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Harvard Law School Professor, Elizabeth Bartholet, Expresses Her Views on Adoption in Peru

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Elizabeth Bartholet is a law professor and Director of the Child Advocacy Program at Harvard Law School. She teaches courses on Civil Rights Law and Family Law. She is an outstanding lawyer who specializes in child protection, adoption, and reproductive technology. Dr. Bartholet is the author of various books and articles in the field, including Family Bonds: Adoption, Infertility, and the New World of Child Production (1999), and Nobody's Children: Abuse and Neglect, Foster Drift, and the Adoption Alternative (1999), among others. She also contributes to various legal journals and admits to being a reader of the Jurídica supplement. On the occasion of her personal and professional visit to our country, José Antonio Pino Mujica, a lawyer and contributor to our publication, interviewed her.

Welcome to Peru. Is there something special about this visit to our country?

Yes, for me it is very special to return with my sons, who were born here. They are now 23 and 25 years old, and it is a pleasure to reconnect with friends that they and I met back then at the time of their adoption. Although this is not the first time we've returned, it is much more significant on this occasion since this time they are meeting with their birth families.

My sons are loving everything about Peru, including the food. One of my sons has a limited number of foods he is willing to eat in the United States, but here in Peru he is eating everything, trying all types of foods and cooking. This trip has really been quite wonderful in every way. It is gratifying to see how Peru has grown and developed economically in the decade since our last trip, and above all to see how the situation for all its people has improved in every respect.

With your expertise in the field of Family Law and your particular interest in adoption issues, how do you view this institution today?

Well, to begin, my general opinion is that adoption is overly restrictive in all countries. I think what is most important for children who cannot live with their biological parents is to be integrated as soon as possible into a good family. I therefore feel that it is necessary to challenge the world to change laws and policies so that children can secure a family and a home as quickly as possible. Specifically in the case of Peru, I consider international adoption to be overly restrictive in that very few cases of international adoption are allowed, and in those cases, the child is usually at least two years old. This is bad for children. This same criticism applies to virtually all adoption systems in South and Central America. It is also true that the United States, my country, is overly restrictive when it comes to adoption.

In our country, the national secretary of Adoptions of the Ministry of Women and Social Development has maintained that adoption isn't necessarily based on knowing which family is the most generous or altruistic; rather the priority is the protection of the child, and what we need to do is to find a family with high levels of tolerance.

I know Dr. Manuel Campana's position, and it is a widely held view. I agree that we need to seek families with the capacity to parent children with the kinds of needs that many children available for adoption have. But I also believe that a family who affirmatively seeks to adopt is generally likely to be a good parenting prospect. Therefore, while it is good to thoroughly evaluate families, it's bad when the evaluation process takes too long, reducing the chances for children to find families. Still, I understand that Peru's current process for screening parents compares well with the prior process and with many other countries.

Following that, what you think of the work of the National Secretary of Adoptions (SNA)?

I understand that recently the SNA has done valuable work to improve the adoption process here. I state this based on what I have been told on this trip by others who have been following the work of Dr. Campana and his team, including, among others, Dr. Daniel Cáceres. I have urged them to come to the United States and told them that they will find the doors of Harvard Law School open for their visit.

It is impressive to find professionals of the highest quality specializing in and committed to improvement of the adoption system. I gather that these men have made radical changes that have generally been received positively. I understand that actions have been taken to protect against corruption, reduce the cost of adoption, and more. It is important that they have been working hard to reduce the time it takes for the placement and integration of children with adoptive families. I gather that this period has been reduced to only three weeks, which is fantastic. I remember when I adopted my sons I had to spend more than three months [in Lima] waiting for the legal approval of my adoption.

It is also important to facilitate the whole adoption process, from beginning to end, so that more children can have families, and so that they can be placed as early in life as possible.

Should we demand from the SNA a greater number of adoptions or should we demand that judges exercise greater swiftness in granting orders of abandonment?

First, I believe that the Peruvian government should provide this institution [the SNA] with the political and economic support it needs to optimize its work. With such support, that office could place many more children who need adoptive families.

I also think that judges should be more efficient in completing their function in terms of adoption. From what I have been told, they take too much time to rule. This is terrible; all cases of abandoned children should be a priority for quick resolution. It is important to keep in mind that it is the life and the future of a child that is in play, which can be destroyed if the child spends many months or years confined to an institution because of delays in resolving their legal situation.

The Special Reform Commission of the Child and Adolescent Code has passed an amendment to the administrative adoption system, proposing that after the Adoption Council approves the placement of a child, the case would then go to the Judiciary for approval, and if it is not approved it could then be appealed. What do you think of that?

Without getting into any confrontation, I think that this change would be a terrible setback for children. At present, I gather that the SNA takes a period of approximately three weeks to verify a family placement and approve an adoption—a time period which is acceptable, as I have expressed earlier. To return to a judicial process incorporating much more significant delays would be inhumane for both children and for adoptive parents. Again my own case is an example. When I adopted I had to spend more than three months living outside of my country until the adoption ruling was issued, a requirement that would likely prevent almost all who might otherwise be interested from applying for international adoption.

Based not just on my personal experience, but 25 years of research, the shorter process is definitively better. There is a big difference between the twenty days that the SNA now takes and the ninety or more days that the judges took before. I cannot understand the reason for returning to a system giving the judges the opportunity to again inordinately delay resolution of adoption cases. Now you have a specialized institution, the SNA, responsible for the studies of the families and the children, together with the Adoption Council designating which parents are the best fit. There seems no need to add another authority to approve the adoption.

I don't know who made this proposal to return to past eras and burden the adoption process with additional delays, but it seems you must turn to the Legislative Body, where the congressional representatives can stop this proposal from succeeding. They have a moral, ethical, and social obligation to respect and fight for the rights of children, especially the right to live with a family, as is recognized by the Convention on the Rights of the Child, to which Peru is a signatory state.

I worry that subjugating the designation made by the Adoption Council to judicial approval will result in children spending more time in institutions, without enjoying the right to have a family, thus extending their victimization by the State. This should be understood as a violation of their human rights under international law. Because of this I call on the congressional representatives to resist changing the law in a way which would be harmful to children.

The principal reason for this proposal is the argument that only a judge can grant an adoption. What consideration does this argument merit?

I don't think there is any special magic in judges. As far as I understand the current system, the judges are legally mandated to decide whether a child is in a state of abandonment and thus eligible for adoption, or not. This gives the judges an important role protecting basic rights of birth parents and children. I don't see any special reason why it should only be judges who have the final decision about adoption. I think that an official institution, such as in this case the SNA, is equipped to carry out the family placement and integration process, and make the final adoption approval.

Thank you for your time. Do you have anything else to add?

Thanks to *Jurídica* for allowing me to offer my professional impressions about adoption, this very sensitive institution, to Peru and to others concerned with the situation of unparented children. This is a topic that I have been immersed in studying for 25 years. As you know, I follow adoption policies throughout the world, their progress, and also their unfortunate setbacks. I am particularly interested in adoption policy in Peru, because of my own adoptions here. From the pages of this journal, I ask the SNA to keep working and to continue improving its system, always looking for ways in which more children can be placed with families in a swift and safe manner.

I see that you have in your hands a copy of the supplement *Jurídica*. How did you obtain it?

Well, it was given to me and is now mine! (laughs). And I plan to carry it back to the library of the Law School at Harvard University.