

# **Intercountry Adoption Alternatives and Controversies**

**Proceedings of the Fifth International Policy Conference  
on the African Child**



**29-30 May 2012  
United Nations Conference Centre  
Addis Ababa, Ethiopia**



**The African Child  
Policy Forum**



# **Intercountry Adoption Alternatives and Controversies**

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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 on the public and political agenda is fundamental for the realisation of their rights and wellbeing and for bringing 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 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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Suggested citation:

ACPF (2012). *Intercountry Adoption: Alternatives and Controversies. Proceedings of the Fifth International Policy Conference on the African Child*. Addis Ababa: The African Child Policy Forum.



## ACKNOWLEDGMENTS

The Fifth International Policy Conference on the African Child entitled “Intercountry Adoption: Alternatives and Controversies” involved considerable preparation and coordination in order to be a success. ACPF is grateful to organisations and individuals who partnered with it in planning and organising the conference.

First and foremost, our appreciation goes to the Government of The Federal Democratic Republic of Ethiopia, more specifically to the Ministry of Women, Children and Youth Affairs, the Federal First Instance Court, the Justice and Legal Systems Research Institute and the Ethiopian Human Rights Commission for supporting ACPF with the preparations and successful completion of this conference.

Our profound gratitude goes to H.E. the First Lady of the Republic of Uganda and Minister of Karamoja Affairs, Mrs. Janet Museveni, for accepting to be the Guest of Honour and gracing the conference. In addition, ACPF is extremely grateful to all Cabinet Ministers who made it to the conference and to H.E. Mrs. Joyce Banda, President of the Republic of Malawi, who despite not being physically present, sent her remarks through Hon. Mrs. Anita Kalinde, Minister of Gender, Children and Community Development of the Republic of Malawi.

To the excellent team of chairpersons, speakers and discussants, we are grateful for taking your time to attend, facilitate and speak at the conference.

We would also like to thank Dr. Charlotte Phillips, Children’s rights specialist, for her work on this proceedings report.

We are especially indebted to Investing in Children and their Societies (ICS) and Plan International, for their technical and financial support without which this conference would not have been possible.

Special thanks also go to Wereldkinderen, the UNICEF Liaison Office to the AU and UNECA, International Social Service (ISS) and The Hague Conference on Private International Law (HCCH) for their extremely valuable technical contribution to the conference.

To all the participants, we are grateful for your involvement and for contributing to the achievement of the objectives of the conference and also joining ACPF in addressing the pertinent issue of Intercountry Adoption in Africa.

Lastly, our sincere thanks go to our International Board of Trustees, under the leadership of H.E. Dr. Salim A. Salim for their devotion, guidance and expertise to ensure that the conference was a success.

The African Child Policy Forum (ACPF)  
July 2012  
Addis Ababa

### Note

ACPF is pleased to announce that the full proceedings and presentations of the conference have been posted on our website: [www.africanchildforum.org/ipc](http://www.africanchildforum.org/ipc)



## ACRONYMS

<b>ACERWC</b>	African Committee of Experts on the Rights and Welfare of the Child
<b>ACPF</b>	The African Child Policy Forum
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>AMC</b>	AfricaWide Movement for Children
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>CCI</b>	Charitable Children's Institution
<b>CRC</b>	Convention on the Rights of the Child
<b>CSO</b>	Civil Society Organisation
<b>DRC</b>	Democratic Republic of Congo
<b>HCCH</b>	The Hague Conference on Private International Law
<b>HIV</b>	Human Immunodeficiency Virus
<b>ICS</b>	Investing in Children and their Societies
<b>IPC</b>	International Policy Conference
<b>ISS</b>	International Social Service
<b>MDGs</b>	Millennium Development Goals
<b>MENA</b>	Middle East and North Africa
<b>NGO</b>	Non-Governmental Organization
<b>OAU</b>	Organisation of the African Union
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNECA</b>	United Nations Economic Commission for Africa
<b>UNICEF</b>	United Nations Children's Fund







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## BACKGROUND

It is estimated that there are over 58 million orphaned children in Africa. Africa has for generations relied on informal alternative care mechanisms such as the community and the extended family system for support and survival of those in need, especially children. However, there is now an increasing disintegration of the informal alternative care systems, at the result of which many children are put up for adoption across the world.

Africa is the only continent where intercountry adoption is on the increase, while adoptions from all other continents have decreased in recent years, yet only 13 African countries have ratified the Hague Convention on Intercountry Adoption. There is a serious and growing concern among governments, as well as human and child rights advocates that intercountry adoption poses serious risks and challenges. Much as some children benefit from the adoption system, experiences from some countries suggest that intercountry adoption is marred with serious institutional and procedural problems and challenges.

The Fifth International Policy Conference on the African Child (IPC) was held on 29 and 30 May 2012 in Addis Ababa, Ethiopia and brought together experts, policymakers and key stakeholders to discuss various issues and the implications of intercountry adoption in Africa. The African Child Policy Forum (ACPF) organised the conference with technical and financial support from Investing in Children and their Societies (ICS) and Plan International. Among those attending the conference were Government officials, representatives of the African Committee of Experts on the Rights and Welfare of the Child, UN agencies, the African Union Commission and other international and non-governmental organisations, members of civil society organisations, and members of ACPF's International Board of Trustees.

All the five International Policy Conferences (IPCs) to date were aimed at raising awareness of circumstances affecting children, with the goal of promoting the protection and rights of the African child. The previous four IPCs focused on the following issues:

- **The African Child and the Family (2004)**
- **Violence against Girls in Africa (2006)**
- **Child Poverty in Africa (2008)**
- **Budgeting for Children (2010).**

The primary objectives of the Fifth IPC were to provide a platform for sharing information and experiences on intercountry adoption; to promote action on this form of adoption; consistent with the best interests of the child and to adopt a Pan-African Framework on Intercountry Adoption.





# DAY 1

## CONFERENCE PROCEEDINGS

Tuesday, 29 May 2012



Mr David Mugawe, Executive Director, ACPF

### Opening Session:

- Welcome Note by Ms Sarah Guebreyes, Director Programme Monitoring and Operations, ACPF
- Mr David Mugawe, Executive Director, ACPF
- H.E. Dr Salim A. Salim, Chairperson, International Board of Trustees, ACPF; Prime Minister of Tanzania (1984-1985); Secretary-General, Organisation of African Unity (OAU) (1988-2001)
- Mme Agnès Kaboré, Chair, African Committee of Experts on the Rights and Welfare of the Child
- *An Uncertain Journey*, documentary on intercountry adoption in Africa, produced by ACPF

- H.E. Mrs Janet Museveni, First Lady of the Republic of Uganda
- H.E. Mrs Zenebu Tadesse, Minister of Women, Children and Youth Affairs, Federal Democratic Republic of Ethiopia

### Ms Sarah Guebreyes, Director Programme Monitoring and Operations, ACPF

The conference opened with a welcome note by Ms Guebreyes. She introduced ACPF as a Pan-African organisation working on children's issues through advocacy and research and wished all the participants fruitful deliberations during the two-day conference.



**Mr David Mugawe, Executive Director, ACPF**

Mr Mugawe outlined ACPF's work, which is based on three pillars: policy, research and advocacy. Having referred to the four preceding conferences, he introduced the topic of the Fifth IPC, namely intercountry adoption. Looking at the soaring numbers of children leaving African soil and the processes employed to obtain these children for adoption, Mr Mugawe stated that these practices can no longer be ignored. He announced that during this conference an array of people – both experts and people with multidisciplinary experience with regard to intercountry adoption – would present their findings and views.

After the introduction of the eminent guest speakers, Mr Mugawe thanked partners and donors for their financial support towards the realisation of the Fifth IPC with particular mention of Investing in Children and their Societies (ICS), Plan International, Oak Foundation, and Save the Children Sweden. Furthermore, he thanked the team of experts and the entire ACPF team for their efforts in ensuring the success of this conference.

Mr Mugawe concluded by describing the current trends of intercountry adoption: whereas most countries are now limiting – in some cases even banning – intercountry adoption, the African continent has become the new frontier for intercountry adoption. Without proper frameworks, Africa's children will slip through the net. The issue of intercountry adoption needs to be addressed. Mr Mugawe expressed his profound hope that this conference would result in recommendations and solutions in order to protect children in need of care in Africa.

**H.E. Dr Salim A. Salim, Chairperson, International Board of Trustees, ACPF; Prime Minister of Tanzania (1984-1985); Secretary-General, OAU (1988-2001)**

Dr Salim was unable to attend the Conference personally due to earlier commitments and in a recorded speech; he praised the diligent work of ACPF in promoting the rights and welfare of the child through research, advocacy, policy development and policy dialogue, efforts which

have led to the placement of children's rights on the public and political agenda in Africa. In his speech he further stated that many children in Africa find themselves in need of care due to a variety of causes such as poverty, orphanhood due to HIV/AIDS, and other communicable diseases. The many deaths of primary caregivers have resulted in an increasing number of children in need of alternative care, which in turn has led to the rise of intercountry adoption in Africa. It is therefore our responsibility to ensure that children grow up in a protective environment.

Dr Salim emphasised the importance of the African Charter on the Rights and Welfare of the Child (ACRWC), as well as the United Nations Convention on the Rights of the Child (CRC) in the context of alternative care provisions for children without (adequate) parental care. The principle of the best interests of the child, which he underscored, should always be the primary consideration in any intercountry adoption process. He noted that although most adoptive parents do indeed genuinely desire to offer a home to children, intercountry adoption may also lead to abuse, exploitation and consequently there is a risk of children growing up in potentially unethical conditions. Children may find themselves culturally disconnected in the countries of destination or in their adoptive families, causing psychological suffering. In other cases, commercial interests have superseded altruism. Biological parents are often coerced into adoption without the full knowledge of the implications of their actions. Most parents are not familiar with the concept of intercountry adoption and are not aware of the fact that adoption is a permanent relinquishment of parental rights.

Intercountry adoption should therefore not simply be a means to an end but should solely be used as a measure of last resort and in the best interests of the child.

Dr Salim reiterated the dire need for countries to support parents in raising their children and to develop adequate alternative care systems. Intercountry adoption should only be considered when other options, such as foster care and extended family care, have been exhausted. He





stated that we have a duty to provide for our children and to offer them a safe environment so that they can grow up within their own communities.

**Mme Agnès Kaboré, Chair, African Committee of Experts on the Rights and Welfare of the Child**

Mme Kaboré elaborated on the duty of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) to ensure children's wellbeing and to play an active role in the discussion on intercountry adoption. She indicated that the ACERWC notes with concern that African children are increasingly left to care for themselves outside the nuclear family. Socio-economic conditions continue to deteriorate, leading to violations of children's rights, even the most basic rights.

The legal framework regulating intercountry adoption was outlined by Mme Kaboré. Both Article 21 of the CRC and Article 24 of the ACRWC provide for

various forms of alternative care systems that are in the best interests of the child, but also to highlight the shortcomings and the challenges imposed by the Hague Convention. This conference is also an opportunity to formulate and agree on recommendations and guidelines on intercountry adoption, aimed at the protection of children's rights.

Mme Kaboré explained that the ACERWC's fulfillment of its mandate involves three procedures, including the examination of States Parties' reports on the implementation of the ACRWC. While to date 46 countries have ratified the ACRWC, only 16 countries have submitted their initial reports. During the examination of these reports, all information relating to adoption is subject to special attention and the conclusion may be drawn that adoption procedures vary widely from one country to another. The ACERWC has also noted with concern that the financial requirements and considerations in respect of intercountry adoption are often high and that there is insufficient data regarding both domestic and intercountry adoption in Africa. Mme Kaboré stressed that intercountry adoption is a process that must be managed by a well-structured and consensual model. She concluded by encouraging African countries that have not ratified the ACRWC and/or the Hague Convention to do so. She officially opened the Fifth International Policy Conference on the African Child.

