

# Intercountry Adoption Alternatives and Controversies

The Fifth International Policy Conference  
on the African Child



## Conference Report

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



# **Intercountry Adoption Alternatives and Controversies**

The Fifth International Policy Conference on the African Child



## 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.



### The African Child Policy Forum (ACPF)

P.O. Box 1179, Addis Ababa, Ethiopia

Tel: +251 (0)116 62 81 92/96/97/99

Fax: +251 (0)116 62 82 00

Email: [info@africanchildforum.org](mailto:info@africanchildforum.org)

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

[www.africanchild.info](http://www.africanchild.info)

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## ACKNOWLEDGMENTS

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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 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.

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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)



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# 1 INTRODUCTION

It is estimated that there are over 58 million orphaned children in Africa, due to a variety of causes. The majority of these children have been absorbed into informal alternative care settings, primarily provided by extended family members, but also by the community. However, extended family and community networks, which Africa has relied on for generations, are no longer able to cope with the increasing number of children in need of alternative care. As a result, a growing number of African children are put up for adoption across the world.

Intercountry adoption is a form of adoption in which the legal parenthood of a child is transferred to adoptive parents who reside in or are citizens of another country. While global numbers of intercountry adoption have decreased in recent years, Africa is the only continent where intercountry adoption is on the increase. This trend has led to a growing concern among African governments and children's rights advocates as serious risks and challenges have presented themselves. Although some children may benefit from the adoption system, experiences from various countries suggest that this type of adoption may have detrimental effects on children involved and is marred with serious institutional, procedural and other problems.

Against this background, The African Child Policy Forum (ACPF) organised the Fifth International Policy Conference on the African Child (IPC), entitled 'Intercountry adoption: Alternatives and Controversies'. The conference was held on 29 and 30 May 2012 at the United Nations Conference Centre in Addis Ababa, Ethiopia.

## 1.1 Goals and objectives of the conference

The overall goal of The Fifth IPC was to further the discussion on intercountry adoption and to contribute to the improvement of national laws, policies, systems and procedures relating to

intercountry adoption. The main objectives of the conference included:

- To raise awareness on the practice of intercountry adoption in relation to the protection of African children in need of alternative care.
- To provide a platform for sharing information and experiences on intercountry adoption.
- To promote legal and policy action on intercountry adoption, consistent with the best interests of the child.
- To adopt a Pan-African Framework and Guidelines on intercountry adoption.

## 1.2 Participants

The conference brought together about 500 participants from a wide variety of backgrounds and countries around the world. Among those who attended the conference were government officials from various African and non-African countries, representatives of the African Committee of Experts on the Rights and Welfare of the Child, the UN Committee on the Rights of the Child, UN agencies, the African Union Commission and other international and non-governmental organisations, members of civil society organisations, advocacy groups, academic institutions, private adoption agencies and individual children's rights activists.

## 1.3 Summary of emerging issues

- African governments should ratify the requisite international legal instruments governing intercountry adoption.
- Support and resources should be made available for countries of origin that wish to ratify and/or domesticate the 1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption.
- African countries must be vigilant in drawing up adequate legislation and policies regulating intercountry adoption.

- Notwithstanding the importance of regulatory frameworks governing intercountry adoption, there is concern as to the efficacy of these frameworks, particularly in relation to people at grassroots level.
- There is a lack of reliable data on the real need for intercountry adoption.
- The term 'adoption' does not feature in African languages and in many African countries adoption is a concept that most people are not familiar with, which signifies the fact that intercountry adoption is a 'foreign practice'.
- Awareness should be raised throughout the continent as to what adoption entails and that intercountry adoption should be a measure of last resort.
- There is a need to share best practices and develop collaborations between different stakeholders involved in intercountry adoption practices in Africa.
- Communication plays an important role in sharing good practices, such as efforts to prevent intercountry adoption by means of social cash transfers.
- Countries of origin invariably have insufficient resources to establish safeguards and to enforce gatekeeping measures of intercountry adoption.
- There is too little attention to family empowerment programmes, especially informal ones, or for domestic adoption; these options should be given much more consideration by countries of origin.
- Rather than removing children from their communities and their families through intercountry adoption at a high cost, receiving countries should consider supporting children and their families locally.
- Some of the major receiving countries, including the US and France, allow for private (or independent) adoptions, which tend to have less safeguards than public adoptions.

