

Intercountry Adoption

An African Perspective



ACPF

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THE AFRICAN CHILD POLICY FORUM (ACPF)

ACPF is an independent, pan-African institution of policy research and dialogue on the African child.

ACPF was established with the conviction that putting children first on the public agenda is fundamental for the realisation of their rights and wellbeing and for bringing about lasting social and economic progress in Africa.

ACPF's work is rights based, inspired by universal values and informed by global experiences and knowledge. Its work is guided by the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and other relevant regional and international human rights instruments. ACPF aims to specifically contribute to improved knowledge on children in Africa; monitor and report progress; identify policy options; provide a platform for dialogue; collaborate with governments, inter-governmental organisations and the civil society in the development and implementation of effective pro-child policies and programmes; and also promote a common voice for children in and out of Africa.



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PREFACE

Africa has become the new frontier for intercountry adoption. Between 2003 and 2010, the number of children adopted from Africa increased three fold. Yet Africa seems to be ill-equipped in law, policy and practice, to provide its children with enough safeguards when they are adopted internationally.

The list of issues that seem to defy consensus in the context of intercountry adoption in Africa is long. The cultural disconnect that children are subjected to in the adoption process raises significant concern; the definition of a family environment in terms of the African Charter on the Rights and Welfare of the Child and the UN Convention on the Rights of the Child for the purpose of adoption is contentious; the basic questions of adoptability and who can adopt are critical to the African context due to varying interpretations; the implications of considering intercountry adoption as a measure of last resort continue to pose difficult legal and ethical complexities for African countries. In practice, intercountry adoption suffers from poor regulation in many African countries and where regulation exists, implementation of the same is inadequate.

Inter-country adoption is an area which has not been comprehensively documented in Africa. This report is an abridged version of the ACPF study entitled “*Africa: The New Frontier for Intercountry Adoption*”. It highlights the legal and policy gaps that expose adopted children to abuse and exploitation, the policy options for intercountry adoption, and presents ACPF’s position on intercountry adoption. African societies and above all, African governments have and must assume full responsibility to provide the legal and material basis for the raising of Africa’s children.



ACPF believes that developing and supporting community based mechanisms of caring for children deprived of a family environment is an obligation which African governments must fulfill. Children must be allowed to grow up in their own families or communities to ensure continuity in their upbringing in an atmosphere of happiness, love and safety.

This report advocates for intercountry adoption to be a measure of the very last resort for children in need of a family environment, taking place only in exceptional circumstances, guided by the best interests of the child.

David Mugawe
Executive Director, ACPF



INTRODUCTION

Encouraging economic outlooks in Africa in recent years have allowed countries to make increasing, sustained investment in poverty reduction. Although the long-term developmental impact of this economic growth is yet to be seen, there is certainly a trend towards improvements in family wellbeing in many parts of the continent.

However, Africa is still haunted by the legacies of famine, disease and conflict of the recent past, and still counts millions of orphaned children, with many more millions left at the mercy of the increasingly fragile traditional support systems. A ubiquitous deficit in family care and a glaring failure of public policy to strengthen families and communities mean that Africa has now become the new frontier of intercountry adoption. An exodus of children destined for the rich global North, as can be seen in Africa's major airports, has – to the dismay of many African and non-Africans alike – become a daily spectacle. All this, as if intercountry adoption was the sole remaining option for the African child.

It should be noted that, in a reassuring testimony yet again of the generosity of the human spirit, many adoptive parents act in good faith, with the noblest of motives. The unfortunate fact, however, is that intercountry adoption is fast becoming an attractive solution, putting into question the very credibility of African traditional values, and the often-idolised collective conscience and solidarity of African communities.

What was expected to be a last resort and an exception in international law has now become the norm and the ordinary. Commercial interests have superseded altruism, turning children into commodities in the greying and increasingly amoral world of intercountry adoption.

Hence our concern and focus on this subject.



1 INTERCOUNTRY ADOPTION: THE RATIONALE

Adoption is one of a wide range of practices that societies throughout the world have developed to allow a child who is unable to live with his/her parents – for whatever reason – to be brought up in a stable family-based environment. These practices include informal arrangements, customary responses, and legalised placements. They are generally regarded first and foremost as child protection measures.

Within the panoply of responses to the situation of children without parental care, the special features of adoption in its “full” form (the one that characterises the vast majority of intercountry adoptions) are that, by judicial decision, it both definitively severs all ties with the child’s biological family and equates his/her status to that of a biological child of the adopters.

In most societies, not least in Africa, the legalised rupture of blood-ties is either forbidden or completely unfamiliar. Placing children with a substitute carer – whether a relative, a friend, a stranger or an “orphanage” – is far from being perceived as a final act that cuts all future relationships with the child.

Formalised “full” adoption therefore remains an alien concept in a large swathe of African communities, and is hardly used – if at all – at domestic level. Despite being an option that has been promoted by a number of external actors as the most advantageous for the protection and best interests of the child, the fundamental question remains: to what extent is intercountry adoption necessary and appropriate for Africa’s children today?

Advocates claim that, precisely because of its legalised and formal nature, it provides a guarantee of “permanency” in a loving family environment in a way that informal coping mechanisms cannot.

Normally, families and communities do their utmost to protect children without parental care. States, of course, have accepted an absolute obligation to do so by ratifying the Convention on the Rights of the Child (CRC) and, in the case of Africa, the region’s Charter on the Rights and Welfare of the Child (ACRWC). Situations warranting the removal of a child for permanent care in another country – as opposed, *inter alia*, to supporting an appropriate in-country



care option if necessary – are consequently to be regarded as truly exceptional or, in the words of the ACRWC, as a “last resort”.

This is how intercountry adoption was and is conceived in theory. In practice, however, this is by no means always the case. Hence

recourse to intercountry adoption is among the most sensitive and hotly-debated issues in the child protection field, not only in countries of origin (the states from where adopted children originate) but also in many receiving countries (the states where they go when adopted).



2 THE MAIN THRUST OF INTERNATIONAL STANDARDS

Intercountry adoption figures among the child protection measures that, according to international standards, “may be considered” for children without parental care. Use of the word “may” – rather than “should” or “shall” – is important here for two reasons.

- First, there is no question whatsoever of imposing the recognition or practice of adoption, in either its domestic or its intercountry form: each country validly decides its policy on the basis of prevailing religious, socio-cultural and other realities.
- Second, where adoption is recognised, it does not have to be envisaged in each individual case – or, indeed, in any case at all. Thus, conditions and restrictions can perfectly well be placed on the characteristics of children for whom adoption may be foreseen; the status of prospective adopters; and additional factors. Within any such limits, too, adoption remains one of many potential outcomes for a child that can be investigated by those responsible for choosing the most appropriate protection measure, but there is no obligation in this respect.

Decisions resulting in the adoption of a child involve something no other child will experience: their parents are chosen for them by others. Any such decision therefore has to be thoroughly and uniquely child-focused: does this child really need to be adopted, and, if so, by whom and under what conditions?

Intercountry adoption means not only a new primary caregiver and name but also a sudden, drastic and, in principle, definitive change in the way and context in which the child will grow up. It follows that decision-making on intercountry adoption by those “others” is a singularly heavy responsibility. It cannot be left up to “others” who, even when they are well-intentioned in certain ways, are not fully prepared, qualified and duly authorised to order, arrange, organise and cope appropriately with the consequences of such a momentous step for a child. Only gradually are all the implications of this reality being understood – but they need to be, fully and immediately.



In light of ever-growing documented reports of serious malpractice surrounding intercountry adoption, the drafters of the main relevant international instruments– the CRC and the 1993 Hague Convention – were far more concerned with safeguarding the human rights of children who are, or might be, the subject of an adoption process than with promoting the practice as such. This is already evident from the full title of the Hague Convention: “...on Protection of Children and Cooperation in Respect of Intercountry Adoption”.

The **Convention on the Rights of the Child** provides the normative base. Notably, it requires that the best interests of the child be “the paramount consideration” in any adoption decision, and sets the principle of intercountry adoption being subsidiary to all suitable domestic solutions to the child’s situation. In that same vein, it stipulates that any placement decision must pay “due regard... to the child’s ethnic, religious, cultural and linguistic background.” It also requires measures to ensure that no “improper financial gain” for anyone involved is derived from an intercountry adoption.