***An Uncertain Journey, documentary on intercountry adoption in Africa, produced by ACPF***

The story begins in Nakulabye, a slum on the outskirts of Kampala, Uganda. It is a hot, sticky day and Jackie, a social worker, is searching for 3-year-old Eva's mother. Aid workers dropped the girl off at a local orphanage after they found mother and child sleeping next to a row of outdoor latrines. Now, three weeks later, Eva is being clothed and fed, but her mother has disappeared. Jackie is hoping to reunite the two and has come back to the slums to search for Eva's mother. There is a lot at stake for Eva: if her mother cannot be found, she risks spending the rest of her childhood in an institution, going into foster care or being put up for intercountry adoption.



Mme Agnès Kaboré, Chair, African Committee of Experts on the Rights and Welfare of the Child

intercountry adoption, indicating that this form of adoption should only be considered as a last resort. In addition, the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (The Hague Convention) complements these Articles. The theme of this conference reflects the desire to take stock of the

Eva is part of a much bigger story: she is one of the 2.5 million children in Uganda who have lost one or both parents. Increasingly, these children end up in the United States or in other Western nations that have collectively earmarked Uganda as the latest hot spot for intercountry adoption.

*An Uncertain Journey* examines what is involved in opening up adoption programmes overseas and what happens when a country does not have sufficient resources to manage the increased volume of adoptions. Through interviews with government ministers, adoption agencies, parents and others, the film investigates how children are identified as 'good' candidates for adoption and whether the needs of true orphans are well served by the sometimes conflicting interests of those involved.

#### H.E. Mrs Janet Museveni, First Lady of the Republic of Uganda

Mrs Museveni's Keynote Address was based on her experience gained by working with vulnerable children in Uganda. She expressed her strong reservations about intercountry adoption as a solution for children in need of alternative care in Africa. Adoption itself is a foreign concept in Africa.



H.E. Mrs Janet Museveni, First Lady of the Republic of Uganda

Most African people on the continent are not familiar with this concept. She indicated that it is essential that African governments take into

account historical lessons as intercountry adoption brings back memories of the slave trade by colonizers who entered Africa and took valuable Africans in exchange for gifts to their rulers. This was the first brain drain where Africa was denied its potential to fully develop and to date Africa has not recovered from the effects of colonisation. Mrs Museveni pointed out that a failure to regulate and adequately provide measures for our children to stay in their communities will potentially lead to another brain drain in Africa. Children are Africa's most precious asset; they are the continent's potential human capital and they should not be handed over to the highest bidder.

Mrs Museveni indicated that natural disasters, conflict, diseases such as HIV/AIDS, poverty and inadequate resources all contribute to the inherent vulnerability of children, as children take the brunt of the effects of these conditions. Parents find themselves unable to provide for the basic needs of their children, forcing them to put them up for adoption. The lack of effective national policies and regulatory frameworks endangers the situation of vulnerable children even further and frequently leads to children being trafficked, used in prostitution rings or as sex slaves, forced to perform hard labor or to become victims of organ harvesting. She stated that African governments must be made accountable for the survival and development of their children. In addition, international organisations and the African Union should dedicate a decade to achieving regional child survival and development goals, comparable to the Millennium Development Goals (MDGs), which have led to a number of improvements in specific areas.

Furthermore, the African extended family structure should be strengthened through government support. Governments should implement policies which discourage institutionalisation and only when all local alternatives fail should intercountry adoption be considered. Approximately 80% of Ugandan children in residential care do not need to be institutionalised and these children can be raised at a lower cost, in a family home setting. It is estimated that the adoption of one child can cost up to \$30,000. Mrs Museveni said that the money involved in intercountry adoption should instead be utilised to develop and enhance family and



community structures, allowing children to stay within their families and preserving their cultural heritage.

Mrs Museveni called on participants representing adoption agencies to consider investing in communities and extended families, so that children are not denied their right to stay in their own environment. She called upon governments, communities, civil society organisations and adoption agencies to focus on strengthening families and communities to absorb children in need of care. Furthermore, an appeal was made to international organisations, UN Agencies, policymakers and advocacy groups to assist African governments to ratify the requisite international legal instruments that regulate and guide intercountry adoption and to monitor and ensure that governments do not undermine proper adoption processes by encouraging unscrupulous activities. Finally, she expressed her hope that the deliberations and dialogues during the conference would lead to concerted efforts to preserve and protect Africa's children.

**H.E. Mrs Zenebu Tadesse, Minister of Women, Children and Youth Affairs, Federal Democratic Republic of Ethiopia**

Mrs Tadesse stated that the conference was an important platform to share best practices and develop collaborations between different stakeholders involved in intercountry adoption practices.

Mrs Tadesse elaborated on Ethiopia's achievements with regard to respecting children's rights and outlined the legal environment that gives impetus to the welfare of children in Ethiopia. The Constitution, the Revised Family Code, the Civil Code and other government policies, such as the Alternative Childcare Guidelines, have been implemented over the years to cater for the needs of children.



H.E. Mrs Zenebu Tadesse, Minister of Women, Children and Youth Affairs, Federal Democratic Republic of Ethiopia

Furthermore, there have been concerted efforts to ensure that the Ethiopian government meets its obligations under the Millennium Development Goals.

Although adoptions are taking place in Ethiopia, robust efforts have been exerted to provide for a continuum of alternative care options by strengthening families and communities to absorb children in need of care. Mrs Tadesse noted that traditional practices of alternative care are proving to work in Ethiopian communities and intercountry adoption is applied as a last resort. Awareness programmes on the importance of community based care have been rolled out from federal to local levels, ensuring that communities value the importance of domestic alternative care mechanisms across the country.

In her concluding remarks Mrs Tadesse officially declared the conference opened and wished the participants successful deliberations.





# SESSION I

## INTERCOUNTRY ADOPTION: THE AFRICAN CONTEXT

Chair: Ms Sally Christine Cornwell, Member, International Board of Trustees, ACPF



Ms Sally Christine Cornwell, Member, International Board of Trustees, ACPF

The chairperson, Ms Sally Christine Cornwell, introduced the first session and she explained that it is ACPF's aim to produce the following documents as outputs of the conference:

- Proceedings Report
- Conference Report
- Pan-African Guidelines for Action on Intercountry-Adoption of Children in Africa
- Conference Communiqué

She further explained that draft Guidelines will be circulated for future review by participants and for due consideration by the ACERWC.

### Presenter:

- *Intercountry adoption: A contested option*

Mr David Mugawe, Executive Director, ACPF

Mr Mugawe's presentation was aimed at providing a contextual overview of intercountry adoption in Africa based on studies carried out by ACPF as well as by other organisations. Mr Mugawe stated that intercountry adoption is a new phenomenon in Africa, to the extent that there is no translation of the concept in local African languages. Meanwhile, figures indicate that adoptions from Africa are increasing, while the numbers of intercountry



adoptions in other parts of the world are decreasing. Africa has become a new frontier for intercountry adoption. In his presentation, Mr Mugawe provided an insight into the proportions of intercountry adoption. Global trends show that in the year 2003 an unprecedented 41,540 children were adopted worldwide, increasing to 45,298 in 2004. The numbers of global adoptions decreased to 29,095 in the year 2010. Conversely in Africa, 2,254 children were adopted in 2003. The number increased to 6,349 children in 2010. Mr Mugawe indicated that the top five sending countries are: Ethiopia, Nigeria, Democratic Republic of Congo, South Africa and Mali; the top five receiving countries are: the United States, Italy, France, Spain and Canada.

The rapidly growing numbers of intercountry adoption in Africa are a reason for major concern, as is the low age of children who are adopted. The studies conducted by ACPF also revealed the following issues of concern:

- Cultural disconnect, disabling children and representing a serious emotional challenge.
- Emotional and psychological ill-effects, leading to the stigmatisation of adopted children.
- Falsification of records and formal documents or the status of biological parents in order to facilitate and expedite intercountry adoption.
- Financial gains and corruption, which are recognised as a major driving force behind intercountry adoption rather than the paramount best interests of the child. Amounts between \$10,000 – \$30,000 are paid for a single intercountry adoption procedure and a number of orphanages have been found to operate on the basis of funds provided by adoption agencies.
- Demand driven, largely due to pressure to provide children for adoption from receiving countries. The question arises: Are we giving a child to a family or are we giving a family to a child?
- Disregard of traditional coping mechanisms to absorb children in need of care.
- Poor monitoring of adoption agencies.

Mr Mugawe emphasised that monitoring is an important aspect of intercountry adoption and that monitoring procedures have been questioned both in terms of process and output. In some instances children are adopted and later rejected by their adoptive parents, leading to multiple changes in their care situation.

He noted that from an African perspective, the regional and international instruments such as the CRC, ACRWC and the Hague Convention are recognised as guiding principles on how to regulate intercountry adoption. He stated that tremendous improvements have been made in terms of legislation and policy. At the same time there are still major gaps between legislative promulgation and the actual implementation of the laws; we should therefore move away from rhetoric and do what we have pledged to do, namely protecting children. The onus is on us, on governments, on CSOs, parents and other members of society to address these issues. Our failure is not the lack of ability but a moral and political deficit: the lack of political will and the failure of accountability towards protecting children.

Mr Mugawe concluded his presentation by posing a number of key questions to which answers should be found: How committed is Africa towards its children's best interests? What can and should governments and CSOs do? What can and should receiving countries do? What about regional bodies such as the African Union and the ACERWC? Last but not least: what can the UN Committee on the Rights of the Child and the Hague Convention mean for our children?

He stressed African children face the biggest challenges; therefore it is imperative that we all hold ourselves accountable.

Mr Mugawe's last message was: "It is thy responsibility; honour thy obligations."

## Plenary discussions

Comments raised during the plenary session included the following:

- Intercountry adoption as an issue may not be overwhelming compared to other problems



such as poverty, conflict and HIV/AIDS, but the fact that it is a growing phenomenon and that it is affecting the African child makes it a major concern. From a legal point of view the term adoption is non-existent in African languages. This should be documented in the Conference Communiqué.

- The term adoption does not feature in African dictionaries and we should not aim to change this. Instead, we should prioritise strengthening alternative care systems and support to families. Priority should be further given to interventions that target vulnerable children in order to keep children at home or within their communities. In other words: the focus should be on preventing intercountry adoption.
- There are religious and spiritual aspects which do not allow for adoption unless the biological parents have passed away. As a result, children end up on the streets. Furthermore, some laws do not recognise or allow the concept of adoption. Therefore, rather than resorting to intercountry adoption, we should focus on finding solutions within children's own countries.
- The positive sides of intercountry adoption have not been highlighted. Intercountry adoption will increase as there are groups of children who are stigmatised for example children branded as witches or who live in extreme poverty. Guidelines and policies are needed to regulate the adoption of children who do not stand a chance in their own country.

- There is an urgent need for consistent policies across Africa on whether a child should be adopted or not, and appropriate checks and balances to ensure proper practices should be put in place. The sensitivity of intercountry adoption should not be underestimated in that the current international environment is characterised by xenophobia and islamophobia and the implications of interracial realities in receiving countries will have an impact on children adopted from Africa. Therefore, the domestic social context and the broader socio-political context of receiving countries should be taken into consideration. Adoptive parents may have good intentions, but the environment into which the adopted child is brought into may not necessarily be ideal for the adopted child.

