

Policy Brief, June 2012

Globally, tens of thousands of children are adopted from one country to another every year, with the vast majority of them being adopted from developing to developed countries.¹ While the number of international adoptions in the last several years has declined, there were still approximately 24,000 children internationally adopted in 2011.² Research has shown that growing up in a supportive family environment is crucial to the successful development of a child³ and, where other family-based options are not possible, intercountry adoption⁴ has allowed for abandoned, orphaned or children with disabilities to be raised within a loving family from another country.

Effective regulation of intercountry adoption, however, is essential to ensure the best possible solution for each and every child. It is also critical that commercial or criminal gain, fraud, child trafficking, and the deception of the birth parents do not play any part in the adoption process.

Best Interest of the Child

Save the Children recognizes that every child, regardless of his or her country of origin, has unique needs and circumstances, while retaining the same rights as all other children. The Convention on the Rights of the Child (CRC) focuses on the importance of human dignity for all children, ensuring their protection, participation, wellbeing, survival and development.⁵ The CRC highlights that decisions affecting children – such as determining the permanent care solution for a child – should always be in “the best interest of the child” which takes into account the child’s wellbeing, safety (both physically and emotionally), wishes, individual circumstances including the community and cultural context with which the child is familiar, and the living situation, including the presence or absence of parents or other family members. Children, depending on their age and maturity, are an integral part of the decision making process. Particular attention may be required to ensure that children can maintain their cultural identity.⁶

The CRC clearly states that every child has the right wherever possible to know and be cared for by his or her own parents. Poverty and a lack of resources should never be a reason for the separation of child from his or her family. To determine the best permanent care solutions for a separated child, Save the Children considers a range of placement options including providing support to the family to retain the child, returning the child to his or her biological parents, strengthening the care given by relatives and extended family members, and domestic or intercountry adoption. As stated in Article 21 of the CRC, intercountry adoption should only be considered after all other local family care options have been exhausted, and national adoption should be always prioritized over intercountry adoption where both options are available.⁷

Regulation & Protection

In the 1990s the *Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption*, also referred to as the Hague Convention on Intercountry Adoption, was created to enhance the contents of Article 21 in the CRC and to ensure that adoption between different countries serves the child’s best interest by setting up adoption procedures that are ethical and transparent. This includes setting up a centralized authority within each country that oversees intercountry adoption, ensuring informed and free parental consent, and guaranteeing no improper financial gains are made from the proceedings. It requires countries that ratify the Convention to cooperate with each other and create legally binding safeguards to protect the child, birth parents, and adoptive parents, also known as the adoption triad. Eighty-eight countries have signed and ratified the *Hague Convention on Intercountry Adoption*, but many have not.⁸ Save the Children believes intercountry adoption should be an option only when it follows the standards and regulations contained within the *Hague Convention on Intercountry Adoption* and is in the best interest of the child.

In line with the *Hague Convention on Intercountry Adoption*, Save the Children prioritises programming that supports birth families wherever possible and enables them to effectively protect, care and remain with their children. Since research findings have shown that the majority of children in “orphanages” have at least one or both living parents,⁹ Save the Children also focuses on reuniting children in such facilities with their families of origin and developing a range of alternative care options for children and their families. In addition, Save the Children works with governments to help reform the care system including creating, adapting, or enforcing laws and policies on alternative care and national and intercountry adoption that promote the child’s best interests.

Never in the first phase of an emergency

There is often misguided attention, especially in emergencies, in creating residential facilities to care for separated children or in thinking that intercountry adoption should be the first response. Save the Children believes that intercountry adoption should never be considered in the first phase of an emergency. In a chaotic environment, children may mistakenly be considered an orphan, even if they have families. Separated and unaccompanied children in an emergency are extremely vulnerable to trafficking and exploitation and every effort must be made to ensure safeguards are in place to protect children from abuse. Therefore, efforts to trace a separated child’s family should be the first priority in any emergency to make certain that children who have families can be reunified and are not considered for adoption.

Similarly, experiences from Rwanda, Sri Lanka, Indonesia and Haiti have shown that setting up or expanding residential child care facilities (often referred to as orphanages or institutions) can undermine existing community mechanisms for supporting children and can actually encourage families to place their children in such facilities.¹⁰ In some cases this can lead to children mistakenly being made available for intercountry adoption even though they still have family members within the country.

Furthermore, recent studies have shown that institutionalization can be extremely detrimental to the development of a child, especially under the age of three.¹¹ High child to staff ratio, non-individualized care, and the lack of one consistent caregiver as well as a lack of sensory, cognitive, and linguistic stimulation, can cause significant physical and developmental delays in children. Even the best run residential child care facilities are no substitute for a family environment.¹² Save the Children strongly believes that every effort should be made to place children in families as quickly as possible and to avoid supporting institutional care. In countries such as Indonesia, Sierra Leone, and Georgia, Save the Children is working very closely with the Government to improve the regulation of care institutions and focus more attention on strengthening family-based care.

How to help

There is a vast need to support vulnerable families and children through a wide range of programs including: family tracing and reunification, economic and livelihood programming, and family strengthening programs which include parenting classes, social support, day care programs, and support to local social services such as social worker and foster family training and support.