For its part, **the Hague Convention** sets out principally “to establish safeguards to ensure that intercountry

adoption takes place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law” and “to establish a system of cooperation among Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children.” It is thus designed to build upon the basic obligations enshrined in the CRC by putting in place guarantees, procedures and mechanisms that facilitate States’ individual and collective compliance with those obligations.

The Hague Convention notably provides for procedures relating to:

- Establishing a child’s legal adoptability and securing free and informed consent for the adoption
- Ensuring that the need for adoption outside the country of origin is determined in accordance with the “subsidiarity principle” and that intercountry adoption may therefore be envisaged only if “possibilities for placement of the child within the State of origin have been given due consideration”
- Determining the fitness of applicants to proceed with an adoption.



Importantly, it implicitly prohibits adoptions that are carried out independently (since all prospective adopters have to work through their Central Authority or an accredited agency) as well as outlawing any “improper or other financial gain”.

The system of cooperation established by the Hague Convention is centred on a governmental “Central Authority” in each country to oversee adoption practice and to serve as focal point on intercountry adoption issues and problems with its counterparts in other States. Adoption agencies that are duly accredited by the Central Authority in the receiving country can carry out specific tasks related to the adoption process, notably regarding assistance to adoptive parents before, during and after the process. If similarly authorised by the Central Authority in the country of origin, the adoption body can also provide such assistance directly there.

A Special Commission comprising all Contracting States to the Hague Convention is responsible for monitoring the treaty’s implementation, making advisory recommendations to improve this, and tackling identified problem areas. It has so far met three times, in 2000, 2005 and June 2010.

The issues taken up by this Commission are a telling reflection of the nature and extent of concern that surrounds intercountry adoption practice today. For example:

- The problem of the **procurement** of children for adoption
- The need for transparent and independent determination of a child’s **adoptability**
- The need for a complete separation between intercountry adoption practice and the provision of **contributions**, donations and development assistance
- The necessary **application of Hague Convention safeguards** (including, for example, prohibition of independent adoptions) in Contracting States’ relations with those that are not parties to the treaty.

All these issues are of particular importance to Africa. While they are not formally part of the international legislative framework, these and other recommendations are definitely of great potential use for attempts to improve regulation of intercountry adoptions from the continent.

Also important, at the regional level, is the stance taken in the **ACRWC**. While echoing for the most part the



wording of the CRC, the African Charter occasionally demonstrates a somewhat more radical approach, exemplified by its references (as mentioned above) to intercountry adoption being “the last resort”; measures to ensure that it does not result in trafficking in addition to improper financial gain; and the obligation to “establish a machinery

to monitor the wellbeing of the adopted child” once he or she is in the receiving country.

In sum, international standards clearly focus more on protecting children and their human rights in the intercountry adoption process than on promoting intercountry adoption as a child protection measure.

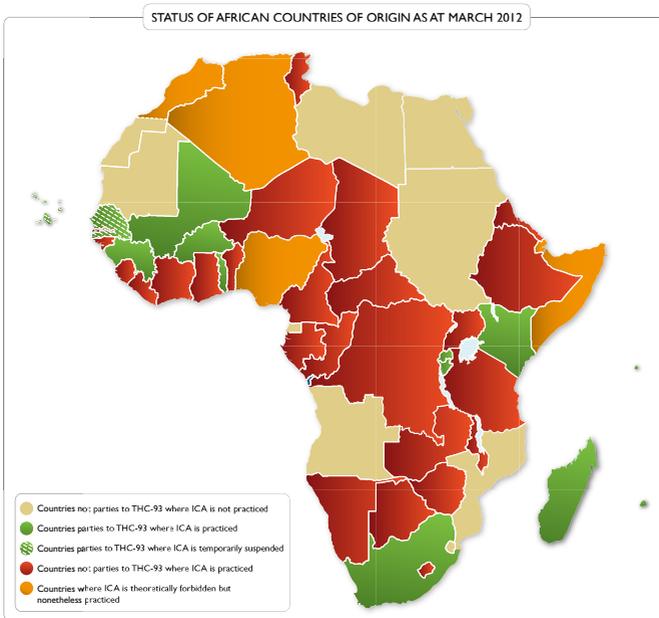


3 INTERCOUNTRY ADOPTIONS FROM AFRICA

3.1 Extent and magnitude¹

A current snapshot of intercountry adoption from Africa shows, unsurprisingly, a patchwork of widely differing realities, comprising everything from countries that neither recognise nor practice the measure

to those that have allowed it to develop without the safeguards offered by internationally agreed standards. The map below illustrates this variety of situations.



¹ Unless otherwise stated, statistical data on adoptions in this and later sections are based on, or compiled and/or derived from, official sources. These are, notably: for adoptions to France, <http://www.diplomatie.gouv.fr/fr/enjeux-internationaux/adoption-internationale-2605/le-service-de-l-adoption/statistiques-de-l-adoption/>; to Italy, <http://www.commissioneadozioni.it/it/per-una-famiglia-adottiva/rapporto-statistico.aspx>; and to the USA: http://adoption.state.gov/about_us/statistics.php. The main source for data on adoptions to other countries, also compiled from official statistics, is the archive of the Australian InterCountry Adoption Network at <http://www.aican.org/statistics.php>



Intercountry adoption has a shorter history as a significant phenomenon in Africa than elsewhere in the world. Its current status on the continent can only be understood by first looking at how and why it has developed.

In the 1970s and 1980s, while intercountry adoption was fast developing elsewhere, there were few applications to adopt African children. The sole exception was in France, where sizeable numbers of African children were already being adopted by the end of that period, notably (in 1990) from Ethiopia (78) and Madagascar (123).

Elsewhere, things moved more slowly. It was only in 1986, for example, that “Americans for African Adoptions” (AFAA) was set up and became the first licensed US adoption agency to be approved by the Government of Ethiopia. AFAA also launched a small adoption programme in Mali, but only much later followed up elsewhere on the continent: Sierra Leone in 1995 and, far more recently, Lesotho and Uganda.²

In the 1990s, there was some development of the practice, both in

terms of numbers and countries concerned. Ethiopia was far and away the continent’s main country of origin (and has remained so) with several hundreds of children already being adopted abroad each year by the turn of the century. But it should not be ignored that already more than 200 Malgache children, together with some 60 from each of Burkina Faso and Mali, were adopted in France alone in 2000. By then, well over 20 African countries were involved to some degree in intercountry adoption.

In terms of receiving countries, by the end of the 1990s adoptions from Africa had still only gained a real foothold in France: they already constituted 17 per cent of all adoptions to the country in 1997, whereas just four per cent of Denmark’s 1999 total of incoming intercountry adoptions concerned African children,³ about the same rate as for Italy. At that time, they accounted for less than one per cent of all intercountry adoptions to the USA and to Spain (which in fact had only begun adoptions from Africa in 1998).

² <http://www.africanadoptions.org/>

³ “Received children 1999-2009”, available at <http://www.adoptionsnaevnet.dk/english/statistical-information/>

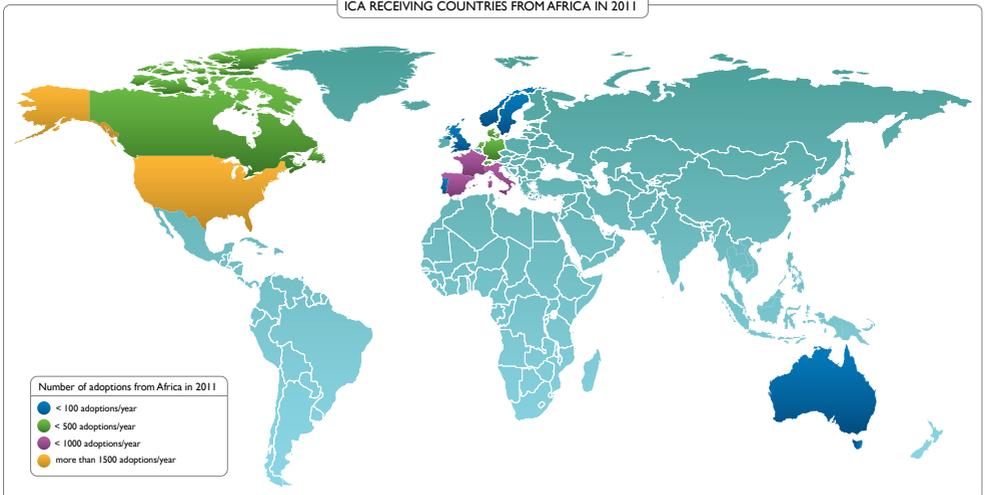


It was over the course of the first decade of the 21st century that the African picture changed remarkably, and this was largely – though not exclusively – due to two factors. First, an increasing number of countries of origin in other parts of the world began placing restrictions on intercountry adoptions or were even forced to suspend them – in both cases often as a result of their ratification of the Hague Convention – meaning that foreign applicants and their agencies needed to seek alternatives. Second, very few African States were bound by Hague rules: until 2003, only Burkina Faso, Burundi and Mauritius

were Contracting States, leaving almost the entire continent potentially open to *ad hoc* agreements and, in too many cases, to what has proved in practice to be an intercountry adoption procedure that is unworkable in terms of protecting children’s rights.