The possibilities of national adoption have been given too little attention. In Uganda, campaigns were launched to familiarise Ugandans with domestic adoption and these campaigns have proved to be successful. People are willing to adopt when they have an understanding of the concept of adoption and are supported through the formal process. Increasingly, young Ugandan couples are taking on an extra child after their first biological child.

Intercountry adoption should be considered only after exhausting local or domestic options of alternative care.







# SESSION II

## INTERNATIONAL LAW AND INTERCOUNTRY ADOPTION

**Chair:** Mr Ben Kioko, Director, Office of Legal Counsel, the African Union Commission (AUC)



Mr Ben Kioko, Director, Office of Legal Counsel, the African Union Commission (AUC)

### Presenters:

- *Intercountry adoption: Trends and perspectives*  
Dr Peter Selman, Newcastle University, UK;  
Chair, Network for Intercountry Adoption (NICA)
- *The international legal framework for intercountry adoption: The 1993 Hague Intercountry Adoption Convention*  
Dr Hans van Loon, Secretary General, The Hague Conference on Private International Law (HCCH)
- *The law and intercountry adoption in Africa*  
Professor Julia Sloth-Nielsen, Member, African Committee of Experts on the Rights and Welfare of the Child; Senior Professor and Dean of the Faculty of Law, University of the Western Cape (UWC), South Africa

- *Laws and practices on intercountry adoption: A global overview*  
Mr Nigel Cantwell, Independent International Consultant on Child Protection

### **Intercountry adoption: Trends and perspectives** Dr Peter Selman, Newcastle University, UK; Chair, NICA

In his presentation, Dr Selman focused on the demographics of intercountry adoption during the period 2003 – 2011. He confirmed that the trends show a general decline in adoptions, with the exception of most African countries where numbers have risen. In 2010, the top five receiving countries (US, Spain, France, Italy and Canada)



Dr Peter Selman, Newcastle University, UK; Chair, NICA

were responsible for nearly 85% of all 29,095 adoptions. The number of children adopted in 2011 has been estimated at approximately 23,000, indicating a further global decline.

According to figures provided by Euradopt, an association of adoption organisations in 12 Western European countries, there has been an increase in the adoption of children in the age categories 1 – 4. There has also be a marked increase in the adoption of children 5 years and older in most countries, whereas the number of adopted children younger than 1 has declined. In some sending countries there has been an increase in the percentage of children with special needs who are put up for intercountry adoption. In Chile only children with special needs are made available for intercountry adoption, while healthy children are adopted locally.

For many years intercountry adoption from Africa was rare. However, the growing demand for young infants and a fall in adoption numbers from many non-African sending countries has brought about drastic changes in Africa. Most notably Ethiopia, which in 2009 was second to China as a sending country in global terms and the main supplier of children to Belgium and Denmark. In the year 2010

a total of 4,397 children were adopted from Ethiopia alone. In terms of percentages, the number of intercountry adoptions from Africa has risen from 5% globally in 2003 to 22% in 2010. More than 25% of all children adopted in the year 2010 in the US and in France are of African origin.

Dr Selman indicated that statistics on intercountry adoption are based on estimates and that generalisations should be avoided; there is a disparity in information on children who are adopted, primarily caused by the level of importance individual countries attach to accurate information management. He concluded by reiterating that while on other continents the adoption trends are decreasing, Africa has indeed become the new frontier for intercountry adoption as shown by current statistics.

### ***The international legal framework for intercountry adoption: The 1993 Hague Intercountry Adoption Convention***

**Dr Hans van Loon, Secretary General, HCCH**



Dr Hans van Loon, Secretary General, HCCH

Dr van Loon called into memory that this, first day of the Fifth IPC, marks exactly 20 years since the Hague Convention was adopted at the Peace Palace in the Hague, where 66 countries



unanimously adopted the Convention. the Hague Convention entered into force on 1<sup>st</sup> May 1995. To date a total of 87 countries have committed themselves to the Convention; only 13 African countries have ratified the Convention. He continued by discussing the Convention's objectives, current status, basic principles, results and practical aspects.

Dr van Loon emphasised that the Hague Convention reinforces principles of the UNCRC and of the ACRWC; by acceding to the Convention, States strengthen their protection mechanisms for children. The aim of the Hague Convention is to set minimum standards for intercountry adoption on the basis of a number of principles. Firstly, the principle of the child's best interests: children should only be adopted when this is in their best interest and when their fundamental rights are safeguarded. On the basis of the principle of subsidiarity, States should ensure that, where possible, children are raised by their biological parents or members of the extended family. The Hague Convention encourages cooperation between States and within States to protect children and to achieve the objectives of the Convention. Cooperation should also lead to adoptions being carried out according to the rules and the prevention of improper financial gain or bad practices. Furthermore, States should ensure that only competent authorities are authorised to perform Convention functions. The Hague Convention also establishes safeguards and procedures to prevent abduction, sale and trafficking of children.

According to Dr van Loon, there is evidence that the Hague Convention has had a number of positive effects. First of all, it has led to increased awareness of good practices, including in emergency situations, while stimulating efforts to combat negative practices. In addition, the Convention motivates governments to look at in-country solutions and it empowers countries of origin to resist inappropriate pressure from receiving countries. Finally, the Convention enhances shared responsibilities by countries of origin and receiving countries, as well as cooperation to promote good practices and combat malpractice.

He concluded by indicating that the Hague Convention provides a proper legal and administrative framework for intercountry adoption, both at global and at regional level. In addition to the 1993 Convention on the Rights of the Child, the 1996 Hague Convention on Child Protection is of relevance to intercountry adoption. It establishes a scheme for cooperation between States with regard to the placement of children in all other cross-border alternative care settings, including fostering and kafala.

***The law and intercountry adoption in Africa***  
**Professor Julia Sloth-Nielsen, Member, ACERWC;  
Senior Professor and Dean of the Faculty of Law,  
UWC, South Africa**

Professor Sloth-Nielsen started her presentation by stating that law is an essential corollary of intercountry adoption in Africa. Many African countries have recently enacted comprehensive



and composite new child laws which cover all aspects of child protection, including children in need of alternative care. Examples are Botswana, Lesotho, Malawi, Mozambique, Sierra Leone, South Africa, South Sudan, Tanzania and Zanzibar. Namibia's new Child Care and Protection Bill is expected to be tabled in Parliament in the latter half of this year. She underlined that many

countries have to a greater or lesser degree provided for adoption and intercountry adoption in their legislation, or are planning separate laws to domesticate or ratify the Hague Convention.

She continued by highlighting a number of important links between law and adoption. Law is important because adoption is primarily a legal transaction in which the formal legal responsibility for a child is transferred to the prospective adoptive parents, and for the most part (although there are exceptions), the legal status of the birth parents is terminated. This cannot be achieved without an enabling statute authorising the change of the child's status and describing how this is to happen. The Hague Convention establishes minimum standards and safeguards, but it does not require internal adoption laws to be uniform. It further allows for different methods by which adoptions are made. Municipal legislation is therefore a prerequisite.

Furthermore, the Guide to Good Practice to the Hague Convention requires that a legislative framework be in place as part of the pre-planning for implementation. The Guide clarifies that the Hague Convention provides a clear set of basic principles and minimum standards for intercountry adoption, but that these may and should be supplemented by provisions in national laws.

Also, domestic legislation is essential to ensure that the principle of subsidiarity is put into effect. According to Professor Sloth-Nielsen, this principle cannot find proper application in the absence of a comprehensive legal framework in which all forms of domestic placement are addressed. If, as the ACRWC demands, placement with foreign adoptive parents is to be the last resort, then the law should clarify how it is to be recorded, further that sufficient and real efforts have been attempted for a domestic placement.

In addition, legislation provides the basis for the required criminalisation of improper inducements, illegal solicitation, improper financial gain and untoward advertising; here, the *nulla poena sine*

*lege* (no penalty without a law) principle applies. Trafficking should also be properly addressed in domestic laws.

Very important is that the legal framework provides a binding means whereby contracting states can introduce controls and safeguards. Especially in the African context, where States' structures are frequently inadequately resourced and human resources are limited, it is dangerous to accede or to ratify an international legal instrument without contemplating in advance the institution of effective local controls. Placing limits on intercountry adoptions also addresses concerns that countries are inundated with requests from overseas agencies, or that the demand for children for intercountry adoption will far exceed the supply of available children.

On the basis of Article 23 of the Hague Convention, legislation is required on how a certificate of conformity (of intercountry adoption) is to be issued. This procedure allows for recognition of adoption by 'operation of law' in the contracting States and it facilitates the future nationality and citizenship of adopted children, reducing the risk of statelessness.

Although the Guide to Good Practice notes that Central Authorities can be established through legislation, administrative decree or executive order, some form of legislation is desirable to imbue Central Authorities with the sole legal authority to handle intercountry adoption cases. If no legal basis exists, the functions, responsibilities and entitlements of these authorities might be challenged and manipulated.

Professor Sloth-Nielsen concluded by noting that law in itself is not sufficient to protect children in need of care. However, the law is a foundational element of the implementation and the control of this intricate process. Implementation of laws is an ongoing process, and regulations, procedures and policies can easily be amended over time, so as to make them appropriate to the circumstances of each individual State.



***Laws and practices on Intercountry adoption: A global overview***

**Mr Nigel Cantwell, Independent International Consultant on Child Protection**

Mr Cantwell stated that, notwithstanding the Hague Convention, there is still a vast diversity throughout the world in terms of approaches to intercountry adoption, legislative frameworks, procedural safeguards, resource allocation and alternative care systems in place. Unfortunately, this diversity is by no means always in response to differing cultural situations and needs, but to a range of other factors, such as the causes that lead to intercountry adoption, that affect the quality of protection afforded.



Mr Nigel Cantwell, Independent International Consultant on Child Protection

He noted that almost all receiving countries are Parties to the Hague Convention, which implies that laws and procedures are generally compatible with that Convention. However, very different approaches and realities exist. For instance, France and the US permit so-called independent adoptions (privately arranged adoptions, not through adoption agencies) from countries who have not ratified the Hague Convention (non-Hague countries), whereas Italy and Sweden outlaw independent adoptions, irrespective of the Hague-status of a country. Another example is that the US

has accredited more than 150 adoption bodies for approximately 10,000 intercountry adoptions. In France there are 35 accredited agencies for 3,500 adoptions, whereas Sweden has only accredited 5 adoption bodies for 900 adoptions. The available resources for intercountry adoption also vary widely.

With regard to countries of origin, Mr Cantwell noted that various legal frameworks are in place, ranging from outdated, colonial laws to laws which allow for swift adoption procedures. Most countries of origin have been forced to enact or adjust laws and procedures rapidly, often leading to quick-fixes and inadequate solutions. Furthermore, these countries have to cope with both external pressures, from receiving countries, and internal pressures, such as inadequate alternative care provisions. The attitudes towards independent adoptions also differ greatly. Meanwhile, most countries of origin – in all regions except for Africa – are now Parties to the Hague Convention. This has led to legal reforms and a decrease in intercountry adoptions, while favoring domestic solutions. There is also a growing appreciation for the principle of subsidiarity. The proliferation of adoption agencies creates huge concerns in countries of origin as it creates difficulties in accreditation and monitoring.

Mr Cantwell concluded his presentation by discussing issues with regard to diversity in practices. Receiving countries have inadequate common positions and different notions as to what acceptable practices are. Countries of origin respond to invitations, rather than actively soliciting receiving countries. At the same time, there is a lack of hard data on the real need for intercountry adoption and to provide evidence-based arguments in favor of or against intercountry adoption. Furthermore, countries of origin have invariably insufficient resources to defend safeguards and to enforce gatekeeping of intercountry adoption. The question is: why are children deemed to need intercountry adoption? There has not been enough attention for family empowerment programs, especially informal ones, or for domestic adoption; these options should be given much more consideration by countries of origin.



