

Dirección Newsletter: Esther Grau y Diana Marre
Contenidos del Nº 11: Blanca Gómez Bengoechea
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ON ADOPTABILITY

While often, within the adoption procedure, we tend to give special importance to the training and evaluation of prospective adopters; the adoptability of minors is perhaps an even more pertinent issue to which we usually pay less attention.

We say that adoptability is even more pertinent than prospective parents' suitability because, as adoption is a form of child protection, the start of the procedure should be marked precisely by the existence of a child with no family, in other words, an adoptable child, rather than by a family looking to adopt a child who, obviously, will then be evaluated.

The assessment of a child's adoptability must be made always having their best interests as fundamental and from two distinct aspects; legal and psychological



Van Gogh, 1890

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Adoptability requires legal consideration, namely the fulfillment of certain requirements set by law, to ensure that adoption is the best possible medium of protection for a given child. This implies, firstly, the presence of the principle of subordination, and secondly that all the necessary consent is granted.

Subordination is dealt with in a principle established in the The Hague Convention on Intercountry Adoption 1993 - ratified by Spain in 1995 - which governs all adoption procedures, according to which definitive separation from the family of origin and integration into a new family must be the last of all measures to be considered in each case. Before suggesting such a radical and definitive alternative to protection, it is necessary to try other types of help which might allow the child to remain with its family, or, at least, within proximity to its family. For this reason, the Convention recommends prioritizing adoption or fostering within the extended family over and above adoption to a new family, and recommends solutions which allow the child to remain in its own country rather than international adoption.

Following this criteria of subordination, each country is responsible for determining which protection measures they will apply to each child and, as such, which vulnerable children are adoptable and which are not. This is also true in Spain where, although there are a considerable number of children separated from their families of origin, very few of them are considered adoptable by our authorities, and other measures are established to protect them, such as family foster care and residential homes.



Van Gogh, 1883

As for consent, it must be granted by those qualified to do so (usually parents, but also institutions for the protection of children when the children were already in their care), but it is also essential that the consent is sufficiently informed to have been granted without pressure or tradeoffs of any kind, and that it is adequately documented.

In short, to declare adoptability is to confirm that there are children for whom definitive integration into a new family is necessary, that this integration has been accepted by those responsible for the children, and that the consequences of the process are fully understood.

Nevertheless, while determining a child's adoptability, it is also necessary to inform him, taking account of his wishes and opinions, and seek his consent if he is mature enough for it. The child's accordance with the measures being taken, as well as being a right, is also essential for the success of the adoption.

It is necessary, therefore, in addition to meeting the legal requirements we have mentioned, to bear in mind certain important psychological aspects, both to assess the appropriateness of the measure in relation to the child's best interests, and to try to minimize the chances of failure.



Van Gogh, 1882

Thus, before granting adoptable status to a child, we must ask ourselves if he is willing to accept the adoption, if he is able to adapt to such a major change, if he is prepared to receive new parents and a new family, what he thinks about this possibility (if he is mature enough), in short, if he can benefit from what adoption means.

The Hague Convention on Intercountry Adoption commits signatory countries to ascertain a given child's adoptability (a task entrusted to the competent authorities of the children's country of origin), to guarantee the subordination of the measure and that due consent is granted, informed, free and without any compensation or payment. It mentions further that the mother must consent to adoption after the birth, and that there should be no contact between the prospective adoptive parents and the child's parents until adoptability has been determined and the relevant consent provided.

However, it seems that we tend to "flee" from these guarantees, and, attracted by shorter processing times, we adopt in countries that are not members of the Convention. It is important that, when choosing the country from which to adopt, we reflect also on all these issues of adoptability, because we run the risk of finding that we have adopted a child who has family in his country of origin, or expects to return to his biological parents, or was declared adoptable with consent given without adequate information or without understanding what adoption meant, especially relating to the severance of ties and the irrevocability of such a measure.



Van Gogh, 1890

One of the questions which arises in relation to children in need of protection is, given that there are so many children in need around the world and so many families willing to adopt them, why are the procedures so lengthy and complicated? Well, the reality of our world is that, although there are many children in need, not as many are eligible for the adoptability we have mentioned, and many of those who are eligible, do not have the profile sought by prospective adopters.