And there was no shortage of takers. Today, the range of receiving countries has grown (see the map below). Intercountry adoptions are now being carried out from more than three-quarters of African countries, several of which are among the most favoured countries of origin for certain receiving countries.

ICA RECEIVING COUNTRIES FROM AFRICA IN 2011



Thus, for France, where over a third of all intercountry adoptions in 2011 involved African children, no less than eight African countries were among the 20 “top” countries of origin: in order of importance, these were Ethiopia, Mali, Democratic Republic of Congo (DRC), Tunisia, Madagascar, Cameroon, Djibouti and Côte d’Ivoire. Ethiopia has been the second most important country of origin for the USA since 2009, and DRC, Nigeria and Uganda also figured among its 20 top countries of origin in 2011. For Italy in that year, Ethiopia was in 5th place, and DRC 11th, out of a total 51 countries, 15 of which are African. Intercountry adoptions to Italy from Africa jumped from 10.7% of the total in 2010 to 13.1% in 2011.

Figure 1: Evolution of intercountry adoptions from Africa to France and USA, 1990-2011

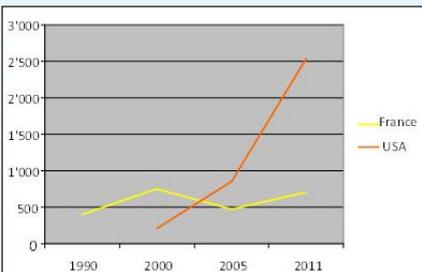
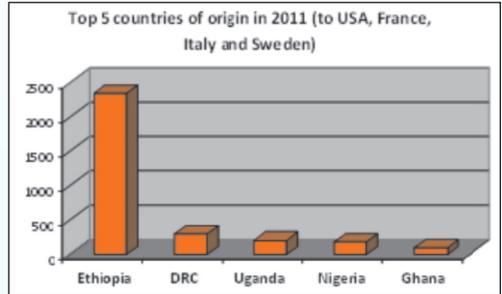


Figure 2: Top 5 African countries of origin to USA, France, Italy and Sweden, 2011



Disturbingly, the rapid increase in intercountry adoption numbers from Africa is almost entirely due to development of the practice in countries that are not parties to the Hague Convention: in Figure 2 above, not a single one of the top five African countries of origin to the main receiving countries in 2011 has ratified the treaty (see Table 1).

That this is the case is both unsurprising and deeply troubling. Unsurprising because, worldwide, full compliance with Hague principles and obligations by countries of origin has invariably resulted in a decline in the number of adoptions they have approved. Deeply troubling because, to compensate for that tendency, “demand” transfers to other countries where Hague protections do not exist and where, all too often, the authorities



are totally unprepared to cope with the sudden influx of applications and are unable to apply basic child protection safeguards.

3.2 Principles and commitments

Currently, only thirteen African countries have ratified the Hague Convention – well under a third of the African nations from which intercountry adoptions are taking place.

Table 1: Status of ratification of the Hague Convention by African States

YEAR	COUNTRY
1996	Burkina Faso
1999	Mauritius, Burundi
2003	South Africa
2004	Guinea, Madagascar
2006	Mali
2007	Kenya
2008	Seychelles
2009	Cape Verde
2010	Togo
2011	Senegal
2012	Rwanda

In 2010, when there were just 10 African Contracting States, only four were among the 10 major countries of origin. Three of these (Burkina Faso, Madagascar and South Africa) saw a decline in intercountry adoption numbers during the period 2004-2010, whereas Mali (the most recent Contracting State of the four) saw a relatively modest overall increase of 60%, though with numbers declining significantly at the very end of the period.

In contrast, five of the six other (non-Hague) countries experienced significant increases during that period: Nigeria (2.5-fold), Ethiopia (threefold), Côte d'Ivoire and Ghana (fourfold) and DRC with a phenomenal 15-foldrise. The sole exception was Liberia which, after a massive fourfold increase between 2004 and 2006, began to take forceful unilateral measures in response to (well-founded) fears of irregularities, resulting in an overall 40% fall by 2010.



Table 2: Evolution of intercountry adoptions (2004 and 2010)

(State Parties to the Hague Convention in red)

COUNTRY	2004	2010
Ethiopia	1,527	4,397
South Africa	242	189
Liberia	87	52
Nigeria	100	259
Madagascar	335	56
Mali	82	132
Burkina Faso	93	79
DRC	12	189
Ghana	32	129
Côte d'Ivoire	26	105

Source: Selman, P.'The Rise and Fall of Intercountry Adoption in the 21st Century: Global Trends from 2001 to 2010' in J. Gibbons and K. Rotabi, (eds.), Intercountry Adoption; Policies, Practices, and Outcomes, Farnham: Ashgate, 2012.

The special vulnerability of non-Hague countries – and thus of their children – to overtures, “encouragements” and pressures on the part of receiving countries could not be more clearly illustrated. In itself, the ratification of the Hague Convention by a country of origin is of course no panacea – as, for example, the experiences of

Madagascar and Guatemala have amply demonstrated – but it does tend to ensure that intercountry adoption is viewed through the prism of children’s rights, which must remain the fundamental goal of the treaty. In particular, by obliging receiving countries to operate henceforth in conformity with its provisions, the treaty considerably enhances the oversight and transparency of intercountry adoption processes that frequently remain far too cloudy outside the Hague framework.

3.3. Suspensions and moratoriums

Even when they are fully aware of severe and widespread problems regarding intercountry adoptions, receiving countries have not to date gone as far as to declare (as they have done elsewhere on occasion) a moratorium on adoptions from any given African country (although some have intensified checks and taken other dissuasive measures in response). For their part, a number of African countries – as is the case for many countries of origin on other continents – have had to resort to suspending all, or almost all, intercountry adoptions at some point in recent years while efforts were made to resolve the problems. While the nature of these problems has been broadly similar, the



circumstances and outcomes have differed quite widely.

Thus, Togo suspended intercountry adoptions in 2008, when it was discovered that, *inter alia*, declarations of adoptability were not subject to adequate background checks and children were being wrongly placed for intercountry adoption. Once a number of legal and other initiatives to address these issues were in place, not only was the suspension lifted, but the country was in a position to envisage ratifying the Hague Convention, which it did in 2010.

In contrast, Madagascar was forced to impose a moratorium in 2006, two years **after** ratifying the Hague Convention, given the impossibility of ensuring that intercountry adoptions were being carried out in conformity with the treaty. Since re-establishing intercountry adoptions 18 months later, it has only been processing a limited number compared to the pre-suspension period, with a view to maintaining due control over the practice.

In 2007, Lesotho (a non-Hague country) also suspended intercountry adoptions after evidence came to light of illicit practices. Having strengthened its legal and policy framework, it lifted the suspension after 18 months, but for only four receiving countries – Canada, the Netherlands, Sweden and the USA – and for only one adoption agency from each.