## Plenary discussions

The following issues were raised during the plenary session:

- In relation to Dr Selman's presentation there were questions about the sources of the data and the reliability of data presented.
- Stressing the importance of regulatory frameworks, there was concern as to how we can ensure that these frameworks are doing what they are supposed to do. The question was posed whether laws actually 'speak' to people at grassroots level?
- The value of the Hague Convention was overemphasised and doubt was expressed about the Convention being a human rights instrument. The fact that the US, the country receiving the highest number of children through intercountry adoption, is not party to the CRC is a reason for great concern.
- It is much easier and cheaper to support children and their families locally as a solution to the problems, rather than paying a fortune for intercountry adoption. Support should be made available for countries that wish to ratify and/or domesticate the Hague Convention
- In relation to Professor Sloth-Nielsen's presentation the following question was posed: "What are the measures that we as Africans are putting in place to encourage adoption among African countries, instead of the trend of intercountry adoption from Africa to the Western world?"
- African countries must be vigilant in drawing up adequate legislation regulating intercountry adoption. In addition, awareness should be raised throughout the continent as to what adoption entails and that intercountry adoption should be the very last resort.

The following responses were given by the presenters for some of the questions raised:

- Dr Selman responded that the source of his data is a database of 23 receiving countries. Due to the fact that most of the sending countries do not provide data to the Hague

Conference, with the exception of Burkina Faso, he was forced to rely on data from receiving countries. Unregistered adoptions are not included in the figures. Overall, there are limitations to the data, and the figures presented are estimates.

- Dr van Loon clarified that the Hague Convention also covers interfamily adoption and that the Convention encourages domestic adoption. He explained that the CRC should be regarded as the first layer of protection, the Hague Convention as the second layer and national laws as the third layer. Together these layers should ensure respect for the rights of children. In cases where both the sending country and the receiving country are Parties to the Convention, an improvement in adopted children's situations is evident.
- Professor Sloth-Nielsen suggested that communication is of paramount importance, especially with regard to domestic adoption. Drafting a communication strategy and using the appropriate media would lead to better understanding of laws by people on the ground. Advocacy programs and initiatives also play an important role in sharing good practices, such as efforts to prevent intercountry adoption by means of social cash transfers. These programs are already in place for instance in Kenya and Tanzania.
- Mr Cantwell stressed the need to focus on the root causes that leave children without proper care. In 2009, the Guidelines for the Alternative Care of Children were welcomed by the UN General Assembly. These Guidelines place enormous emphasis on the prevention of family breakdown and, should this happen, reunification should be the first option. In addition, a variety of alternative care options – with the exception of adoption – are recommended. In order to prevent intercountry adoption, every attempt should be made to regulate children entering into an alternative care system as prescribed by the Guidelines.





# SESSION III

## COUNTRY EXPERIENCES ON INTERCOUNTRY ADOPTION

**Chair:** Dr Mary Shawa, Principal Secretary, Ministry of Gender, Children and Community Development, Republic of Malawi



Dr Mary Shawa, Principal Secretary, Ministry of Gender, Children and Community Development, Republic of Malawi

### Presenters:

- *Setting standards for intercountry adoption: Nigeria*

Dr Mary Orjioke, Deputy Director, Child Development and Participation, Federal Ministry of Women Affairs and Social Development, Nigeria

- *The law and intercountry adoption: The Malawi experience*

Mrs Gertrude Lynn Hiwa, Law Commissioner, Malawi

- *Policy and programmatic interventions: The case of the DRC*

Mr Gauthier Luyela, Director, Service of the Child Protection, Ministry of Gender, Family and Children, Democratic Republic of Congo

- *Policies, practices and challenges in intercountry adoption: Ethiopia's experience*

Mrs Yayesh Tesfahuney, Director, Child Rights Promotion and Protection Directorate, Ministry of Women, Children and Youth Affairs, Ethiopia



### ***Setting standards for intercountry adoption: Nigeria***

**Dr Mary Orjioke, Deputy Director, Child Development and Participation, Federal Ministry of Women Affairs and Social Development, Nigeria**

Dr Orjioke started her presentation by explaining that adoption as a legal institution was introduced in Nigeria in 1965. Currently, adoption is regulated by various statutes and mainly by the Child's Rights Act 2003. These rules and regulations are limited to domestic adoption; there are no provisions for intercountry adoption.



Dr Mary Orjioke, Deputy Director, Child Development and Participation, Federal Ministry of Women Affairs and Social Development, Nigeria

Adoption in Nigeria is characterised by misconceptions, illicit practices and total disregard of applicable legislation, as well as negative public attitudes. In many cases, children have been taken away for other reasons other than their welfare. In some instances, children have been adopted for the main purpose of child labor or for ritual purposes. At the same time, vital records and data required for planning and improvement of services are difficult to obtain and frequently are unavailable.

Dr Orjioke indicated that Nigeria has various categories of children who are considered adoptable. First of all, abandoned children; abandoned babies constitute the largest percentage of children who are adopted in Nigeria. Furthermore, orphans or children who are deprived of a family environment can be adopted. Children, whose future development

is uncertain because their parents are not able to adequately provide for them, can be adopted if parents voluntarily give them up for this purpose.

There are also rules and regulations with regard to adoptive parents. Couples who are unable to have a biological child of their own may adopt. Furthermore, any adult, whether married or single who can provide a permanent, stable and caring home for a child until adulthood and beyond may adopt. Others considered suitable to adopt include: married couples with or without children of their own, provided they have reached the age of 25 years; a single person, provided he or she has attained the age of 35 years (although they are not allowed to adopt children of the opposite sex). Every adoptive parent must be at a minimum 21 years older than the child he or she adopts and both the adoptive parent and the child must be resident in the same state. It is prohibited for other nationals to adopt a Nigerian child in Nigeria.

Dr Orjioke indicated that the absence of intercountry adoption services in Nigeria has led to the situation where private maternity wards and orphanages are exploited, resulting in the illicit sale of babies, child trafficking and facilitating unauthorised intercountry adoptions. It is therefore essential that Nigeria develops clear and concise legal provisions on intercountry adoption. Furthermore, ratification of the Hague Convention should be considered. However according to Dr Orjioke this is currently premature. She concluded by stating that Nigeria should first develop clear procedures and laws with regard to intercountry adoption. She reiterated that procedures should be based on international best practices.

### ***The law and intercountry adoption: The Malawi experience***

**Mrs Gertrude Lynn Hiwa, Law Commissioner, Malawi**

In her presentation, Mrs Hiwa underscored that the courts in Malawi apply principles of the CRC and the ACRWC, to guide the perspectives and processes of intercountry adoption and other child rights issues in Malawi. The legal framework in Malawi offers protection to children who are in need of

care and includes provisions with regard to adoption. The Constitution, the new Child Care, Protection and Justice Act, and the Adoption of Children Act consolidate the laws relating to children. All provisions in the Acts are based on the fundamental principle of the best interests of the child.



Mrs Gertrude Lynn Hiwa, Law Commissioner, Malawi

The Adoption Children Act was enacted in 1949 and is based on an old English statute of 1926. Mrs Hiwa pointed out that adoption laws in Malawi have largely remained unchanged since 1926, making them incompatible with or outdated to the current trends and realities. Despite legislation, the concept of adoption was relatively unknown in Malawi until very recently. In addition, there is little understanding in Malawi about the phenomenon of intercountry adoption. Most parents putting their children up for adoption believe that when their children have been adopted, they can get them back at any time they desire. This misconception is constantly exploited by adoption agencies, who fail to explain the true legal consequences of adoptions. Opinions about intercountry adoption differ significantly, ranging from people fully supporting it to those who argue that it is harmful for children. Mrs Hiwa stressed the need for improvement in general knowledge with regard to adoption.

She continued by discussing the meaning of the term 'residence' in relation to an adoptive parent, by analysing the decisions of the Supreme Court on the adoption of two Malawian children by Madonna. Due to the large numbers of intercountry adoptions in Malawi, a Practice Direction was issued in 2009. However, a replacement of the existing adoption laws is urgently needed. A review of the Act by the Law Commission has already been put into effect; and the Commission intends to harmonise the Act with the Hague Convention and other relevant international instruments.

***Policy and programmatic interventions: The case of the DRC***

**Mr Gauthier Luyela, Director, Service of the Child Protection, Ministry of Gender, Family and Children, DRC**

Mr Luyela's presentation commenced with an outline of the legal framework protecting children in the DRC. Although the DRC has not yet ratified the Hague Convention, certain provisions of the Convention have been incorporated into the 2009 Law No. 09/001 on child protection.

Historically the DRC implemented adoption laws at two different points in time: before 1987, in cases where there was an absence of an heir (providing



Mr Gauthier Luyela, Director, Child Protection Services, Ministry of Gender, Family and Children, DRC





a family with a child), and from 1987, aimed at children in need of parental care (providing a child with a family). Mr Luyela explained that the 1987 Adoption Law was drafted for the protection of children deprived of a family environment, rather than adoption being a means of providing an heir for somebody.

In the period 1997 – 2007 the DRC was ravaged by war and it is estimated that more than 5 million people were killed. On one hand, many families were left without children, while on the other hand; many children were left without a family. There was a strong concern to provide mechanisms to help these children and as a result, laws on adoption and alternative care provisions were changed, paving the way for adoptions to take place within communities.

The Adoption Law in DRC provides that adoptive parents must have been married for a minimum of 5 years, they should be at least 15 years older than the adopted child and they should not have more than 3 children alive at the time of adoption. Official documents, such as a marriage certificate and proof of health are required. Only two provisions in the Adoption Law relate to intercountry adoption. Although the Government is actively involved in the process of intercountry adoption through Parliament, the Ministry of Justice and the Ministry of Social Affairs, there is no Central Authority governing intercountry adoption. This is a major issue of concern as the lack of a Central Authority fragments the regulation and monitoring of orphanages, adoption agencies and adoptions in general leaving a gap for potential illicit adoption practices.

Mr Luyela reiterated the need for the harmonisation of domestic laws with international principles on intercountry adoption. He concluded his presentation by expressing a sincere hope that African States will consider adopting the Hague Convention within due course. In addition he suggested the possibility of drawing up an African Convention on intercountry adoption.

### *Policies, practices and challenges in intercountry adoption: Ethiopia's experience*

**Mrs Yayesh Tesfahuney, Director, Child Rights Promotion and Protection Directorate, Ministry of Women, Children and Youth Affairs, Ethiopia**

Mrs Tesfahuney set out the Ethiopian demographics before presenting the legal framework protecting children in Ethiopia. In 2011, the population was estimated at more than 82 million people of whom 55% are children; a total of 6 million children fall into the category of 'vulnerable'. Children deprived of their family, displaced children, street children, abandoned children and disabled children make up the bulk of this category.



Mrs Yayesh Tesfahuney, Director, Child Rights Promotion and Protection Directorate, Ministry of Women, Children and Youth Affairs, Ethiopia

Most international legal instruments relating to the protection of children have been ratified by the Ethiopian Government, including the CRC, ACRWC, ILO Convention on the Minimum Age of Employment and the ILO Convention on the worst forms of child labor. The best interests of the child principle has been incorporated in the Constitution and with regard to both domestic and intercountry adoption, provisions have been included in the Revised Family Code. In addition to these laws, a policy framework aimed at children and youth exists.