- The principle of the best interests of the child should guide all actions pertaining to intercountry adoption and it must be properly interpreted in the context of adoption.
- There is a strong desire in African countries to bring intercountry adoptions from Africa to an end within the near future. In this respect, developments in Latin America and Asia, regions where intercountry adoption was reduced significantly, are good examples of the feasibility of this desire.
- Some African countries 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.

## 1.4 Outputs of the conference

ACPF has produced the following documents as outputs of the conference:

### **Addis Ababa Communiqué on Intercountry Adoption**

The conference adopted the *Addis Ababa Communiqué on Intercountry Adoption* which calls for a reversal of the current trend of resorting to intercountry adoption as a primary solution for African children in need of alternative care. Instead, the communiqué calls for prime priority to be given to enabling all children in Africa to remain with their families and in their communities. The Communiqué therefore calls upon African States, Civil Society Organisations and Treaty Bodies to assume their responsibilities in ensuring the wellbeing of all children in Africa.

### **Guidelines for Action on Intercountry Adoption of Children in Africa**

The conference adopted the *Guidelines for Action on Intercountry Adoption of Children in Africa*. These Guidelines explicitly do not promote or encourage intercountry adoption. They are aimed at facilitating and supporting the efforts of African States to take all appropriate legal, administrative



and other measures to ensure that all persons and organisations involved in the adoption of a child act in conformity with applicable international legal instruments.

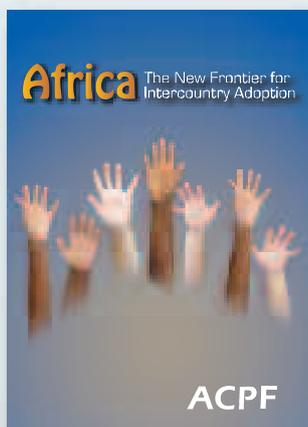
### *Proceedings Report – Intercountry Adoption: Alternatives and Controversies*

The Proceedings Report presents summaries of all presentations delivered and of all plenary discussions held during each session of the conference.

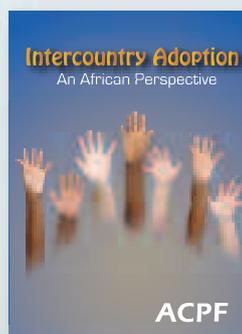
### *Conference Report – Intercountry Adoption: Alternatives and Controversies*

This Conference Report presents a synthesised account of all technical input papers, presentations, discussions and recommendations of the conference.

### *Publications on Intercountry Adoption*



*Africa:  
The New Frontier for  
Intercountry Adoption*



*Intercountry Adoption:  
An African Perspective*

These two publications were prepared as background documents to inform the discussions and debates during the conference, and were distributed to participants at the conference.

## *Documentary on Intercountry Adoption in Africa*

### **An Uncertain Journey**



An investigative documentary on intercountry adoption highlighting different aspects of the debate from the point of view of the African Child.

[Visit Website](#)

## 2 INTERCOUNTRY ADOPTION: THE AFRICAN CONTEXT

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) has noted with great concern that in most countries socio-economic conditions continue to deteriorate, leading to violations of even the most basic children's rights. Many children on the African continent find themselves in need of care due to a variety of causes, such as poverty, natural



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

disasters, conflict and orphanhood due to HIV/AIDS and other communicable diseases. These factors have resulted in an increasing number of children left to care for themselves outside the nuclear family, which in turn has led to the rise of intercountry adoption in Africa. However, serious reservations have been expressed about intercountry adoption as a solution to the aforementioned problems.

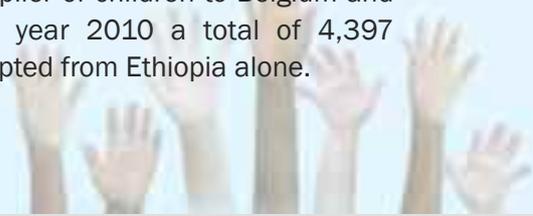
The examination of Country Reports of States party to the African Charter on the Rights and Welfare of the Child (ACRWC) by the ACERWC has led to the conclusion that adoption procedures vary widely from one country to another, lacking a well-structured and consensual model. Furthermore, it has become apparent 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.