The moratorium on intercountry adoption imposed by the President of Liberia (also a non-Hague country) in early 2009 responded not only to long-standing allegations of corruption in the adoption procedure as a whole, but also to a 2007 report by the United Nations Mission in Liberia (UNMIL) that “confirmed that many illegal overseas adoptions were taking place through orphanages, facilitated by weak Government adoption procedures”⁴, and to the recommendations of the Special Commission on Adoption the president had set up in 2008. There had also been concern about adoption breakdowns and their ramifications in the USA, to where

⁴ UN News Centre, 28 March 2007: <http://www.un.org/apps/news/story.asp?NewsID=22051&Cr=liberia&Cr1=>



the vast majority of Liberian adoptees have gone. Liberia is reportedly still “not actively utilising intercountry adoption as a permanency option for children”⁵ – in other words, as a rule it is not accepting new applications, but is nonetheless dealing with cases that were underway prior to the moratorium.

In the wake of the arrest in October 2007 of Zoe’s Ark personnel who had tried to transport children illegally from Chad to France (an act that, it should be noted, has little or nothing to do with intercountry adoption procedures as such, even if adoption was the declared aim), the Republic of Congo and Zambia (both non-Hague countries) announced that they were suspending all international adoptions, ostensibly as a preventive measure. That said, when Congo’s ban was lifted four months later, an official reportedly noted that: “Many times in the past adoptions were not

in accordance with the rules. There were many things that were done that were not in the interest of the adopted children.”⁶

The African country that has most recently suspended intercountry adoption is Senegal. It did so in December 2011, the month when the Hague Convention came into effect for the country. Here, the motive given was to allow time for mechanisms and procedures to be put in place that ensure compliance with the treaty.

This listing demonstrates *inter alia* that there are two rather different principal reasons invoked for setting a moratorium in place: in some cases, reacting to serious and widespread malpractice outside the Hague framework; and in others ensuring compliance with Hague procedures. Eliminating the first of these should be a priority.

⁵ Joint Council on International Children’s Services, USA:
<http://www.jointcouncil.org/news-info/country-pages/liberia/?submit=Go>,
accessed 18 April 2012.

⁶ IRIN, 5 March 2008.



4 INTERCOUNTRY ADOPTIONS FROM AFRICA: DANGER SIGNS

In addition to the so far dangerously low ratification rate of the Hague Convention by African countries, current trends highlight two key risks for the proper conduct of intercountry adoptions, fully respectful of children's rights, from many countries on the continent: the apparently uncontrolled and rapid increase in intercountry adoption numbers, and the low ages at which children can be adopted abroad.

4.1 Rapid growth

Between 2003 and 2006, intercountry adoptions from Liberia to the US (accounting for at least 95% of all intercountry adoptions from the country) rose from 27 to 353, a staggering thirteen-fold increase over a period of just 36 months. Concerns began to be raised about the origins and circumstances of the children and the probity of the processes concerned, as well as about the fate of certain adoptees. This finally resulted in the moratorium imposed in 2008.

Less spectacular, but involving far bigger numbers, was the rise in Ethiopia, from about 500 at the start of the century to a peak nearly ten times higher (4,565) by 2009. Again, serious concerns were raised and

again the authorities reacted, this time by setting limits on the number of cases that can be validly processed during a given period.

Developments in Uganda are also worthy of special mention. Adoptions to the USA jumped from 62 in 2010 to 207 in 2011, more than a three-fold increase from one year to the next. Furthermore, 95% of these intercountry adoptions were to be finalised in the USA, and the CRC Committee has expressed concern that the issuance to foreign adopters of legal guardianship orders instead of final adoption papers was being used to circumvent proper procedures in Uganda.

At present, however, the most preoccupying situation in this respect may well be that of DRC. From just 12 intercountry adoptions registered in 2004, the number rocketed to 62 the following year, then stabilised before jumping to 149 in 2009. While figures for 2011 are still incomplete, adoptions from DRC to its three main receiving countries alone are recorded at 296 (France 40, Italy 123, USA 133), thus at least doubling in the space of two years.



There are several significant proven problems frequently associated with such rapid growth in intercountry adoption numbers from a given country.

First, it is very likely that official services and the judiciary will quickly (and understandably) be overwhelmed, with far too few staff adequately trained to deal with the surge in cases and to ensure that safeguards and processes are being respected.

Second, a rapid increase may indicate that there are legislative and/or procedural loopholes or inadequacies, in addition to lack of policy, enabling an uncontrolled and probably unwarranted number of intercountry adoptions to take place.

Third, it may reflect a situation where special relationships are being formed between agencies and residential care facilities or other “intermediaries” in order to identify – and in the worst cases procure – an ever-increasing number of children for intercountry adoption.

Finally, the above factors combine to create a severe risk of monetary gain becoming a major motive and influence in the adoption process – whether through falsifying documents or “expediting” their issuance; facilitating the “right” contacts;

procuring children; or, regrettably, a wide range of other illicit or unethical activities.

4.2. Low age of children at adoption

A frequently cited risk factor in intercountry adoption is the adoption of young babies by foreigners.

More and more countries of origin (ranging, for example, from Ukraine to the Philippines) have placed minimum age limits for intercountry adoption as they find increasing possibilities for placement of these children in-country. At the same time, babies and toddlers, not unnaturally, remain the most desired by prospective adoptive parents both foreign and domestic. As a result, fears have arisen that this unfulfilled demand, from abroad in particular, may lead to unethical or illicit practices.

From a human rights stand point regarding the placement of children for adoption abroad, there are two somewhat conflicting requirements. On the one hand, efforts must be made to ensure that a child finds a stable family-based environment as quickly as possible. On the other, the child’s true need for an alternative care setting has to be thoroughly checked, all possible domestic solutions must be examined before turning to intercountry adoption – in application of the subsidiarity principle – and then a



series of protective procedures must be followed, ranging from matching and bonding to systematic verifications and judicial approval. This is necessarily a time-consuming set of (vital) obligations.

The USA seems to be the sole receiving country to publish information on the duration of the procedure though only for countries that are parties to the Hague Convention. It notes, as regards Africa, that in 2011 its one case from Madagascar took just 71 days to complete, whereas three cases from South Africa took an average of six months and two cases from Burkina Faso averaged one year. For whatever reason, Madagascar's procedure in that case was in fact by far the shortest worldwide – after that came Estonia at 154 days – and most were recorded as requiring over 250 days, with a third at more than a year.⁷ This sets in perspective the kind of **timelines generally required for intercountry adoption in practice** and thus unavoidably raises questions, to say the least, about unusually rapid procedures that enable, *inter alia*, babies to be adopted.

Regrettably, relatively few states, publish up-front data on the age of

adoptees from abroad, at least in sufficient detail to be useful in determining whether there may be potential cause for concern on this front in relation to given countries of origin. The limited information available nonetheless points to a *prima facie* need to elucidate the situation in Mali (a Hague country) and DRC (non-Hague) as special priorities at the present time.

Almost a third (19 out of 61) of Malian children adopted to France in 2011 were aged six months or less, with a total of 46 (75%) under the age of one (see Figure 3). For its part, Italy – whose citizens generally demonstrate unusual willingness to adopt older children and others with special needs – gives the average age of children adopted there from Mali as 1.5 years, which is among the very lowest in the world and comparable only to China, South Korea and Vietnam. In Africa, the country closest to the Malian level in Italy's listing is Nigeria, cited as having an average age for intercountry adoptees of 2.5 years, while all other countries show average ages of three years and upwards (see Table 3 on the next page).

⁷ http://adoption.state.gov/content/pdf/fy2011_annual_report.pdf



Figure 3: Children adopted from Mali to France in 2011, by age

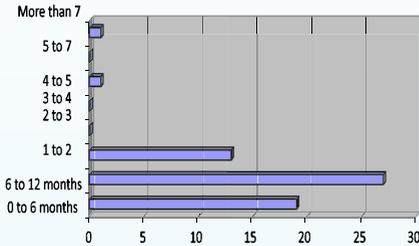


Table 3: Average age of children adopted from African countries to Italy, 2011

Togo	5.9 years
Cameroon	5.4 years
DRC	5.1 years
Burundi	4.4 years
Ethiopia	4 years
Benin	4.3 years
Kenya	3.9 years
Madagascar	3.6 years
Burkina Faso	3.6 years
Guinea-Bissau	3.4 years
Nigeria	2.5 years
Mali	1.5 years

The way adoptions have evolved recently from the DRC, to the USA at least, is particularly telling. When they were very few – just nine in 2008 – most (six cases) involved children over the age of three years. But as intercountry adoptions from the country have escalated, there has been a complete turn around.