Mrs Tesfahuney expounded on the causes of the vulnerability of so many children. Structural causes include: extreme poverty, HIV/AIDS and urbanisation. The underlying causes of vulnerability are: family instability and disintegration, violence in the home, abuse of children and disability. Neglect and abandonment were cited as immediate causes of vulnerability. The government has provided for a range of interventions and options such as community-based care, foster care, adoption, reunification and reintegration. Community-based care is pursued as the main strategy, while institutional care is least promoted. In 2011, more than 700,000 children received some form of support, primarily within their own community. An estimated 7,000 children live in an institution, while nearly 3,000 children were adopted via intercountry adoption.

According to Mrs Tesfahuney, there are a number of challenges with regard to intercountry adoption. First of all, there is limited availability of domestic alternative care options. Furthermore, a comprehensive data management system is not in place and there is a lack of accurate and reliable data. In addition, misconceptions relating to intercountry adoption exist; the non-compulsory nature of birth certificates and the lack of post-placement follow-ups are amongst the challenges.

Currently, the Ethiopian alternative care system is being reformed. The Ministry of Women, Children and Youth Affairs is in the process of strengthening the regulatory framework on alternative care. In addition, an adequate data management system is being set up. National laws are being assessed, comparing them with international laws and conventions and gaps are identified. A national alternative care network (the Ethio - alternative Care Network) has recently been launched, serving as a common platform for public-private partnerships to share information and resources among relevant stakeholders in the area of alternative care. Furthermore, community-based child care programs, as well as local adoption and reunification are promoted through the national and local media. Social cash transfer programs targeting vulnerable households have been rolled out.

Mrs Tesfahuney touched upon Ethiopia's plans for the future, which include the further development of family-based care programs and the ratification of the Hague Convention. She concluded her presentation with a short documentary on community-based care for children.

Due to time constraints, no plenary discussions were held at the end of this session.



**From left to right:** Mrs Yayesh Tesfahuney, Director, Child Rights Promotion and Protection Directorate, Ministry of Women, Children and Youth Affairs, Ethiopia, Mrs Gertrude Lynn Hiwa, Law Commissioner, Malawi, Dr Mary Shawa, Principal Secretary, Ministry of Gender, Children and Community Development, Republic of Malawi





# DAY 2

## CONFERENCE PROCEEDINGS

Wednesday, 30 May 2012

# SESSION IV

## KEYNOTE ADDRESS

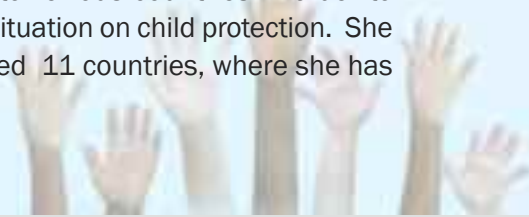
Dr Najat Maalla M'Jid, UN Special Rapporteur on the sale of children, child prostitution and child pornography



Dr Najat Maalla M'Jid, UN Special Rapporteur on the sale of children, child prostitution and child pornography

Dr M'Jid began her presentation by illustrating the mission of her position as Special Rapporteur on the sale of children, child prostitution and child pornography. She explained that the goal of a Special Rapporteur is to operate totally independent of any UN body or system, to analyse risk factors and legal frameworks and to identify children who

are at risk. In addition, she advocates for the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Dr M'Jid carries out visits to various countries in order to take stock of the situation on child protection. She has currently visited 11 countries, where she has



consulted with government officials, and children, in cases where this was necessary and appropriate.

Dr M’Jid emphasised that the family forms the first shield of protection for any child. In relation to the term ‘family’ she explained that in most countries the family does not only comprise parents and children, but also extended family members and, in certain cases, neighbours and community members. The family environment may be affected by many factors and in the African context a long history of droughts and wars has diminished the capacity of the traditional family network of protection. She reiterated the right of children to live in a safe family environment; where necessary, social support should be provided to parents and families who do not have the adequate means to take care of their children, thus enabling them to raise their children in line with the CRC provisions.

Intercountry adoption practices deserve special attention due to the fact that when adoption is not supervised, regulated and controlled, it may lead to premature, illegal adoptions and the sale of children. She stressed that intercountry adoption should not be utilised as a solution to poverty or an alternative for families in precarious situations.

Intercountry adoption should be considered as a last resort and in keeping with international regulations, whereby the interests of the child is of utmost importance. Of equal importance is the fact that a child’s birth has not been registered should not lead to the conclusion that this child is adoptable. Cases are known of newborns whose births are deliberately not registered, with a view to facilitating their sale. Other cases show that biological parents are often not informed sufficiently about the consequences of adoption. Countries of origin should therefore make every effort to implement reliable and credible information systems, containing information about all children, such as birth registrations and risk factors. In addition, receiving countries must ensure that all obligations of the Hague Convention are respected, also when the country of origin has not ratified the Convention.

Dr M’Jid concluded by expressing her satisfaction that at the end of this conference Guidelines for Action on Intercountry Adoption of Children in Africa would be proposed; these will in turn contribute to a transparent and ethical approach to adoption.



# SESSION V

## EXPERIENCES FROM RECEIVING COUNTRIES

Chair: Ambassador Olawale Maiyegun (PhD), Director of Social Affairs, AUC



Ambassador Olawale Maiyegun (PhD), Director of Social Affairs, AUC

### Presenters:

- Ambassador Susan S. Jacobs, Special Advisor for Children's Issues, US State Department
- Ambassador Thierry Frayssé, Head of Intercountry Adoption Service, Ministry of Foreign and European Affairs, France
- Mr Joël D. Van Andel, Advisor on International Relations, Ministry of Justice, the Netherlands

#### **Ambassador Susan S. Jacobs, Special Advisor for Children's Issues, US State Department**

Amb. Jacobs stated categorically that the US supports intercountry adoptions and does not consider it to be a measure of last resort. According to her, the purpose of intercountry adoption is to

raise children in a loving family environment; therefore, it can be the best outcome for a child.

Amb. Jacobs held that the principle of subsidiarity which states that it is in children's best interests to be raised by their biological parents or family members. The subsidiarity principle if effectively applied is beneficial to children. She however opined that, a situation where children are being raised by a loving family – in the US – is preferable to leaving children in their own countries when they cannot be cared for adequately.

She confirmed that the US allows adoptions both from countries State Party to the Hague Convention and non-Hague countries. All countries have the







Ambassador Susan S. Jacobs, Special Advisor for Children's Issues, US State Department

obligation that the rules governing intercountry adoption are adhered to and every party involved has to work according to the highest standards, based on the Hague Convention. The reason the US ratified the Hague Convention was to stop trafficking and the sale of children.

The US is both a receiving country and a country of origin. It is estimated that almost 10,000 children were adopted into the US in 2011, the majority from non-Hague countries; at the same time, a substantial number of children were adopted from the US.

Amb. Jacobs concluded her presentation by stating that it is important to educate biological parents as to the meaning and consequences of adoption.

**Ambassador Thierry Frayssé, Head of Intercountry Adoption Service, Ministry of Foreign and European Affairs, France**

Amb. Frayssé noted that intercountry adoption is not a new phenomenon in Europe. After World War II charities, often faith-based, utilised intercountry adoption to provide a childless family with one or more children. At that stage the focus was on the adoptive family, whereas now the adopted child is of central importance.

Due to the current downward trend of intercountry adoption, numbers of domestic adoptions have risen. Another trend worth mentioning is the growing number of adoptions of slightly older children, rather than infants and the increase in adoptions of children with special needs. Furthermore, a drop in intercountry adoption applications is seen as a result of lengthy procedures. There is a risk that this may lead to families resorting to independent and illegal adoptions, which are significantly shorter.

France has ratified the Hague Convention and has established a Central Authority as well as the necessary bodies to oversee all adoption procedures. Amb Frayssé explained that France adopts children from both Hague and non-Hague countries; with regard to countries that have not ratified the Convention, France provides them with the necessary information and support. Adoptions from African countries have been happening for a long time; figures stabilised in 2005 at approximately 3,500 children and dropped in 2011 to an estimated



Ambassador Thierry Frayssé, Head of Intercountry Adoption Service, Ministry of Foreign and European Affairs, France

2,000. However, there are no quantitative limits to adoptions from any geographic area, and the focus is on the legal aspects of adoptions. Paradoxically, individual adoptions are not prohibited in France, despite this being a violation of the Hague Convention. An amendment in the law is required to change this.

In France, adoption agencies provide adoptive parents with all the requisite information, including the cultural aspects that need to be taken into account. In addition, there are networks for adoptive parents. All necessary mechanisms are in place to protect adopted children and they are continuously monitored by Social Services.

Amb. Frayssé concluded by stating that intercountry adoption should be a measure of last resort.

**Amb. Joël D. van Andel, Advisor on International Relations, Ministry of Justice, the Netherlands**

Mr van Andel started his presentation with the latest developments in intercountry adoption. With the decrease in the number of adoptable children in China – during the past decade one of the most popular countries of origin – the pressure on other countries of origin has increased. Worldwide there still is a glut of parents wishing to adopt while the number of children for whom intercountry adoption is considered to be an alternative, is declining. This could be seen as a positive development as it is in conformity with the principle of subsidiarity; in



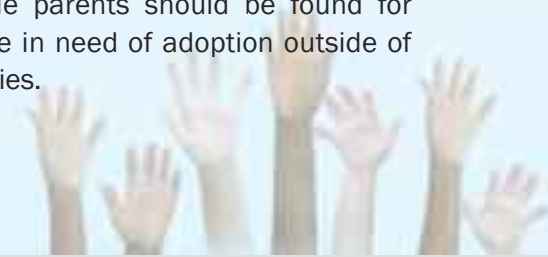
Amb. Joël D. van Andel, Advisor on International Relations, Ministry of Justice, the Netherlands

many countries of origin the promotion of the application of this principle has resulted in a review of their child protection systems and the strengthening of domestic childcare systems. Mr van Andel applauded the fact that in some countries of origin

solutions other than intercountry adoption are pursued, such as programs for family preservation, reunification, foster care or national adoption.

He continued by outlining the situation of intercountry adoption in the Netherlands. In 2007, 782 children were adopted to the Netherlands, a figure that declined to 528 children in 2011. More than 2,400 prospective parents applied for a permit to adopt in 2007, while in 2011 just over 1,200 prospective parents applied for adoption permits; a decline of 50%. The decline in adoptions may be attributed to the global economic crisis and the costs incurred with intercountry adoption. Another contributing factor to the decline is a change in the profiles of children who are put up for adoption. An increased number of children being put up for adoption fall into the category of 'special needs' children. The percentage of children adopted from African countries to the Netherlands has increased from 18% in 2007 to 27% in 2011; the main countries of origin were the DRC, Ethiopia, Kenya, Nigeria, South Africa and Uganda. During the same period there was a decline of 9% of adoptions from Asia.

The importance of information about both the child and the adoptive parents was emphasised by Mr van Andel. To enable adoptive parents and the authorities of a receiving country to make an informed choice, they need to be informed about the medical, social and psychological background and the 'condition' of the child. On the other hand, it is equally important that reports on prospective adoptive parents contain all the relevant information. Free exchange of information between countries of origin and receiving countries is therefore essential. Both countries ought to cooperate, on equal terms, on the basis of the principles of the Hague Convention. A good balance between the needs of children, the desire of prospective adoptive parents and the ability to resist the pressure from prospective adoptive parents, can only be reached by countries of origin that have a well-developed child protection system. Intercountry adoption should be seen as an option whereby suitable parents should be found for children who are in need of adoption outside of their own countries.



