2018, the recognition of individual and collective rights to children only is meaningful if these are part of a solid, structured and operational protection system. Furthermore, the respect for the child's right to grow in a family, for example, is inseparable from the existence of a child protection system with effective family and community measures and an efficient deinstitutionalisation policy (see p. 7). Without such provisions for their comprehensive and special protection, when necessary, how can the principle of subsidiarity be safeguarded (see Monthly Review No. 204 of August 2016)? Likewise, the right of a child on the move to preserve his or her family relationships (see Monthly Review No. 224 of August 2018) can only be a reality if the country adopts an efficient protection system for the alternative care of these children. In line with the latter, the project of a [MOOC](#) on children on the move, in which ISS is one of the leading organisations, aims to promote quality care for these children, which coordinates humanitarian responses and available options within the child protection system. Furthermore, the right of a child to be heard will only be valuable

In order to have laws and systems that are as close as possible to the needs of children, their active participation must become a standard, rather than an exception. Let us make of 2019 a year of change, during which the child will be included in debates, a year after which children will be recognised as human beings in their own right and respected as such.

if there are child-friendly measures in place adapted to children within the social, judicial and child protection services³.

Right of the child to be a stakeholder in his or her life

As taught by J Korczak, a pioneer of the UNCRC, children have 'the right to be what they are, *i.e.* not human beings in the making, but human beings in their own right, who deserve respect, listening and trust'. Over 80 years after the works of this passionate defender of the child's right to participation, may we affirm that societies have realised the importance of this right and its impact on the situation of children? Are the adults surrounding the children ready to allow the latter to assume an active role in the decisions affecting him or her? Do they believe sufficiently in the child and are they capable of gaining access to their feelings, views and perceptions?

There is no lack of promising practices to demonstrate how adopted children and adults can be true motors of change. Some are committed to developing family-type alternative care, others create programmes of support in the context of searches for origins⁴. Others even express their views in court and thereby create true case-law to reestablish their rights (see Monthly Review No. 227 of December 2018). In general, there are initiatives worldwide to ensure that the voices of children and young people are heard, such as in Latin America (see p. 4), in Asia (see Monthly Review No. 223 of July 2018) or in Europe⁵. In sensitive fields, such as the resort to surrogacy or migration, participation remains an important challenge. How does one ensure the effectiveness of child participation of a child to be born or of a child considered to be a migrant first and then recognised as a child?

The ISS/IRC team,
January 2019

References:

¹ See also the Editorial of Monthly Review No. 220 of April 2018.

² Such as Art. 2 of the Optional Protocol of the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (see Monthly Review No. 219 of March 2018).

³ See Monthly Review No. 208 of January 2017.

⁴ See Monthly Review No. 225 of September-October 2018; as well as the contribution of Céline Giraud in Baglietto, C., Cantwell, N., Dambach, M. (Eds.) (2016). *Responding to illegal adoptions : A professional handbook*. Geneva, Switzerland, ISS. Available in English at: [https://www.iss-ssi.org/images/advocacy/Illegal Adoption ISS Professional Handbook.pdf](https://www.iss-ssi.org/images/advocacy/Illegal_Adoption_ISS_Professional_Handbook.pdf).

⁵ See the implementation tools and tools for the assessment of child participation developed following the Recommendation of 2012.