According to 2011 figures, two-thirds of the 133 children adopted to the USA were aged two years or less, with 36% (48) of the overall total aged 12 months or less.

In addition, “average age” does not necessarily reflect very well the lowest ages at which some children are adopted from a given country, since it takes no account of the spread, so alarm bells should no doubt be ringing elsewhere too. Thus, for example, despite Ethiopia’s relatively high average age of adoptees, the USA and France both state that about a quarter of Ethiopian children entrusted to their citizens were aged under one year in 2011 (26% and 24% respectively), with Norway noting that two-thirds of its Ethiopian adoptees were in the 0-2 year age-range in 2010. In that same year, moreover, Norway also records that every one of the 22 children adopted there from South Africa was aged 0 to 2 years.⁸

Situations such as these give rise to legitimate concern. They beg the question as to how the subsidiarity principle can have been properly respected, and all aspects of the subsequent procedure carried out, for a baby whose adoption abroad is completed before he/she reaches the age of one at the very least, and more plausibly 18 months or two years.

⁸ http://www.ssb.no/english/subjects/02/02/10/adopsjon_en/tab-2011-06-08-04-en.html

5 PROBLEMS AND CHALLENGES

For countries that decide that the adoption of certain children abroad can correspond to the best interests of those concerned, a range of issues have to be addressed to ensure that it is carried out in a manner that fully respects those children's human rights. This Section looks at selected key problems to be tackled and challenges to be faced by African countries in their efforts to achieve this.

5.1 Pressure from adoptive countries

A report on an intergovernmental meeting for Southern and Eastern Africa hosted by the Government of South Africa in February 2010⁹ states that "Many delegates acknowledged that with the growing pressure from receiving countries to adopt more children, they were struggling to manage." Later that year, at the Special Commission to review implementation of the 1993 Hague Convention, several African delegates similarly expressed very serious concerns about the way their countries were being "urged" to

make more children available for intercountry adoption.

As long as pressure is exerted, experience has shown that the prospect of being able to administer adoptions in a proper manner, respecting all safeguards for the children concerned, can be very severely compromised.

The forms this pressure takes are varied. Among the more active approaches is the offer of development assistance – often to selected aspects of the child protection system – linked to the potential enhancement of an intercountry adoption programme.

Similar encouragement may involve inviting relevant officials to the receiving country's capital, or sending missions to countries of origin, for talks on cooperation on intercountry adoption. It is interesting to note, for example, the somewhat doleful tone of the report on one such mission – by French agency AFA to Burkina Faso in June 2008 –

⁹ Cross-frontier child protection in the Southern and Eastern African region: the role of the Hague Children's Conventions, Pretoria, South Africa, 22 – 25 February 2010



which noted that the country of origin “wanted to continue its cooperation with AFA but indicated that the number of children proposed to French adopters would not be increasing in the coming years” because of the desire to promote domestic adoptions. “Thus, babies under one year of age [would] henceforth be proposed as a priority” to nationals.¹⁰

Another way in which receiving countries may exert pressure is by submitting applications to adopt in numbers that far exceed the needs expressed by – and the logistical capacity of – the country of origin. As recently as November 2011, the French Central Authority announced that no less than 800 applications had been sent (by AFA) to its Malian counterpart and were still awaiting consideration. Yet the number of intercountry adoptions from Mali to France in 2011 totalled just 61, and had fallen for the third consecutive year.

As soon as the number of applications “to hand” from foreign prospective adoptive parents exceeds the number of children adopted abroad during the preceding year, this should send

an immediate alarm signal to all concerned. A linked indicator is the increase in average “waiting times” between reception of an application and the matching process between the child and the prospective adopter. More constructively, receiving countries should never transmit applications, or allow them to be transmitted, unless they are called forward by the country of origin.

5.2 Money matters

It is well known that financial issues constitute a major obstacle to ensuring that intercountry adoptions are carried out in an ethical manner. In particular, measures need to be taken to ensure that children are not brought into the intercountry adoption process because of the potential financial gain they represent rather than because they truly need adoption abroad.

Money means influence, and of course the glaring disparity between the economic situation of most governments, agencies and individuals in Africa and that of their counterparts in industrialised countries already creates conditions where the latter can take advantage of the former.

¹⁰ <http://www.agence-adoption.fr/home/spip.php?article267>



But over and above the phenomenon of illicit payments to secure documents or decisions, in a context where no one is yet quite certain how to determine what constitutes “proper” or “improper” financial gain, there are two particularly disturbing practices that need to be addressed first and foremost by the authorities of all countries concerned.

The first concerns the level of “in-country” fees that adoption agencies charge their clients – i.e. expenditures ostensibly to be made in the country of origin in relation to the adoption process, and thus in addition to basic agency fees and excluding items such as travel and board and lodging.

These “in-country” fees vary considerably from country to country and from one agency to another, but they invariably amount to several thousand dollars for each adoption. Thus, for example, French agency *Lumière des Enfants* quotes no less than 7,450 euros (approx. US\$ 9,700) for the cost of “local

procedure” in Nigeria.¹¹ In contrast, for Burkina Faso its figure is under half of this (3,586 euros), an amount similar to the US\$ 4,500 quoted for that country by the US agency Adoption Advocates International.¹² There is, moreover, an interesting situation that exists in Ghana: whereas a number of agencies specify their fees – Children’s House International, for example, puts its “foreign fee” for Ghana at US\$ 5,900¹³ – another US agency states that “[a]t the request of authorities in Ghana, we do not publish specific fees on the internet.”¹⁴ Clarification of the reasons behind these strangely opposing standpoints could be instructive.

The record for an in-country fee charged for an adoption from Africa might well be held by US agency Wasatch International Adoptions, for DRC. Whereas Lifeline Children’s Services quotes DRC “official” fees (“Includes child’s birth certificate, passport, and paperwork”) at the already intriguing amount of US\$ 4,000,¹⁵ Wasatch gives the staggering

¹¹ <http://www.diplomatie.gouv.fr/fr/enjeux-internationaux/adoption-internationale-2605/les-acteurs-de-l-adoption/operateurs-de-l-adoption/organismes-autorises-pour-l/article/lumiere-des-enfants>

¹² <http://www.adoptionadvocates.org/Africa/Burkina/index.php>

¹³ <http://childrenshouseinternational.com/>

¹⁴ <http://www.adoptionadvocates.org/Africa/Ghana/fees.php>

¹⁵ <http://lifelinechild.org/wp-content/uploads/2012/05/Congo-Fee-Sheet.xlsx.pdf>



figure of US\$ 14,500 as the in-country fee for DRC, which it describes, bizarrely, as being “required by the foreign country”.¹⁶ Unavoidably, sums of that order, if they are truly paid “in-country”, and especially when multiplied by tens or hundreds of adoptions per year in certain countries (including DRC), create income opportunities that many will understandably seek to preserve and develop regardless of the real needs of children for adoption abroad.

The second, possibly even more disturbing, practice is the absolute requirement that adopters make a contribution to “child care”, “humanitarian aid projects” or similar as part of the global fee paid to the adoption agency.

Consider this: the “Ethiopia Programme Fee” of US\$ 9,000 charged by Children’s House International includes “humanitarian aid and orphanage donations” at a level of no less than 44% (i.e. US\$ 4,000) – not to mention an additional 8% for “programme

development”.¹⁷ Of the US\$ 7,500 in-country fee charged by Adoption Advocates for Burkina Faso, US\$ 1,000 is for “programme development” and US\$ 2,000 is an “orphanage donation”.¹⁸ For an adoption from Ghana, Faith International Adoptions requires a “charitable donation” of no less than US\$3,000.¹⁹ The US\$ 500 in “humanitarian aid” required by Lifeline for DRC pales in comparison,²⁰ as do the US\$ 100 charged per month by Wasatch for the child’s care “after acceptance of referral” in addition to its previously-mentioned phenomenal in-country fee (moreover, it charges US\$ 300 per month for “foster care” in Ethiopia). That said, in these and in many other cases, to the extent that the quoted sums are actually disbursed in the country of origin, the aim of de-institutionalising alternative care in Africa and promoting solutions for children that do not involve their transfer abroad can only be compromised by the vested financial interests of the “orphanages” and projects involved.