## Plenary discussions

The following issues were raised during the plenary session:

- Italy's experience was shared: it is a Hague country, that does not allow private adoption, and intercountry adoption is considered a last resort. Transparency and ethical practices are critical for quality processing of intercountry adoption.
- A question was asked about measures taken against malpractices. The high number of adoption agencies was also questioned.
- Intercountry adoption robs the child of various aspects of the child's life, such as culture, language, religion; the focus should therefore lie on domestic adoption.
- The fact that receiving countries which have ratified the Hague Convention allow for independent adoptions is highly questionable as there is no guarantee that children's best interests are the main consideration.
- Independent adoptions should be prohibited as it opens the door to illegal practices. African countries should ban independent adoption if the US and France, two major receiving countries, do not prohibit such adoptions.
- It is not clear what happens to children once they have been adopted and moved to another country. Post adoption reports are therefore fundamental to determine whether the child is integrating well in the destination country.

The following responses were given by the presenters to some of the questions raised:

Amb. Jacobs stated that it is also the responsibility of countries of origin to monitor procedures. In the

US, laws on trafficking only apply to activities relating to labor and sex; illicit intercountry adoptions are therefore not regarded as trafficking. The US shuts down operations when there are improper practices and aim for ethical and transparent adoption processes.

Amb. Jacobs opined that countries of origin have to make their own decisions on how many and which adoption agencies they allow and work with, and how many children they make available for intercountry adoption.

Amb. Frayssé confirmed that independent adoptions are not prohibited in France despite the fact that France has ratified the Hague Convention. To prohibit this form of adoption requires an amendment of the law which is a complicated and long procedure. According to Mr Frayssé, not all independent adoptions are bad, but he agreed that countries of origin should prohibit these adoptions in order to safeguard children from illicit adoptions. In France, adoption agencies (a total of 34) are not allowed to operate without accreditation. The failure rate of intercountry adoption is a mere 1%.

Mr van Andel called upon countries of origin to take the 'driver's seat'; they should decide on whether a child is adoptable and whether intercountry adoption is in a child's best interests. Countries of origin should seek adoptive parents rather than the other way round, as is common practice now. In the Netherlands, a quality framework has been put in place to accredit adoption agencies and all agencies are subject to monitoring; post-placement reports are provided when countries of origin require this.





# SESSION VI

## APPROACHES AND OPTIONS TO INTERCOUNTRY ADOPTION

**Chair:** Mme Akila Belembaogo, UNICEF Representative to the AU and UNECA



Mme Akila Belembaogo, UNICEF Representative to the AU and UNECA

### Presenters:

- *Approaches and Options to Intercountry Adoption: Good practices*  
Dr Benyam D. Mezmur, Vice-Chair, ACERWC;  
Research Fellow, UWC, South Africa
- *Child rights, Intercountry Adoption and Responses: The North African experience*  
Dr Moushira Khattab, Former Minister of  
Family and Population, Republic of Egypt and  
Former Vice-Chair of the CRC
- *Dealing with children in need of alternative  
care in Kenya*  
Mr Ahmed Hussein, Director, Department of  
Children's Services

### *Approaches and Options to Intercountry Adoption: Good practices*

**Dr Benyam D. Mezmur, Vice-Chair, ACERWC;  
Research Fellow, UWC, South Africa**

Dr Mezmur started his presentation by asserting that there is a rights-based argument for alternatives to intercountry adoption: intercountry adoption is regarded as a measure of last resort both in the ACERWC (Article 24) and in the CRC (Article 21). The overriding factor is the principle of the best interests of the child. In addition, the subsidiarity principle is of great importance.



Dr Mezmur stated that family preservation should be considered as 'first resort'. Since the perfect family does not exist, the standard should be a 'good enough' family. In most African countries various economy strengthening programmes have been undertaken; good examples of family support programmes are the South African Child Support Grant and the Safety Net Programme in Ethiopia. However, poverty reduction alone cannot resolve child protection issues. Therefore, in addition to social protection systems, national child protection systems should be in place for children to benefit sufficiently.



Dr Benyam D. Mezmur, Vice-Chair, ACERWC;  
Research Fellow, UWC, South Africa

Through family reunification the need for alternative care can be significantly reduced and the importance of family reunification and reintegration programs should not be underestimated. Children should not be adopted at the height of an emergency, as this may curtail their chances of reunification with their families. Instead, time and effort should be dedicated to returning children to their families. There are, of course, limits to this process and questions that arise are: has every effort been made to locate a child's family? How much time is reasonable? How do we assess the concept of 'reasonable prospect of reunification'? An example of a good practice is the situation after the 2007-2008 post-election violence in Kenya; through concerted efforts, more than 82% of separated children had been returned to their families by August 2009. In all cases of separation

or displacement of children, an adequate birth registration system is vital.

Dr Mezmur explained that domestic adoption is not an alien concept in every African country. Some countries, however, have a more cumbersome process for national adoption. In other countries awareness campaigns on domestic adoption should be launched for locals to understand the concept and legal implication of intercountry adoptions. With regard to community-based care, foster care and kinship care, good practices exist in a number of countries, including Ethiopia, Kenya and Malawi; in Namibia permanent kinship care is embedded in the law. Institutionalisation of children has been documented to have a negative impact on their growth, development and capacity to form attachments. Approximately 80% of children in residential care have one or two parents alive and this form of care is heavily overused. Evidence indicates that the number of orphanages is on the increase particularly in countries impacted by high poverty rates, conflict, HIV/ AIDS, displacement or a combination of these factors. In Zimbabwe, which has a high HIV prevalence rate, 24 new orphanages were built between 1996 and 2006, 80% of which were initiated by faith-based groups. It is therefore essential that faith-based organisations be engaged in de-institutionalisation processes, and focus on other alternative care systems. In Liberia, the number of orphanages increased from 10 in 1989 to 121 in 1991, due to war. In 2008, 117 orphanages existed, and more than half were unregistered and unmonitored. Depending on the type of residence and the situation of a child, institutional care might be employed on a temporary basis. Institutions may also be utilised in the process of family reunification.

Dr Mezmur concluded by pointing out that the 'Africanisation' of children's rights is important. However, this should not be a simple 'copy-paste' exercise; instead, national laws should be harmonised with children's rights. Furthermore, the over-reliance on donors and external assistance should be limited. Instead, African governments should look at regional experience sharing and make use of good practices from neighbouring countries.

***Child rights, intercountry adoption and responses:  
The North African experience***

**Dr Moushira Khattab, Former Minister of Family and Population, Republic of Egypt; Former Vice-Chair of the CRC Committee**

Dr Khattab set out the reasons for MENA (Middle East and North Africa) countries not having ratified the Hague Convention. Adoption is prohibited by law in these countries with the exception of Tunisia. Instead, Egypt and the other MENA countries provide for a system of alternative care called kafalah. She explained that kafalah is a commitment to voluntarily take care of the



Dr Moushira Khattab, Former Minister of Family and Population, Republic of Egypt; Former Vice-Chair of the CRC Committee

maintenance, education and protection of a minor, in the same way as a father would do for his son. She continued by outlining the pros and cons of kafalah. Advantages are, amongst others: the preservation of a child's blood lineage (adoption changes this); children can carry the fourth surname of their new parents (important in Muslim social tradition); it provides for appropriate financial support and family-based care systems; it reduces the dependence on institutional care. Disadvantages of kafalah are: it is a cumbersome process; the best interests of the child is not a central consideration; a child is not entitled to the same rights as biological children (notably that of name and inheritance); social stigma challenges the child's full integration in the family and in society.

The practical implementation of kafalah is beset by a tremendous gender bias. First of all, a man's word is enough to declare a newborn as his child, whereas a mother cannot report the birth of her child without official proof of marriage. Furthermore, children born in Orfi (unregistered) marriages have no rights and are virtually non-existent in the eyes of the law. Orfi marriages also subject women to immense social stigmatisation, and men are encouraged to enter into them, even for convenience purposes.

The Egypt Child Law No. 126/2008 forms a rights-based reformed legal framework to alleviate the plight of children without parental care. It focuses on prevention, protection and early intervention and contains a number of vital aspects and principles. Firstly, it forms an umbrella, guaranteeing as a minimum all rights enshrined in the CRC, its Optional Protocols and other international Human Rights Conventions. Secondly, children's right to a family environment and care is embedded in a number of Articles in the Child Law. In addition, the right to an identity and a nationality as well as to education are covered. The Law also provides for three new protection mechanisms, namely General Child Protection Committees at the Governorate level, District Protection Committees as well as a Child Helpline, a national, toll-free, 24-hour service.

Dr Khattab indicated that with regard to the implementation of the Child Law, a number of challenges remain. The best interests principle is not always the paramount consideration. Caring for a child in need of alternative care can be sought after as a source of income. Inspection of family set-ups is poor and there are no follow-up mechanisms in place. As the Law is still relatively new, there is need for: advocacy to raise awareness for its benefits; capacity building of all professionals dealing with vulnerable families and children; financial and human resources. In addition, due to the current political situation in Egypt, some of the legislative gains achieved are under threat.

In her concluding remarks, Dr Khattab expressed her confidence that the rich deliberations and the success stories exchanged in this conference will guide the drafting process of Pan-African



Guidelines on intercountry adoption. For this process, the consolidation of traditional African forms of communal care is essential. We should also benefit from the UN Guidelines for the Alternative Care of Children, utilising them as a model to guide the Pan-African Guidelines. The process should be transparent and participatory, involving all stakeholders, especially children deprived of parental care. Last but not least: it should be a process that is solely guided by the best interests of the child.

***Dealing with children in need of alternative care in Kenya***

**Mr Ahmed Hussein, Director, Department of Children's Services**

Mr Hussein explained that in Kenya, legislation governing children's issues are the Constitution and the Children's Act 2001. The Children's Act gives effect to the principles of the CRC and ACRWC and contains provisions with regard to parental responsibility as well as different forms of alternative care. Despite the existence of current legislation, children are faced with many challenges,



Mr Ahmed Hussein, Director, Department of Children's Services

such as poverty, HIV/AIDS, child labor, harmful traditional practices and child abuse. Mr Hussein outlined that statistics show that more than 2.5 million children fall into the category 'vulnerable', approximately 700,000 children are involved in child labor and more than 300,000 children live on

the streets; about 1 million children of school-going age are out of school.

Mr Hussein noted that adoption is a relatively new concept in the Kenyan society and the first law on adoption was the 1963 Adoption Act Cap143, which has been repealed by the Children's Act 2001. Adoption is defined as the complete severance of ties with biological parents and the establishment of a new legal relationship between child and adoptive parents. Kenya is one of the 13 African countries that have ratified the Hague Convention. A National Adoption Committee has been established which approves every prospective intercountry adoption procedure before the adoption process can begin. The Committee also registers Adoption Agencies, formulates policy and monitors all adoption activities in the country. More than 200 adoptions are concluded every year, of which 60% are domestic adoptions. A number of these national adoptions are problematic in that adoptive parents shy away from registering the adoption of a child; which is an essential step in the finalisation of an adoption. Furthermore, adoptive parents do not always tell their children that they are adopted, violating the child's right to identity. In some cases Kenyan citizens living abroad employ the domestic adoption process, while in fact a child will be transferred to another country.

Mr Hussein deliberated on other forms of alternative care in Kenya. In recent years the Cash Transfer – Orphans and Vulnerable Children (CT-OVC) Program was established, which has yielded very positive results. The objective of this program is to ensure that children in need of care are retained within their families, communities and households, providing them with access to basic services, thus improving their future prospects and promoting their human capital. In 2004, about 500 families benefited from the program; today approximately 134,000 families are supported. The main benefits of the program are: an increase of real household consumption levels; a reduction of poverty levels by 13%; an increase of food expenditure by 15%; improved acquisition of birth certificates by 12% and improved access to secondary school by 6%. Unfortunately there is no national coverage of the program as yet.

