

ADOPTION OR FOSTERING? THE CASE OF MOROCCO

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Abstract

First of all I would like to say that it is a pleasure for me to be here sharing this 1st International Forum on Infancy and Families and to thank the organizers who have invited me to attend. As President of the Association IMA (Friends of the Infancy of Morocco) I am extremely satisfied to be able to participate in this Forum, since it gives us the opportunity of expounding the reality of the adoptive process of Moroccan minors before a privileged public.

IMA is, at present, the only association in the whole Spanish state that works voluntarily to offer up to date information about the adoption process of minors from Morocco for the families who so wish, to push the Spanish public authorities towards the maximum knowledge and recognition of these adoptive processes and to be able to obtain, in the near future, a bilateral agreement that establishes a common judicial framework.

For this reason, when the CIIMU offered us the possibility of making this conference with the title you know, we considered that we should offer them a description within the legal framework that governs the adoption processes of Moroccan minors, but also a family vision since we who comprise the IMA Association are adoptive families of Moroccan children.

And so, to be able to answer this double objective, I will explain what the characteristics of the adoptive process are for Moroccan minors, in which legal framework they are developed and how the adoptive families can manage to live. But to begin we need to take the case of the adoptive processes of minors in Morocco in its just measure.

Some details of reference

Catalonia is one of the Communities with the greatest volume of applications for certificates of aptitude in the whole of Spain. It is also in this Community where there have been the most number of adoptions of Moroccan children.

In 2005 there were 21 requests of Aptitude for Morocco in Catalonia, in the 11th place, after countries like Haití, India, Brazil or Nepal, of a total of 2.588 applications. In that same year, the Catalan Institute for Fostering and Adoption issued certificates for adoption for all the families who had applied, in the ninth position together with Bolivia (with a total of 2,098 certificates). It is the second African country with most processes in aptitude carried out, after Ethiopia (by a long way).

So Morocco, is a minority destination country for adopting families and, in spite of this, year after year, in Spain, the processes have increased exponentially. Due to the nature of the adoption process of Moroccan children, there are no conclusive official details, but if in 1998 3 processes were produced (according to details facilitated to the Spanish Ministry of Work and Social Affairs by the Spanish consulates abroad) in 2004 there were 47, in 2005, 23, and in the first six months of 2006 there have already been 21 processes (according to information facilitated to IMA by the very families and the center of Moroccan control of children).

The legal framework

Without wishing to develop very extensively the legal fundamentals of the adoption of children of Moroccan origin (also since I am not an expert in the matter) I thought it was important to express at least what the general framework in which we circulate is.

The two principal norm texts of the Moroccan legislation that enable Spanish citizens to take over abandoned children are, on the one hand, Law No. 15-01 relating to *kafala* of abandoned minors [dahir n° 1-02-172 of June 13, 2002, published in the BO No. 5036 of September 5, 2002, in French, and BO No. 5031 of August 19, 2002, in Arabic] and, on the other hand, the Moudawana or Civil Code and of Succession.

The general dispositions of Chapter 1 of the Law define the concept of an abandoned minor and the content of the *kafala*. According to article 2 "The control (*kafala*) of the abandoned minor, in the sense of the present law, is the commitment to be in charge of the protection, the education and the maintenance of an abandoned minor with the same degree that a parent would do for his (biological) child. The *kafala* does not give the right to filiation nor succession."

Together with the state legislation, Morocco has signed the following International Conventions: 1) Hague Convention of October 19, 1996 relating to the responsibility, the applicable law, the recognition the execution and cooperation in matters of parent responsibility and protection measures for children. 2) The United Nations Convention on Children's Rights of 1989.

The adoption of a minor in *kafala* in Spain is obtained via the sentence of adoption by the Courts of the family domicile. To request the Judge for the adoption of a child in protection, the Civil Code is applied (Art 9.5 and 19) which establish that a year must be waited after the guardianship (in this case the *kafala*). In the case of Catalonia, the Family Code is applied (art .117 and 115), which permits the application of the adoption of a protected minor on the following day of the guardianship.