¹⁶ <http://www.wiaa.org/congo.asp>

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ <http://faithadopt.org/adoptions/ghana/>

²⁰ <http://lifelinechild.org/wp-content/uploads/2012/05/Congo-Fee-Sheet.xlsx.pdf>



In some ways, however, there would appear to be even worse transactions to consider: certain agency figures make no clear distinction at all between purported “costs” and “humanitarian aid”. A “placement fee” of, very precisely, US\$ 9,050 for Uganda that “includes passport, all legal, child care, humanitarian aid, administrative costs” is an amalgam that can at best be described as opaque.²¹ Similarly, for Ethiopia (and indeed for Ghana as well), the All God’s Children agency charges “care of child fees” of US\$ 4,500, destined to “provide care for your child in their birth country”. Included is “...a programme me fee that supports ongoing orphan care and payment for your child’s medical checkup and HIV/PCR testing”.²² There is no indication of how these sums are broken down, and thus of how any or all of them might be justified. Furthermore, many agencies still do not provide even minimal up-front information on the fees and costs involved in the adoptions they facilitate.

In sum, the combination of vast amounts of money and the lack of transparency that characterises too many intercountry adoptions from Africa today favour the maintenance, not to say the increased exploitation, of the status quo. Money determines not only the way these adoptions are carried out, but also the reasons for which many are initiated. Money does not just matter - it is a key factor that must be tackled if the human rights of African children are to be effectively protected vis-à-vis intercountry adoption.

5.3 Disregard for the role of traditional coping mechanisms

Informal alternative care arrangements are invariably the norm in African countries. Known by a wide variety of names throughout the continent, and with nuances in their organisation and effects, these traditional coping mechanisms are often referred to collectively as “customary adoption” and “informal foster care”.

²¹ <http://www.adoptionadvocates.org/Africa/index.php>

²² <http://www.allgodschildren.org/adoption/our-adoption-programmes/ethiopia-adoption>



Arguments put forward in favour of intercountry adoption – often claiming to be based on children’s rights or, at the very least, the “best interests” of the child – are frequently grounded in the proposition that, because of its legalised nature, only adoption can provide guarantees of “permanency” for the child. Therefore, it is said, adoption is to be preferred over long-term foster care and various informal arrangements, which do not constitute being cared for “in a suitable manner”. It is vital that arguments such as these be debunked, and this can be done from at least four main standpoints.

First, this is of course a highly Western approach: not only does it ignore the fact that legal adoption is almost or completely unknown in a large swathe of societies, but it also assumes that any solution that is not formal and legally binding is automatically inferior in terms of the long-term best interests of the child.

Second, adoption does not in fact provide a “guarantee of permanency”, given that some adoptions break down: in Liberia, as just one example, a significant increase in the number of cases in which adoptive parents decided to terminate their relationship with Liberian adoptive children was

cited as one factor in the decision to impose a moratorium.

Third, from a child’s perspective, the issue is not “permanency” as such – a concept that few would grasp – but rather the need to feel safe in a stable and supportive environment. In most cases, this will best be ensured through traditional informal coping strategies.

Finally, the idea that intercountry adoption should be subsidiary to virtually nothing bar legalised domestic adoption leans on a singular vision of the “suitability” of care arrangements imposed in contexts where other visions might prevail.

Simply putting into question these arguments is not, however, sufficient. Families and communities in many African nations have been finding it increasingly difficult in recent years to fulfil their customary responsibilities towards children without parental care. It follows that, if “justified” recourse to intercountry adoption (and, indeed, institutional placements) is to be countered in practice, these families and communities must be empowered and enabled to play their traditional roles. This means priority being given – by national and



local authorities, civil society organisations, foreign governments and development aid bodies alike – to supporting their efforts rather than to allowing or promoting “formal” alternatives that are alien to the African context.

5.4 Alternative care in private hands

In the great majority of African countries, the residential care sector is essentially the sole kind of formal alternative care setting offered, and one key factor behind the history of the violation of children’s rights in intercountry adoption lies in the anarchy that has been allowed to reign in that sector.

Furthermore, while the use of large facilities (institutions) in industrialised countries has been drastically reduced over the past 30 or 40 years, due to concerns over their negative impact on child development, their numbers have been growing in many African countries during that same period. Somewhat paradoxically, this growth has been financed largely by donors in those same industrialised countries where institutional care is being phased out.

Per child, moreover, it is well established that care in a residential facility is generally far more costly than providing family support to prevent relinquishment or assisting families and communities in their informal nurturing roles for children without parental care. The incoherence is blatant.

There is a certain irony, to put it mildly, in the fact that “institutional placements” are thus funded yet simultaneously decried as unsuitable, often by the very same bodies or individuals that then evoke “children languishing in orphanages” as an argument in favour of intercountry adoption.

As in many countries of origin elsewhere, institutional placements in Africa are completely or very largely in private hands, in most cases with little official oversight and often with neither effective registration nor authorisation systems in place. As just one example, a governmental study in Ghana in 2009 found that only eight (5%) of all known “orphanages” were licensed to operate.²³

²³ <http://www.irinnews.org/Report/84582/WEST-AFRICA-Protecting-children-from-orphan-dealers>



Since most children are in the care of – or have been brought to – such facilities when identified for adoption abroad, special concerns are aroused in relation to intercountry adoption. These include the lack of control over which children are admitted and why; the frequent absence of adequate records; and, in many cases, the fact that children are actively discouraged from maintaining contact with their families (which most still have).

The problem is further compounded when facilities are funded by, or have special links with, foreign agencies that organise intercountry adoption.

A number of such agencies actually take pains to demonstrate that they are supporting in-country care (notably though not only in residential facilities) as well as facilitating adoptions abroad, but there should be no confusion in roles. A privileged conduit between a facility and an agency has constantly been shown to have high potential for irregularities. The following are among the ways in which “orphanages” (whether or not in collusion with adoption agencies) in Sierra Leone were reportedly infringing the law or

otherwise engaging in illicit or questionable practices connected with inter-country adoption:

- Actively prospecting for babies and young children in vulnerable families in the community
- Maintaining inadequate admission records or not sharing those records with the competent authorities
- Misrepresenting the “adoptable” status of children to prospective adopters
- Falsely declaring to the competent authorities that a child’s parents had died or were untraceable
- Obtaining consent for adoption by misleading birth parents or other family members as to the consequences of adoption
- Falsifying or forging documents (e.g. consent forms) and procuring falsified or forged documents (including ID).²⁴

Undoubtedly, this has been and still is a more general problem on the continent. Certain countries, including Liberia and Namibia (in the latter case, in a move unconnected with

²⁴ Assessment for UNICEF, 2006 : monograph.



intercountry adoption), have set up more systematic regulation and inspection of private facilities. To the extent that reliance on the latter for alternative care provision has to continue, such improved oversight is obviously a vital minimum condition for protecting the rights of the children concerned.

5.5 Independent adoptions: potential for illicit practices

Independent, or “private”, adoptions are those that are organised without the intervention of an approved adoption agency or the direct supervision of the Central Authority of the adopters’ country of residence. Because they escape much oversight and often involve prospective adoptive parents working directly with unregistered individuals or entities (and thereby gaining undue influence and control over the process), independent adoptions are well-known to generate a particularly high level of risk of violations of children’s rights. They are consequently outlawed implicitly by the procedures set out in the Hague Convention, and some receiving countries (e.g. Italy, Sweden) and

countries of origin have put a blanket prohibition on them, even when the adoption process is not carried out in the framework of that treaty. A Francophone Seminar on the Hague Convention in June 2009²⁵ attended by several African governments (Burkina Faso, Burundi, Côte d’Ivoire, Guinea, Madagascar, Mali, Mauritius, Seychelles and Togo) recommended that both receiving countries and countries of origin establish the objective of prohibiting private and independent intercountry adoptions.