Foster care in Kenya is usually carried out on an informal basis. Formal foster care is the placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child. Under the Children's Act, the foster care placement process has been revised; currently, 640 children are recorded to be in foster care.

The law also provides for guardianship. A guardian is a person appointed by will or deed by a parent or by court order to assume parental responsibility for the child upon the death of the parent, either alone or in conjunction with the surviving parent of the child. This is the least known and practiced form of alternative care. Due to the fact that it anticipates a scenario where a parent is no longer alive, it evokes similar controversial sentiments as the making of a will.

The last alternative care modality mentioned by Mr Hussein is the Charitable Children's Institution (CCI). A CCI is defined as a home or institution which has been established by a person, corporate or unincorporated, a religious organisation or NGO and has been granted approval by the National Council for Children's Services to manage a program for the care, protection, rehabilitation or control of children. CCIs must renew their registration every three years and must meet set standards. Currently, more than 700 CCIs are operational, hosting over 41,000 children. The biggest controversy surrounding CCIs is that in a number of cases they appear to be the first as opposed to the last resort for children in need of alternative care.

Mr Hussein concluded his presentation by stating that the number of children in need of alternative care is increasing daily, hence the need to develop and implement adequate systems that guarantee children in Africa a family- and community-based upbringing with institutionalisation as a last resort. Mr Hussein stressed that Africa has ability as well as space to develop effective child care programs.

## Plenary discussions

The following issues were raised during the plenary session:

- Alternatives should be sought by National Authorities, taking into consideration the sustainability and appropriateness, as well as the relevance of alternative care systems.
- Kafalah was presented as an option for the Muslim world, with the pros and cons of this option clearly delineated. However, kafalah should not only be considered as a form of alternative care for Muslim societies as Christians also practise kafalah.
- The meaning of the best interests of the child principle should be a set determination, and its definition and ambit must be enhanced as there are divergent interpretations of this concept.
- Informal adoption may not be in the best interests of the child as demonstrated by the practice of kafalah. Therefore informal practices should be discouraged.
- A strong wish was expressed that within the near future intercountry adoption would come to a halt in Africa. References were made to recent developments in Latin America and Asia as good examples to illustrate that these regions no longer practise intercountry adoption.
- Governments should be meticulous in their selection of adoption agencies and always verify their backgrounds. It was emphasised that the monitoring of intercountry adoption processes is an important measures.
- The issue of budget was raised. Some African countries were noted to spend less than 1% of their budget on child protection. If adequate resources are made available, children can be supported in their own communities and intercountry adoption can be avoided altogether.





# Special Sitting

**Statement from H.E. Mrs Joyce Banda, President of the Republic of Malawi**

The Honourable Mrs Anita Kalinde, Minister of Gender, Children and Community Development of the Republic of Malawi read out a statement on behalf of H.E. Mrs Banda.

adoption should be regarded as an alternative care option for African children without parental care. Equally important is the question of the extent to which intercountry adoption fits within the spirit of the best interests of the child principle. The theme of this conference is therefore timely and befitting.

The statement further stated that available reports indicate that Africa has over 53 million orphaned children. These children require care, protection



H.E. Mrs Anita Kalinde, Minister of Gender, Children and Community Development of the Republic of Malawi

According to the statement, not long ago Malawi made news worldwide due to an intercountry adoption case. On two separate occasions, the country was in the limelight for allowing two Malawian children to be adopted overseas in circumstances that created a heated debate internationally. The debates that arose from these adoptions tested the adequacy and capacity of the policy, legal and institutional frameworks governing intercountry adoption. At the centre of all this, lies the critical question as to whether intercountry

and support to develop to their full potential. Collectively, as a continent we need to put the right measures in place to protect the African child. The increased number of orphaned children in our respective countries has overstretched the available community and extended family care systems. Consequently, many children are living in child-headed households, grandparents are looking after large numbers of children and others are living on the streets, exposed to different forms of abuse. In Malawi, there are approximately 1.2

million orphaned children, 50% of which cases are due to HIV/AIDS. The Government has undertaken the review of various legislative provisions with a view of providing adequate safeguards for the protection of these children. For instance, provisions from the CRC and the Hague Convention have been domesticated in the new Adoption Act.

As a matter of policy the Government of Malawi promotes community-based approaches for the care, protection and support of children. For example the Orphans and Other Vulnerable Children Policy promotes formal and informal foster care by relatives and non-relatives. As stipulated by Article 21 of the CRC this policy considers adoption as a measure of last resort. In 2010, the Malawi Parliament passed the Child Care, Protection and Justice Act, No. 22 of 2010, which provides the overall legal framework for children in need of care and protection. The Ministry of Gender, Children and Social Welfare is developing implementation guidelines for the Act. The goal is to improve access to justice for all children. The Ministry will also produce policy guidelines, regulations and procedures with regard to adoption which will protect and safeguard the best interests of children eligible for adoption.

Intercountry adoption has become a reality in Africa. The situation has led to the urgent review of the Adoption Act to avoid putting Malawian children at risk of trafficking and exploitation. The review process of the Adoption Act is almost completed and the process of its drafting was highly consultative. Through consultations it was

observed that the term adoption is considered to be foreign by most Malawians who, due to cultural tendencies, do not readily ascribe to the notion of permanent severance of ties between the child and its biological parents and family. Most rural communities conceptualise adoption as a process whereby the adoptive family helps the biological parents by raising their child; when the child reaches adulthood, the biological family may reclaim their rights over the child.

Another interesting outcome of the consultations was the fact that the majority of Malawians are not in favour of adoption agencies operating in Malawi because they are associated with child trafficking. The Government of Malawi is still in the process of considering the ratification of the Hague Convention and domestication of its standards. The Government is also considering the development of comprehensive child policies and guidelines, regulating adoption and other forms of alternative care.

Lastly, the Government of Malawi has embarked on the promotion of child protection strategies that address the problems of poverty, social security, nutrition and health in order to fulfill the right to life, survival, growth, development and protection of all children. As part of this process, a Social Cash transfer scheme has been implemented, providing support to the 10% of ultra-poor families, coupled with education and early childhood development. The delegation of the Malawi Government will benefit greatly from the outcome of this conference.





# SESSION VII

## TOWARDS A PAN-AFRICAN FRAMEWORK

Chair: Mme Agnès Kaboré, Chairperson, ACERWC



Mme Agnès Kaboré, Chairperson, ACERWC

### Speakers:

- Mme Akila Belembaogo, UNICEF Representative to the AU and UNECA
- Mr George Nyakora, President, Africawide Movement for Children (AMC)

Mme Kaboré noted that the two day discussions on intercountry adoption raised a wide variety of observations, leading to two major viewpoints:

- those who accept intercountry adoption as a child protection mechanism
- those who oppose the practice of intercountry adoption.

She emphasised that the deliberations concerned the best interests of children; not that of parents, agencies or others involved, but children. Only when international standards are implemented and adhered to, can the rights of children be guaranteed.

Mme Belembaogo spoke about the need for ratification and implementation of relevant children's rights treaties, including the Hague Convention and the Optional Protocols to the CRC. In addition, legal frameworks need to be put in place, as well as mechanisms and policies to uphold the best interests of the child.





She stressed the need for social investigations to be undertaken before processing any adoption application. She further reiterated that all factors need to be taken into careful consideration by judges and other parties involved in intercountry adoption procedures. Based on these investigations and the subsequent findings an informed decision should be taken.



Mr George Nyakora, President, Africawide Movement for Children (AMC)

Mr Nyakora stated that there are limitations in the systems that we have put in place. As regards the intercountry adoption regime, countries of origin and receiving countries have a shared responsibility. Intercountry adoption should be approached on the basis of the RACI principle, whereby RACI stands for Responsible, Accountable, Consulted and Informed.

From an Africawide perspective we urgently need a regulatory framework for intercountry adoption in place. Furthermore, retention in the country of origin should be taken into consideration. There is also a need for social awareness about adoption and the legal consequences thereof. Furthermore, it is essential to raise the bar for adoption agencies; they should in any case be registered.

Mr Nyakora indicated that many governments tend to ratify treaties without considering the implementation aspect. He appealed to the AU and the ACERWC to put intercountry adoption high on their agendas. Finally, he indicated that it calls for political will to allocate adequate resources to child protection.

Mme Agnès Kaboré, Chairperson, ACERWC



**From left to right:** Mr George Nyakora, President, Africawide Movement for Children (AMC), Hon. Mrs Anita Kalinde, Minister of Gender, Children and Community Development of the Republic of Malawi, Mme Agnès Kaboré, Chairperson, ACERWC, Mme Akila Belembaogo, UNICEF Representative to the AU and UNECA





## Task force for the preparation of the Addis Ababa Communiqué on Intercountry Adoption

Mr Hervé Boéchat – International Social Service (Switzerland)

Mr Nigel Cantwell – Independent Consultant (Switzerland)

Ambassador Moushira Khattab, PhD (Egypt)

Ms Freda Luzinda – Country Director, Child Advocacy Africa (Uganda)

Ms Laura Martinez – The Hague Conference on Private International Law (Netherlands)

Dr Benyam Dawit Mezmur – Vice-Chair, ACEWRC (Ethiopia)

Ms Violet Odala – ACPF (Ethiopia)

Mr Gorqui Sow – Regional Coordinator, ANCEFA (Senegal)

Mr Shimelis Tsegaye – ACPF (Ethiopia)

Justice Edward Twea – National Child Justice Forum (Malawi)

## Addis Ababa Communiqué on Intercountry Adoption

The draft Addis Ababa Communiqué on Intercountry Adoption (Annex 1) was drafted by a Task Force which comprised of a pool of experts from diverse. The development of the Communiqué was a shared effort, and during the conference the Task Force took stock of the deliberations, presentations, debates and comments made over the two days, which served as the basis for the draft.

The draft Communiqué was distributed to all the participants and it was read out by Freida Luzinda, for comments and suggestions.

Participants expressed their satisfaction with the manner in which the Communiqué reflects all the key issues raised during the conference. For further improvement, participants pointed out that the document lacked a section on post-placement and follow-up reports to be provided by receiving countries to countries of origin. Mr Cantwell, who was part of

the Task Force drafting the Communiqué, explained that a section on follow-up reports had not been included due to the fact that the role of these reports is extremely limited and in itself they cannot provide protection for children; measures to protect children should be taken beforehand.

Mme Kaboré, Chair of the ACERWC, gave the assurance that the ACERWC will do everything in its power to adopt the recommendations of the Communiqué.

Participants expressed their sincere hope that government officials and representatives have taken note of the points and recommendations which emerged from the conference.

Finally, the participants displayed their acceptance and adoption of the Addis Ababa Communiqué on Intercountry Adoption with a round of applause.





# CLOSING SESSION

## TOWARDS A PAN-AFRICAN FRAMEWORK

Chair: Mr David Mugawe, Executive Director, ACPF



**From left to right:** Hon. Mrs Anita Kalinde, Minister of Gender, Children and Community Development, Republic of Malawi, Mr David Mugawe, Executive Director, ACPF, H.E. Almwaw Mengist, State Minister of Women, Children and Youth Affairs, Federal Democratic Republic of Ethiopia, H.E. Mme Clémence Traoré, Ministre de l'Action Sociale et de la Solidarité Nationale, Présidente de l'Autorité Centrale du Burkina Faso,

### Panelists:

- Honourable Felicite Get Bilenge, Minister, Family and Social Affairs Ministry, Republic of Gabon
- H.E. Mme Clémence Traoré, Ministre de l'Action Sociale et de la Solidarité Nationale, Présidente de l'Autorité Centrale du Burkina Faso
- H.E. Mr Almwaw Mengist, State Minister, Ministry of Women, Children and Youth Affairs, Federal Democratic Republic of Ethiopia
- Honourable Mrs Anita Kalinde, Minister of Gender, Children and Community Development, Republic of Malawi
- Mr Gauthier Luyela, Director, Service of Child Protection, Ministry of Gender, Family and Children of the Democratic Republic of Congo

During the ministerial deliberations, the following points were raised:

**Reflections: Hon. Mrs Anita Kalinde, Minister of Gender, Children and Community Development, Republic of Malawi**

The Government of Malawi recognises that man-made and natural disasters have left many children unprotected. In most cases, governments are not prepared for such catastrophes. Malawi also recognises that there is a need for an integrated child protection system. Domestic adoption should be a first consideration, while intercountry adoption should be regarded as a measure of last resort. The Government acknowledges the need for ratification of the Hague Convention.