First, it is important to distinguish the need for adoption from the child's adoptability: a vulnerable or needy child may have a family which is willing to care for him, but which lacks the means and/or knowledge to do so. This child, in principle, and following the principle of subordination, as already discussed, does not need a new family, but rather that his own family be helped to take care of him. An adoptable child, meanwhile, is a child in whose best interests it is to be integrated into a new family, because his parents cannot take care of him, because they are not willing to do so, or because they have not cared properly and the child has been removed permanently from them by the competent authorities.

At this point, it is important to note the difficulties that exist in some countries where there are many vulnerable children, to formally declare the absence of family, and with it, the adoptability of children. There are cases where states lack the political and legal structures necessary to do so, as well as negligent authorities, who do not pay heed to this issue and do not invest resources in it, or even countries ideologically opposed to adoption, which therefore never declare vulnerable children as adoptable. Children who are in this situation are not adoptable because no competent authority has designated them as such and therefore they cannot be permanently integrated as children into another family.

As a second important issue, it is necessary to note that, in regard to the profile of children, the reality is that those who offer to adopt, look for children that are far from being the kind of children who most often need a family. Generally, prospective adoptive parents seek to incorporate a child who is as young and as healthy as possible, while children who are waiting for a family tend to be somewhat older, sibling groups or children with some type of special need.

As there are more adoption applicants than healthy, young, adoptable children, the current situation is that there are parents who wait (those who want healthy children) and there are children who wait (those with special characteristics).

This "imbalance" means that, in some cases, pressure from waiting parents prompts a "search" for children with the desired characteristics in order to declare their adoptability. Thus, cases occur with some frequency where biological parents are pressurized to consent to adoption, where adoptability is determined after the assignment, or after a personal meeting between the child and prospective adoptive parents, even of children being abducted from their families or directly conceived for adoption.

This situation has also provoked the beginning of a necessary and overly delayed reflection in Spain on the adoptability of the children in our juvenile facilities, for whom we must provide a stable and permanent life trajectory. The debate on this issue is currently open in the Spanish Senate where, for the past few months, a special committee has been convened to study domestic adoption.

Perhaps it would be good to take advantage of this period of analysis and discussion on the issue to rethink the meaning of subordination, and ask if it is legitimate to arrange intercountry adoptions when there are children waiting for families in one's own country, or should national options be exhausted by the prospective adoptive parents before adopting from abroad.



Van Gogh, 1890

REFLECTIONS

Adoption in a situation of catastrophe

Frequently, whenever a particularly bloody war or a particularly destructive natural disaster happens in one part of the world (as recently happened with the earthquake in Haiti), the media present us with news and images of children suffering, and the desire emerges among the public to help these children by bringing them to be part of their families.

In these situations, many people are surprised to learn that our International Adoption Act (Law 54/2007 of 28 December) specifically prohibits the adoption of children resident in countries at war or natural disaster.

The reason for this prohibition is to be found mainly in two issues central to the processing of an adoption: the motives of the prospective adoptive parents and the declaration of adoptability of the children.

Regarding motivation, it is important that the desire to adopt is sufficiently mature, and has been reflected on and prepared for sufficiently. To adopt is to become a parent for life of a child who will become an adult, and it may be dangerous to the success of the adoption if the offer originates only from an impulse of solidarity from images of suffering given to us by the media.

Regarding adoptability, in these situations it is particularly difficult to check the condition of these adoptable children, and it is also a prerequisite to try to locate parents or relatives willing to care for the children, or seek alternative care solutions within the country before subjecting the children to all the changes that come with international adoption. In this sense it is important to note what has been said about psychological adoptability: is a child ready for international adoption after suffering an earthquake, the destruction of his home and separation from a family when in many cases records do not even exist if the family has died or if they are still looking for him?

There are many ways to help children who find themselves in these situations, and, in the majority of cases, the best ways do not involve making ourselves their parents and bringing them to our country to form part of our families.

...FURTHER READING AND VIEWING

- ABC News 2009, [Fly away children](#), 27 min



- TV Documentary, [Yo, la adoptada](#).