Nonetheless, independent adoptions remain a fact of life in arrangements that certain receiving countries have put in place with countries of origin that are not parties to the Hague Convention, including several in Africa. Both France and the USA allow independent adoptions from non-Hague countries, and for France those from Africa made up over a third (35.5%) of the total in 2011. In that year, all 83 adoptions to France from Gabon, Guinea, Senegal and Tunisia were independent in nature, as were almost all of those from Cameroon (29 of 31), Congo (16 of 18), Côte d’Ivoire (28 of 29) and

²⁵ Séminaire francophone relatif à la Convention de La Haye du 29 mai 1993 sur la protection des enfants et la coopération en matière d’adoption internationale, The Hague, 22 to 26 June 2009



Central African Republic (18 of 19), among others. In all, over 220 African children were adopted “independently” to France alone in 2011, and thus with scant guarantees of a principled process.

Obviously, situations such as these are highly disturbing. Opportunities for illicit practices are multiplied when adoptions are not monitored systematically from beginning to end. With the exclusion of independent adoptions from procedures under the Hague Convention, there is no rights-based argument that justifies the practice being maintained – anywhere.

5.6 Adoption agencies: Inadequate government oversight

Adoption agencies come in all shapes and sizes, from small, localised volunteer associations (often set up by adoptive parents) run on a shoestring to large staffed organisations dealing with hundreds of intercountry adoptions each year. Those operating within the Hague framework must be accredited by their base (receiving) country and approved by the country of origin with which they are working. According to the country concerned, however, there may be far less

stringent rules governing agencies organising adoptions from non-Hague countries of origin.

Recourse to the services of an adoption agency, even if duly and conscientiously approved and accredited, is regrettably not an absolute guarantee of carrying through a totally ethical adoption, as shown previously in this document. For those operating under Hague rules at least, it nonetheless demonstrably reduces the risk of abusive conduct.

A number of countries of origin throughout the world remain mistrustful of the motives of private agencies involved in intercountry adoption, and do not allow them to intervene within their borders. In Africa, these include Central African Republic, Cote d’Ivoire, Malawi, Swaziland, Uganda and Zambia. In particular, the fear is expressed that financial gain – or in some cases ideology – may be motivating these agencies more than genuine child protection concerns. There are certainly many instances where such fears have proved justified.

Unfortunately, the systems – or lack thereof – set in place as an alternative are invariably inadequate to safeguard the rights and best



interests of children for whom adoption abroad may be envisaged. They may involve, for example, “facilitators” who do not have to be vetted or even registered; direct contacts with “orphanages”; the inappropriate delegation of tasks and responsibilities to notaries or facility directors; or unrealistic attempts to have each process supervised directly by officials. The possibility of effective oversight in such conditions is dramatically reduced in comparison to a situation in which a small and known set of approved agencies is operating.

If the risks of an agency-based system are to be minimised, clearly the first requirement is to ensure that the accreditation and approval processes for agencies demand the fulfilment of stringent criteria, including financial propriety (fees charged, in-country costing of services), the suitability of any local agents or staff, and the quality and exactitude of information provided to prospective adoptive parents about the intercountry adoption needs and process in the country of origin concerned.

But it is also vital to limit the number of agencies approved for operating

in a given country of origin to no more than what is strictly necessary to cater to the expected number of children who may require adoption abroad. Countries of origin often do not realise that, by failing to do this, an unhealthy climate of competition is likely to emerge among agencies, with consequent pro-active searching by each agency for children who may be “adoptable”. Certain receiving countries leave it entirely to the country of origin to determine the appropriate number.

As a result, for example, at the start of 2010, over 70 foreign agencies were operating in Ethiopia. They included 15 US agencies that had been set up after 2005, when overall intercountry adoptions were already in decline, suggesting that they had been established in particular to take advantage of the rapid rise in adoptions from this specific country. This was also a time, furthermore, when there were reports of a growing number of unlicensed orphanages and “transition homes”, mostly run by foreign agencies, from where children could be placed directly with foreign prospective adoptive parents, with all the previously mentioned attendant risks.



5.7 Systemic inadequacies

In the adoption sphere, as in any other domain of human activity, there are individuals who will seek to circumvent or ignore the law, and clearly there is a need for constant vigilance to prevent and respond effectively to this.

However, most of the major problems and violations of standards encountered in the intercountry adoption process are not rooted in illegal acts by isolated persons, but rather concern activities that have become quasi-generalised – even endemic – because, in particular, of inadequacies in the legislation and system in place. Such systemic lacunae range from “loopholes” or absence of regulation to legal or administrative requirements that actually undermine, or even run counter to, international standards. The following are examples of some of these:

- Systems where the required process for declaring the adoptability of a child is neither transparent nor thorough
- Systems that permit independent adoptions

- Systems that do not provide for screening facilitators and other intermediaries in the adoption process
- Systems that do not provide for matching a child with prospective adopters but allow the latter and/or their agencies to have direct contact with residential child care facilities and, more or less directly, to “select” a child
- Systems where prospective adopters or agencies are required to make donations to the residential child care facility from which they adopt, or to provide other humanitarian assistance or financial support to the child protection system.

Where systems of this nature exist, it is almost inevitable that the financial advantage of adopters and their agencies compared to the situation of those involved in the country of origin will result in illicit activity. This is of course exacerbated by the fact that the number of foreign applicants to adopt is considerably greater than the number of “adoptable” children.



6 ENSURING A MORE EFFECTIVE PROTECTION OF CHILDREN

The effective protection of children's rights in relation to intercountry adoption clearly has to take place in the country of origin, with the active cooperation of all concerned, before the adoption process starts. It involves preventing child procurement, verifying a child's true legal adoptability, ensuring the fitness to adopt of prospective adoptive parents, carrying out professional matching with a child they are deemed apt to care for, and ensuring successful bonding period with that child. It is at those points, and through those processes, that the child's future protection is to be assured. Many countries of origin, however, seem to be in denial of this reality, preferring to place undue emphasis on follow-up reporting on the circumstances, development and welfare of their children who have already been adopted abroad as a key protective measure. Unwittingly or otherwise, they are thereby deflecting attention from the vital need to require and implement safeguards at the pre-adoption phase.

Follow-up reports in the years immediately following the move, when taken as a whole, can indeed

provide an overall picture of the degree of success for children adopted to a given receiving country, as well as highlighting problems in some instances (e.g. the incidence of breakdowns of the adoptive relationship). However, it is extremely rare that follow-up reporting is useful as a form of protection for the individual child concerned, and there must be nonrealistic expectations on this level. Experience shows that over-reliance on *post facto* reporting as a protection measure is a dangerous approach.

Whether or not it is a party to the Hague Convention, no country is under any obligation to "allow" its children to be moved abroad for adoption either as a general principle or at all. Several States Parties authorise this only on a case-by-case basis, in relatively rare instances, and on rigorous rights-based grounds.

There is no record, publicly at least, of the authorities of any African nation ever having made a spontaneous appeal to governments, agencies or individuals from other countries to adopt their children. On record, they have, in contrast, voiced concerns



about both the circumstances in which “adoption programmes” are implemented and the outcomes for some of the children concerned.

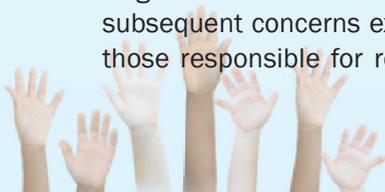
Exceptional cases apart, the fact that African children are being adopted abroad thus stems from the acceptance of offers made, or pressures exerted, from outside. Implicit recognition of this is reflected in statements from some agencies that express appreciation to the authorities of Country X for “allowing” them to organise the adoption of its children abroad. Indications of a more active – some would say aggressive – attitude include official missions to an actual or potential country of origin, with the goal of promoting intercountry adoption.

That there are severe and widespread – some would say inherent – problems for the protection of children’s rights in intercountry adoption is now beyond doubt. At the same time, the main factors that, singly or in combination, generate those problems have been identified and documented. Indeed, in many instances they have been widely acknowledged for many years, as evinced by the text of the 1993 Hague Convention itself and the subsequent concerns expressed by those responsible for reviewing its

implementation. But not only are the problems and underlying factors known, in most cases there are also – as shown earlier – a number of clearly-identifiable indicators of the risk that they will materialise.