All the process from obtaining the aptitude until the adoption of the minor can take, according to the Autonomous Communities and the political situation of both countries from two to four years, but during most of the time the family lives with the minor.

Therefore, when we raise the question "Adoption or fostering? The case of Morocco" we can state that it is not possible to carry out an international adoption in Morocco, but it is possible to have adopted children of Moroccan origin.

The adoption process

As can be seen, to adopt a Moroccan child is a process full of peculiarities with ups and downs and difficulties. This does not deter, as expressed, more families every day from wanting to adopt, particularly more single women, and opting for Morocco, that requires important doses of patience, strength and perseverance.

In many cases, the people who choose Morocco as the origin of their future children, have some personal link with the country, which helps them to accept, although not always understand or share, the attitudes and resolutions of the competent authorities, not only in Morocco but also in Spain.

The first thing to understand is that in Morocco there is no legal judicial figure adoption, only that of the *kafala* (which could be compared to a guardianship or permanent fostering). Further on we will see what the legal framework of this figure is. In any case, this reality has, at least, four important repercussions:

- The minor we are going to "*kafala*", preserves its judicial state, that is to say fundamentally the name and surname, and nationality; for Morocco we are the "tutors", not the parents.

- The judicial process for obtaining the *kafala* is carried out in one's own name and, therefore there is no intermediary by credited entities (ECAIs) in this country; which does not mean that the family cannot have a legal representative, both in Morocco and in Spain during the adoption process. It is therefore a process via the Public Administration (better known as "free").

- The entry by the minor into Spain is regulated by the Law of Immigration, since at present the process for a specific and favorable visa for the children in *kafala* by Spanish families has not been resolved. At present the visa conceded to these minors is via "family regrouping" and requires a favorable resolution for the residency of the minor by the corresponding Government Subdelegation.

- Once in Spain, if this proceeds, the family applies to the Courts for the adoption of the child that has been in *kafala*.

Morocco permits *kafala* by couples or single women who are national or foreign but in any case Moslem. For this reason, the large majority of foreign people who start the adoption process in Morocco, as a prior step, celebrate the conversion to Islam.

Any people who wish to carry out a *kafala* in Morocco, must also accredit that they are in full physical, mental, material and penal faculties to obtain the tutor responsibilities of a minor. The Certificate of Aptitude and the Psycho-social Report (together with other documents that comprise the *kafala* Dossier) are the Letter of Presentation for the families before the Judges of Guardianship of Minors in Morocco. As well as the presentation of this Dossier, the same as any Moroccan family who may wish the *kafala*, a judicial process must be carried out as detailed by the Law which, for foreign families, usually takes about a month and a half from the moment of first meeting their child and they request their "*kafala*" from the Judge until they obtain the pertinent authorizations to travel to Spain.

It is very important to bear in mind that no two adoption processes are the same, and this is particularly true in the case of Morocco. In any case the time that a family spends in Morocco, represents a very special opportunity of getting to know, sharing and establishing a unique bond with the child and his/her country of origin, since every day the family may go to the center to see their child, feed him or her, change, cuddle, learn songs, to find about prior antecedents and state of health at first hand, collaborate with the people in charge of attending the other children... in fact to be nearer to the child and the surroundings in which he/she has grown up until that moment, an experience for the families that represents an open door for establishing a unique bond a some time before going home with the child.

The moment of meeting the future child is very special, and at the same time feared by many families, as the orphanage does not carry out the referral, but rather it is the family that has the responsibility of election. Although this can sound cold, or perhaps scandalous, it is true that the election surges alone and few families make a rational analysis of it, but rather are simply led by intuition, by the children's looks by their gestures. We families usually say that in fact they choose us and not vice versa; at that moment each family establishes the choice in a personal and intimate way.

Morocco is, therefore, a very particular country for international adoption, but not because of that less full and satisfactory than other countries in the world, every day, more and more Moroccan children find a family in Spain.