Individuals, who would like to adopt a child, should only proceed through official channels, use the services from accredited adoption service providers or the government in their own country and should not attempt private adoption as such services are unregulated. Individuals should only consider adopting from countries which have signed and ratified the *Hague Convention on Intercountry Adoption*, and should not adopt a child during the first phase of an emergency. If a country has signed, but not yet ratified the *Hague Convention on Intercountry Adoption*, all measures of protection and transparency should be in place according to the Convention before adoption proceedings take place. Families wishing to adopt should receive professional adoption counselling and screening which will help to match the child to the family and ensure a safe and positive family environment for each and every child.

Adoption is a long term commitment and once a child has been adopted, the adopted child and family have the right to receive post-adoption services and

support which according to the *Hague Convention on Intercountry Adoption* should be provided by the receiving countries through official adoption agencies.¹³

Recommendations

- **Greater investment in local family-based support services:** Governments, donors, NGOs, and faith-based organizations should give much greater support to family support services and structures that enable children to be cared for in their own families and communities. These services and structures should be developed in-line with international norms and standards, including those laid out in the *International Guidelines on Alternative Care for Children*.
- **Effective regulation of intercountry adoption:** Countries who have not already signed, ratified, and implemented the *Hague Convention on Intercountry Adoption* should do so and adoption should only be undertaken between signatory countries. Legal policies, appropriate safeguards, monitoring instruments, and mechanisms as well as domestic programming and social services should be in place to ensure that all intercountry adoptions are in the best interest of the child. The sale and abduction of children, coercion and manipulation of birth parents, bribery, fraud, inducements, and inappropriate financial gains should be addressed and the perpetrators of any abuses should be brought to justice.
- **Urgent efforts to improve the quality of care within residential child care facilities until family based care is available:** While in the long-term all countries should develop family-based care alternatives, standards should be improved within existing residential child care facilities while alternative care options are being established.
- **Prospective adoptive parents should help to ensure that intercountry adoption is in the child's best interest:** Prospective parents should only go through accredited adoption service providers, non-profit, or governmental agencies (Central Authority) in their own country and not attempt to adopt children through private adoption agencies. Children should only be adopted from countries that have

signed and ratified the *Hague Convention on Intercountry Adoption*. Families wishing to adopt should receive professional adoption counselling and screening before the adoption as well as follow up on the child's adjustment and development with post-adoption support and services.

1. Adoption is the permanent placement of a child into a family other than his or her biological parents; parental rights and responsibilities are therefore transferred from the biological parents to the adoptive parents.

2. Selman, P (2011). ;Australian Intercountry Adoption Statistics. Retrieved 26 March 2012 from <http://www.ag.gov.au/Intercountryadoption/TheintercountryadptionsysteminAustralia/Pages/IntercountryAdoptionStatistics.aspx>.

3. Davies, D. (2011). Child Development, Third Edition: A Practitioner's Guide, 3rd Edition. The Guilford Press.

4. Intercountry adoption refers to the social and legal process whereby a child in one country is permanently placed with a family other than the biological mother or father in another country, outside of the child's country of origin. International adoption, while often used synonymously with intercountry adoption, actually refers to adoption when the child and adoptive parents are of different nationalities, regardless of where they reside. UNICEF, 'intercountry adoption', *Innocenti Digest*: UNICEF Innocenti Research Centre, Florence, Italy, 1998 Retrieved from <http://www.unicefirc.org/publications/pdf/digest4e.pdf>, p. 2

5. UNHCR Guidelines on Formal Determination of the Best Interests of the Child.

6. United Nations Convention on the Rights of the Child. (2009) General Comment No. 11 of the UN Committee on the rights of the Child – Indigenous Children and their rights under the Convention.

7. United Nations Convention on the Rights of the Child (1989). Retrieved 7 May 2012 from <http://www2.ohchr.org/english/law/crc.htm>; Article 4 of the Hague Convention on Intercountry Adoption also outlines the preference for suitable domestic alternative care solutions over intercountry adoption. The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993). Retrieved 27 May 2012 from http://www.hcch.net/index_en.php?act=conventions.pdf&cid=69

8. For a current list of the countries that have signed and ratified the Hague Convention on Intercountry Adoption, go to: http://www.hcch.net/index_en.php?act=conventions.status&cid=69

9. UNICEF (2006) Orphans UNICEF Press Centre; Csaky, C. (2009). *Keeping Children out of Harmful Institutions: Why we should invest in family based care*. Save the Children; Carter, R. (2005). *Family Matters: A study of institutional childcare in Central and Eastern Europe and the Former Soviet Union*. Every Child.

10. De la Soudière, M., Williamson, J. and Botte, J. (2007). *The Lost Ones: Emergency care and family tracing for separated children from*

birth to five years, UNICEF; Doyle, J. (2010). *Misguided Kindness: Making the right decisions for children in Emergencies*. Save the Children.

11. Nelson, C., Zeanah, C., Fox, N. (May 2009) *The Effects of Early Deprivation on Brain-Behavioural Development: Bucharest Early Intervention Project*. Oxford University Press.

12. Brown, K. (2009). *The Risk of Harm to Young Children in Institutional Care*. Better Care Network.

13. The Hague Conference on Private International Law. The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention, Guide To Good Practice. Guide No. 1. Family Law. Bristol, 2008.

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This policy brief can be found at this link:
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