- TV Documentary 2007, [Huérfanos en venta](#).



- Ródenas, V. 2007. [Guatemala. Se exportan niños](#). Madrid, ABC



- Cantwell N. 2003. ["La adopción internacional. Un comentario sobre el número de niños adoptables y el número de personas que buscan adoptar internacionalmente"](#). Conferencia de La Haya de Derecho Internacional Privado, Boletín de los Jueces, Volumen V, Primavera 2003.

- Servicio Social Internacional, Centro Internacional de Referencia para la Protección del Niño en la Adopción, [Adoption from Viet Nam](#)



ALSO RECOMMENDED...

- Social Services International, International Reference Centre for Child Protection in Adoption, "*Edición especial sobre el principio de subsidiariedad*", *Monthly Bulletin* nº 3-4/2009, March-April 2009.
- Social Services International, International Reference Centre for Child Protection in Adoption, "*La determinación de la adoptabilidad del niño*", *Ficha de formación* nº 20
- Social Services International, International Reference Centre for Child Protection in Adoption, "*Derechos del niño en la adopción nacional e internacional. Marco ético. Orientaciones para la práctica*"
- Social Services International, International Reference Centre for Child Protection in Adoption, "*Ethiopia: Protection of the child deprived of, or at risk of being deprived of, the family of origin*".

RECENT EVENTS

Between the 17th and 20th of February 2010, three associations all together celebrated a congress in Albuquerque, United States:

- *39th Congress of the Society for Cross Cultural Research (SCCR)*
- *Congress of the Society for Anthropological Sciences (SASci)*
- *American Anthropological Association's Anthropology of Children and Childhood Interest Group (AAAACIG)*

Two of the Workshops were co-organised from the Group of Investigation AFIN-UAB (Confronting the Challenges of Intercountry Adoption I and II):

Co-Chair: Judith Gibbons (Saint Louis University)

Co-Chair: Diana Marre (Universitat Autònoma de Barcelona, Spain)

Discussant: Deborah Best (Wake Forest University)

Confronting the Challenges of Intercountry Adoption I

Presenters:

- Leslie Kim Wang (University of California, Berkeley) Returning to China: The Experience of Adopted Chinese Children and Their Parents
- Rachael Stryker (Mills College) A Comparison of Adoptive Parents' and 20 Transnational Adoptees' Perspectives on Postplacement Experiences in Families at Risk for Dissolution
- Kathleen Bergquist (University of Nevada - Las Vegas) Operation Babylift or Baby Abduction? Implications of the Hague Convention on the Humanitarian Evacuation and 'Rescue' of Children.
- Carmen Monico & Karen S. Rotabi (Virginia Commonwealth University) Voices for Truth and Reconciliation in El Salvador: The Experience of the Association in Search of Disappeared Children in Post Hague Convention on Intercountry Adoption (HCIA)

Confronting the Challenges of Intercountry Adoption II

Presenters:

- Carmen Monico (Virginia Commonwealth University) Issues of Adoptions from Haiti: An Open Discussion
- Natalina Barcons-Castel, Neus Abrines, Diana Marre, Carme Brun, & Albert Forniels (Universitat Autònoma de Barcelona) Resilience: Adaptive and Social Abilities in Internationally Adopted Children in Spain
- Jennifer Jue-Steuck (University of California, Berkeley) Adoption Pride: Social Capital & Cross-Cultural Research Through a Transnational Adoption Lens
- Neus Abrines Jaume, Natalia Barcons, Diana Marre, Albert Fornieles, & Carme Brun (Universitat Autònoma de Barcelona) Attention Deficit Hyperactivity Disorder (ADHD) in Internationally Adopted Children

FUTURE EVENTS

Between the 11th and 15th of July 2010 the following event will take place in Leiden, Holland:

- *2010 International Conference on Adoption Research*, bajo el título *The Many Faces of Adoption in Today's World*

Several members of the AFIN group will participate on it:

- In the paper's sessions:

Paper Session 2

Title: The many faces of adoptability in intercountry adoption: a multidisciplinary approach