So why is it that most contemporary responses to problems, to the extent that they are implemented, are still simply reactive to abuses rather than preventive in orientation? Why, for example, do countries of origin and receiving countries alike still allow – and even, at least passively, promote – independent adoptions? Why are adoption agencies able to set up and/or finance “orphanages”, usually subject to minimal or no oversight, through which children can be adopted abroad? Why are vertiginous year-on-year increases in intercountry adoption numbers countenanced when it is evident that those responsible for ensuring that safeguards are respected are completely overwhelmed?

Governments both of countries of origin and of receiving countries need to ask themselves – and to answer – questions like these. Neither set of countries can effectively tackle the issues alone. While it is naturally up to countries of origin to determine their policy on intercountry adoption in line with the overall obligations under the CRC, compliance with that



policy in practice requires the full cooperation of the receiving countries concerned. This principle of co-responsibility was “accepted and supported” at the 2009 Francophone Seminar mentioned previously, which recognised joint responsibility “for developing guarantees and procedures

that protect the best interests of the child”.

There are also specific actions that need to be taken by everyone concerned, as laid out in the following box.

INTERCOUNTRY ADOPTION: SPECIFIC ACTIONS

States must closely assess and scrutinise the need for and the role of intercountry adoption as a child protection measure in their country, against the principle of the best interests of the child, before embarking on the practice.

For countries that allow intercountry adoption to take place, States must ensure that the system, at all levels, should be about finding a suitable family for a child who needs intercountry adoption as opposed to finding a child for a family. This requires ensuring that the principle of the best interests of the child is *the* paramount consideration.

Treaty bodies, such as the UN Committee on the Rights of the Child, and the African Committee of Experts on the Rights and Welfare of the Child should review intercountry adoption policy and practice closely, not only in countries of origin but also in receiving countries. They should also pay special attention to developments in alternative care provision in general, including prevention of the need for such care and its effective oversight.

Governments of receiving countries should, amongst other measures:

1. Strictly and systematically adhere to the 1993 Hague Convention principles in their dealings with all countries of origin, whether or not they are States Parties;
2. Prevent actions that may result in excessive “effective demand” for adoptable children being expressed in any country of origin as well as take measures to ensure the proper application of the subsidiarity and adoptability principles and/or rigorous respect for all steps in the adoption process;

3. Endeavour to reach common stances and make joint approaches when situations of concern arise in which there is *prima facie* evidence of serious and widespread violation of children's rights in the intercountry adoption process of a given country of origin;
4. Seek all possible ways, through bilateral or multilateral cooperation, to assist actual or potential countries of origin to develop suitable preventive and responsive domestic services for children without parental care, in the framework of the Guidelines on Alternative Care for Children (UNGA, 2009).

African governments should, amongst other measures:

1. Comprehensively review legislative and procedural provisions regarding intercountry adoption, to ensure that they effectively respond to international standards (especially the ACRWC, CRC and the 1993 Hague Convention) and, in particular, to indicators of risks identified in this report as well as ensuring compliance with the Guidelines for the Alternative Care of Children (UNGA, 2009);
2. Put in place additional safeguards such as limiting the number of authorised adoption agencies operating in the country and the number of receiving countries to cooperate with; strengthen oversight of child-focused bodies, prohibit independent and private adoptions, closely regulate all financial aspects related to intercountry adoption;
3. Request bilateral and/or multilateral assistance for developing preventive and gatekeeping services to reduce the number of children coming into residential care facilities, and for promoting and supporting appropriate traditional informal care arrangements, in accordance with the above-mentioned Guidelines.



7 TOWARDS A PAN-AFRICAN POSITION ON INTERCOUNTRY ADOPTION

There are around 58 million orphans in Africa today, equal to the combined populations of Botswana, Lesotho, South Africa and Swaziland. Not withstanding the demonstrably promising beginnings of an **Africa Rising** – as can be seen in impressive growth rates of recent years – poverty in both rural and urban areas in Africa remains endemic. The HIV/AIDS pandemic, now being brought under increasing control, is still rampant, with huge consequences for the survival and livelihoods of millions of families and children, including child-headed households. The unholy trinity of famine, drought and conflict, sometimes ebbing and sometimes raging, along with the breakdown of centuries-old communal and traditional sources of support, have decimated African families and added to the vulnerability of African societies and their children.

This combination of factors has added to the attractiveness of intercountry adoption as an alternative solution to the deficit in family care and the failure of public policy. Beyond Africa, the increasingly restrictive or rigorous protective policies being adopted in Latin

America and Asia on the one hand, and the growing demand from Europe and North America for adoptee children on the other, have fuelled the demand for children from Africa. The combined result of all these factors has been a dramatic rise in the number of children being adopted from Africa – as much as a 15-fold increase in some countries – within a short space of time.

The circumstances surrounding the process of adoption and the mixed record of the wellbeing of African children adopted outside the continent have given rise to serious questions, and sometimes passionate arguments, about the wisdom of intercountry adoption. Undoubtedly, and in reassuring testimony yet again to the generosity of the human spirit, many adoptive parents have acted in good faith, with the noblest of motives. But the reality is that intercountry adoption has too often been marked by many challenges, risks and abuses, both here in Africa and in receiving countries.

Too many African parents have been coerced or manipulated into giving up their children, often without fully understanding the legal and other



consequences of their actions, and substitute carers have similarly surrendered children under unethical or illicit conditions. Some governments have undermined their legal and moral obligation – and, therefore, their regulatory or supervisory duties – by not addressing the behaviour of unscrupulous agents. Children have been turned into commodities in the greying, increasingly amoral world of intercountry adoption.

It is under these unfavourable circumstances that thousands of African children, already traumatised by the loss of their natural parents, or abandoned by them, are yet again thrown into what must be an uncertain and intimidating world of strangers from a totally alien environment. Not surprisingly, many children have suffered, usually in spite of the best efforts of their new adoptive parents, and sometimes in the hands of the very people or communities to whose care they had been entrusted. Even where there has been the best of will and maximum effort, there are genuine concerns about the psychological and cultural disconnect and the indelible psychological impact on a vulnerable, sensitive, traumatised African child being adopted into a totally foreign environment.

Let us restate the obvious in order to make what is likely to be a contentious conclusion. Children must grow up in their own families; if they cannot do so with their natural parents, they should do so among their extended families; short of that, in their own larger community; and if short of that, within the larger African family. There may come a time of a world beyond race, ethnicity and exclusion; but, alas, this is not the reality of the world we live in today.

We, therefore, have the duty to provide for our children so that they grow up in their own communities and in Africa, in total security and full freedom from hunger and deprivation. And in this task, African societies and, above all, African governments, have and must assume full responsibility to provide the legal and material basis needed to raise Africa's children with dignity. As stated in the African Charter on the Rights and Welfare of the Child, echoing the United Nations Convention on the Rights of the Child:

“When considering alternative family care of the child and the best interest of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.” [Article 25 (3)].



Intercountry adoption should not be taken as an easy and convenient option. It must at all costs be discouraged. It should be a last resort and an exception rather than the normal recourse to solving the situation of children in difficult circumstances, as it seems to have become. It must never take place unless all other means to provide the child with a suitable family environment within their country of origin have been exhausted. It must be used under

veritably exceptional circumstances, with the best interests of the child as the **primary** consideration (CRC Article 21), and with proper safeguards.

So, we say, “NO” to intercountry adoption of African children, save for exceptional reasons and under exceptional circumstances. Africa and African governments must assume their responsibility to ensure an Africa fit for all its children.

INTERCOUNTRY ADOPTION: KEY ISSUES

- The unholy trinity of war, famine and disease have left millions of children without parental care
- Many parents have been forced by poverty to relinquish their customary child rearing duties, and at times to succumb to temptations of profiteering by giving away their children for adoption
- Intercountry adoptions from Africa are increasing at an alarming rate, creating a growing sense of unease among Africans
- Serious concerns are also raised about the psychological and cultural disconnect posed on African children and the rupture of blood ties with their biological families
- The significant amounts of money and the lack of transparency that characterise too many intercountry adoptions today help reinforce the practice
- It is everyone’s responsibility to reverse the current trend of relying on intercountry adoption as an easy and convenient option
- The care and protection of children in Africa is primarily an African responsibility. Children must grow up in their own families; short of that, among their extended families; short of that, in their own larger community; and if still short of that, within the larger African family.
- Wherever and whenever it is applied as a measure of last resort, intercountry adoption should be carried out based on the principle of the best interests of the child.





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