Hon. Mrs Anita Kalinde, Minister of Gender, Children and Community Development, Republic of Malawi

Mrs Kalinde indicated that, despite efforts to reduce poverty, 52% of the population in Malawi live below the poverty line and 10% of children grow up without parental care. The Government recognises the need to address the root causes of poverty, HIV/AIDS and other problems related to child care and protection and intensify the social support system.

**Reflections: H.E. Almw Mengist, State Minister of Women, Children and Youth Affairs, Federal Democratic Republic of Ethiopia**

Ethiopia remains amongst the poorest countries in Africa; with 52% of the population below the age of 18, the population is vulnerable. In recent years, there have been encouraging results in relation to health, education and other sectors through the implementation of social support systems. When the impact of these results trickle down to family level, it will contribute to curbing the problem of vulnerable families and children, leading to a significant decline in the number of vulnerable children and a reduction of intercountry adoption.



H.E. Almw Mengist, State Minister of Women, Children and Youth Affairs, Federal Democratic Republic of Ethiopia

Mr Mengist noted that Ethiopia focuses on the following forms of alternative care: community-based care, family reunification, domestic adoption and – as a last resort – institutional care. Ethiopia has ratified most Human Rights treaties, but not the Hague Convention; it will require time to review the content and implications before signing and ratifying the Convention.

**Reflections: H.E. Mme Clémence Traoré, Ministre de l'Action Sociale et de la Solidarité Nationale, Présidente de l'Autorité Centrale du Burkina**

Mme Traoré noted that in Burkina Faso children constitute 57% of the population; a considerable proportion of them live in precarious situations. Support is often obtained from the community and from funding agencies. There are three main forms of alternative care practiced in Burkina Faso, namely guardianship, care placements and intercountry adoption. When considering alternative care options for children, intercountry adoption is the last resort. There are numerous challenges relating to intercountry adoption, the main being that procedures are lengthy and most people do not support this form of alternative care.



H.E. Mme Clémence Traoré, Ministre de l'Action Sociale et de la Solidarité Nationale, Présidente de l'Autorité Centrale du Burkina Faso

The Government of Burkina Faso is of the opinion that support for children should be provided in their country of origin; therefore, domestic adoption is promoted through an awareness campaign. Furthermore, efforts are made to support families through social protection programs in order to ensure that vulnerable children are provided for. Mme Traoré appealed to the community and society to provide support for children who are in need of protection. She called upon actors to work together to ensure a better future for Africa's children.

**Reflections: Mr Gauthier Luyela, Director, Child Protection Services, Ministry of Gender, Family and Children, DRC**

In the DRC an Inter-Ministerial Committee has been established to handle intercountry adoption procedures, leading to noticeable improvements. Mr. Luyela noted that the Government is in



Mr Gauthier Luyela, Director, Child Protection Services, Ministry of Gender, Family and Children, DRC

dialogue on intercountry adoption with the Hague Convention team, aimed at the collection of relevant data. In addition, sensitisation programs and advocacy are needed to create awareness on intercountry adoption.

Mr. Luyela made an appeal to all African States to organise workshops where experiences and good practices can be exchanged, in order to adequately deal with intercountry adoption both at national and international level.

**Concluding observations by Mr David Mugawe, Executive Director ACPF**

A great deal has been achieved during this conference and the past two days were worth spending for the benefit of children in Africa. A wealth of speakers shared their experiences and

perspectives on a very critical subject, facing children all over the world.

Where do we go from here?

The draft Communiqué will be modified to incorporate suggestions and comments made during the deliberations; the Proceedings Report and the Conference Report will be shared both in English and French; the Guidelines for Action on Intercountry Adoption of Children in Africa will be put forward to the ACERWC for consideration. All these documents will be made available to the public via the ACPF website.

ACPF would like to see this as the beginning of a journey we have only just started together. We shall leave this conference room with inspiration, insights and issues for consideration and for action.

Mr Mugawe thanked all who made the conference a success: the delegates, chairpersons, presenters and participants; the partners who provided financial and technical contributions; the team who worked as a Task Force on drafting the Communiqué; ACPF's team who did an excellent job both in terms of producing technical documentation and organising the conference; the host, UNECA, for allowing access to the facility; last but not least: the interpreters who have been working well beyond normal working hours, providing an excellent service.

Mr Mugawe concluded his observations by emphasising that the conference functioned as a true forum, as implied by the organiser's name – The African Child Policy Forum – to discuss an issue that is of great importance for the African child. He expressed the hope that all present will join future forums organised by ACPF.







# ANNEX I

## ADDIS ABABA COMMUNIQUÉ ON INTERCOUNTRY ADOPTION

The Fifth International Policy Conference on the African Child

29-30 May 2012

Addis Ababa, Ethiopia

### THE ADDIS ABABA COMMUNIQUÉ ON INTERCOUNTRY ADOPTION

**Recalling** the African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention on the Rights of the Child (CRC), and all rights guaranteed therein, including the right of the child to be brought up in his/her family wherever possible;

**Cognisant of** the right of the family to receive any necessary support and the child's right to be granted special assistance if he/she cannot remain in parental care, and in that case preferably to be placed in an alternative family environment;

**Conscious of** the fact that African societies have for centuries been able to care for their children, including those left without parental care, based on collective values and wisdom;

**Aware of** the present reality that the very fabric and integrity of the African family is threatened, among others, by poverty, disease, HIV/AIDS, and conflict, leaving children in dire circumstances;

**Recognising** that intercountry adoption could be resorted to in truly exceptional circumstances for certain children without parental care, and with the best interests of the child as the paramount consideration, in particular as provided for by article 24 of the ACRWC;

**Concerned by** the trend of Africa being the new global frontier for intercountry adoption at a time when the practice is sharply declining in other continents;

**Duly acknowledging** that a vast majority of adoptive parents sincerely wish to provide a loving and lasting family environment for children in need of alternative care;

**Taking note** nonetheless of reports, in some instances, of intercountry adoption resulting in abuse of children in the receiving countries;

**Recognising** the usefulness of follow-up reports regarding the wellbeing of adopted children but with due recognition of the fact they cannot replace proper safeguards within the adoption procedures;

**Concerned** that sometimes children are being procured for adoption abroad through manipulation, falsification and other illicit means of securing financial gains;

**Concerned** also that in some instances there are both internal and external pressures put on families and governments to make their children available for intercountry adoption;

**Convinced** that with a modest degree of economic and social support, African families and communities could provide for children without parental care;



**And bearing in mind** that the global and African community has agreed on various principles to be respected towards each child, as set out in regional and international instruments and documents, notably The African Charter on the Rights and Welfare of the Child (1990); The UN Convention on the Rights of the Child (1989); The Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000); The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption; the UN Guidelines for the Alternative Care of Children (2009), and the Declaration and Plan of Action for an Africa Fit for Children (2001) and the Call for Accelerated Action (2007);

**We, the participants of the Fifth International Policy Conference on the African Child, call upon:**

## 1. African States

To assume and honour their responsibility for ensuring the wellbeing of Africa's children, including children without parental care. African Governments should therefore:

- a. Give absolute priority to enabling all children in Africa to remain with their families and in their communities by among other things:
  - i. Harmonising national legislation with the ACRWC, the CRC and other applicable international human rights instruments;
  - ii. Putting in place a comprehensive child protection system;
  - iii. Establishing credible data-gathering and analysis systems to ensure evidence-based policies and decision-making on needs and appropriate responses in the sphere of alternative care;
  - iv. Allocating adequate financial and human resources to support vulnerable families;
  - v. Strengthening families and providing for the natural and basic needs of children;
  - vi. Promoting and supporting informal and traditional mechanisms of care such as kinship care;
  - vii. Promoting non-institutional forms of alternative care for children, such as foster care, guardianship and domestic adoption;
  - viii. Ensuring strict oversight over the quality, number of residential care facilities, their source of funding, the reasons for and number of admissions of children, and the duration of their stay in these facilities; and
  - ix. Establishing partnerships with CSOs, the media, traditional and religious leaders.
- b. When considering intercountry adoption:
  - i. Put in place appropriate legislative and procedural measures to ensure proper safeguards for children involved in intercountry adoption;
  - ii. Ratify and ensure the implementation of the 1993 Hague Convention on Intercountry Adoption;
  - iii. Establish a central database of children without parental care in need of adoption;
  - iv. Establish a mechanism to ensure that the child is adequately prepared for psychological and emotional challenges which they may experience in the course of intercountry adoption;
  - v. Prohibit independent and private adoptions; and
  - vi. Combat illicit financial gains.

## 2. Civil Society Organisations

- a. To monitor government compliance with their treaty obligations;
- b. To raise awareness on domestic family-care options;
- c. To carry out research and generate data on the state of children without parental care; and
- d. To advocate for the rights of children without parental care.



**3. Treaty Bodies**, in particular,

- a. The African Committee of Experts on the Rights and Welfare of the Child should monitor:
  - i. Developments in African countries regarding intercountry adoption, and the observance of internationally recognised safeguards and the UN Guidelines on Alternative Care; and
  - ii. Measures taken by States to address family poverty and breakdown and to improve domestic alternative care provision.
- b. The UN Committee on the Rights of the Child should pay special attention to:
  - i. The compliance of both “receiving countries” and “countries of origin” with intercountry adoption standards; and
  - ii. The commitment of “countries of origin” to developing appropriate and effective domestic responses to children without parental care or at risk of being so.

THEREFORE, WE, THE PARTICIPANTS OF THE FIFTH INTERNATIONAL POLICY CONFERENCE ON THE AFRICAN CHILD, CALL FOR A REVERSAL OF THE CURRENT TREND OF RESORTING TO INTERCOUNTRY ADOPTION AS AN EASY AND CONVENIENT OPTION FOR ALTERNATIVE CARE IN AFRICA, AND FOR GIVING ABSOLUTE PRIORITY TO ENABLING ALL CHILDREN IN AFRICA TO REMAIN WITH THEIR FAMILIES AND THEIR COMMUNITIES.

WE TAKE UPON OURSELVES THE DUTY OF ENSURING THAT INTERCOUNTRY ADOPTION IS GUIDED BY THE BEST INTERESTS OF THE CHILD, APPLIED ONLY WHEN AN ALTERNATIVE FAMILY ENVIRONMENT CANNOT BE FOUND IN THE HOME COUNTRY, AND, IN LINE WITH THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD, IS USED AS A LAST RESORT.

ADOPTED ON 30 MAY 2012 AT THE FIFTH INTERNATIONAL POLICY CONFERENCE ON THE AFRICAN CHILD (IPC), ORGANISED BY THE AFRICAN CHILD POLICY FORUM (ACPF)

[www.africanchildforum.org/ipc](http://www.africanchildforum.org/ipc)



# ANNEX II

## (DRAFT) GUIDELINES FOR ACTION ON INTERCOUNTRY ADOPTION OF CHILDREN IN AFRICA