Covenor: Juan Pedro Nunez Partido

Paper 1: Title: The legal exigencies for the determination of the adoptability of the child, Salome Adroher Biosca, Universidad Pontificia Comillas

Paper 2: Title: The Balance between legality and legitimacy in adoptability declaration: Ethical and social issues in intercountry adoptions, Blanca Gomez Bengoechea, Universidad Pontificia Comillas

Paper 3: Title: Is every adoptable child able to be fully adopted? Questions from psychosocial research, Ana Berastegui Pedro-Viejo, Universidad Pontificia Comillas

Paper Session 16

Title: Changes and continuities in discourses and practices about the needs of the adopted child

Convenors: Diana Marre and Barbara Yngvesson

Paper 1: Title: From "Russian orphan" to "a child for adoption": International adoption from Russia to Spain, Lilia Khabibullina, University of Barcelona

Paper 2: Title: The "truth that can be told". Re-writing broken identities to inventing a 'true' family tale in transnational adoption, Rossana DiSilvio, Milano-Bicocca University

Paper 3: Title: 'Monitoring children without the children.' International Adoption in Spain from children's rights perspective, Julia Ramiro Vazquez, Universitat Autònoma de Barcelona

Paper 4: Title: What's best for my child? (Dis)continuities within the familial and professional narratives about adopted children, Marta Bertran, Universitat Autònoma de Barcelona

- In the poster sessions:

Poster Session 5: *Something Different*

Poster 2: Other people's children; the otherness revisited, Vicente Casalta, Universitat Autònoma de Barcelona

Poster Session 6: *Social Development of Adoptees*

Poster 4: Resilience: adaptive and social abilities in internationally adopted children, Natalia Barcons, Universitat Autònoma de Barcelona

Poster Session 11: *The Cognitive and Psychosocial Effects after Institutional and Foster Care*

Poster 7: Attention Deficit Hyperactivity Disorder (ADHD) in internationally adopted children, Neus Abrines Jaume, Universitat Autònoma de Barcelona

LINKS

- Social Services International: www.iss-ssi.org
- The Hague Conference: www.hcch.net



AFIN NEWS

- The [AFIN web page](#) is now available
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- To subscribe AFIN distribution list: info.afin@afin.org.es

ABOUT THE AUTHOR

Blanca **Gómez Bengoechea**,

- Doctor of Law and University Specialist in intervention with minors in difficulty and social conflict.
- Professor of the Faculty of Law, Universidad Pontificia Comillas (ICADE)
 - Researcher of the University Institute of the Family, Universidad P. Comillas, she has undertaken diverse research regarding adoption, family and child protection.

Among her recommended **publications**:

- Berástegui Pedro-Viejo, A., Gómez Bengoechea, B. (Coords.), *Los retos de la postadopción: balance y perspectivas*, Ministerio de Trabajo y Asuntos Sociales, Madrid, 2008.
- Berastegui Pedro-Viejo, A., Gómez Bengoechea, B. Libro. *Esta es tu historia: Identidad y comunicación sobre los orígenes en adopción*. Universidad P. Comillas, Madrid, 2007.
- Gómez Bengoechea, B. *Derecho a la identidad y filiación: búsqueda de orígenes en adopción internacional y otros supuestos de filiación transfronteriza*, Dykinson, Madrid, 2007.
- Adroher, S.; Berástegui, A.; Gómez Bengoechea, B. *Adopción internacional en la Comunidad de Madrid: Guía para padres*. Consejería de Familia y Asuntos Sociales de la Comunidad de Madrid (D.L. M-52.562-2006)

SOBRE LAS ILUSTRACIONES

Vincent Willem Van Gogh (Zundert, 30 March 1853, Auvers-sur-Oise, 29 July 1890) was a Dutch Post-Impressionist painter whose work had a far-reaching influence on 20th century art for its vivid colors and emotional impact. In spite of his hard life, painting was always the way by which Van Gogh canalized his feelings. "And my aim in my life is to make pictures and drawings, as many and as well as I can; then, at the end of my life, I hope to pass away, looking back with love and tender regret, and thinking, 'Oh, the pictures I might have made!'" (Vincent Van Gogh).