Furthermore, the phenomenon of adoption is relatively unknown in Africa. It is a foreign concept that most people on the continent are not familiar with and the term 'adoption' does not feature in African languages. In an attempt to ensure the provision for basic needs of their children, parents resort to intercountry adoption as a solution, often unaware of the legal implications of adoption. The lack of effective national policies and regulatory frameworks endangers the situation of vulnerable children and leads to children being trafficked, used in prostitution rings or as sex slaves, forced to perform hard labour or to become victims of organ harvesting.

Current statistics show that Africa has become a new frontier for intercountry adoption: whereas the number of intercountry adoptions in other parts of the world is decreasing, adoptions from Africa are on the increase. Global trends indicate that in the year 2004 an unprecedented 45,298 children were adopted worldwide. This number declined by a third to 29,095 in the year 2010 and the number of children adopted in 2011 has been estimated at approximately 23,000, indicating a further global decline. Conversely, in Africa, the number of intercountry adoptions nearly tripled from 2,254 in the year 2003 to 6,349 in 2010, making up 22% of the total number of intercountry adoptions worldwide. The top five sending countries are: Ethiopia, Nigeria, the DRC, South Africa and Mali. The top five receiving countries are: the US, Italy, France, Spain and Canada. More than 25% of all children adopted in the year 2010 in the US and in France were of African origin.

Most notable is the increase in global terms in the number of children adopted from Ethiopia, which in 2009 was second to China as a country of origin 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.



However, there are limitations to data on intercountry adoption and it should be noted that these are estimates. Due to the fact that most of the countries of origin have not ratified the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Convention) and therefore do not provide data to the Hague Conference, the source of the aforementioned figures is a database comprising details of 23 receiving countries. Unregistered adoptions are not included in the figures.

The rapidly growing number of children who are adopted from Africa are a reason for major concern and recent studies have revealed critical adverse effects of intercountry adoption. Most importantly, children become culturally disconnected from their own country, community and family, often resulting in serious emotional problems. Furthermore, adopted children are frequently stigmatised, leading to psychological trauma. The national social context and the broader socio-political situation of receiving countries should be taken into consideration. Adoptive parents may have good intentions, but the environment into which the adopted child is brought may not necessarily be ideal for the child in question. In some instances children are adopted and, for various reasons, later rejected by their adoptive parents; multiple changes in a child's care situation may lead to attachment disorder.

With regard to the adoption process itself, concerns relate to the financial gains and corruption, which are recognised as a major driving force behind intercountry adoption, rather than the consideration of the best interests of the child. Fees of \$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. In many countries, adoption agencies are poorly monitored or not monitored at all. In order to facilitate and expedite intercountry adoptions, falsification of records and formal documents or the status of biological parents occur. The practice of intercountry adoption is more often than not demand driven, due to pressure from receiving countries to provide children for adoption, giving precedence to the interests of future adoptive parents, rather than the best interests of the child.



Mr David Mugawe, Executive Director, ACPF

From an African perspective the ACRWC, the UN Convention on the Rights of the Child (CRC) and the Hague Convention are recognised as guiding instruments for the regulation of intercountry adoption. Despite the tremendous improvements that have been made in terms of national legislation and policies with regard to children's rights, major gaps between legislative promulgation and the actual implementation of the aforementioned instruments still exist.

The general consensus is that the focus should be on preventing intercountry adoption and on finding solutions within children's own countries. African countries should prioritise strengthening alternative care systems and support to families in order to keep children at home or within their communities. In this regard, the possibilities of national adoption should be explored. Good practice examples can be found in Uganda, where campaigns were launched to familiarise the population with domestic adoption. These campaigns have proved to be successful and have led to an increase in the number of national adoptions.

Guidelines and policies are urgently needed to regulate the adoption of children for whom alternatives in their own country are not available. Furthermore, consistent policies should be implemented across Africa on whether a child may be considered adoptable and appropriate checks and balances to ensure proper practices should be put in place.

## 3 INTERNATIONAL LAW AND INTERCOUNTRY ADOPTION

Inter-country adoption in Africa is governed by three international instruments, namely the ACRWC, the CRC and the Hague Convention on Intercountry Adoption. Most African countries are party to both the ACRWC and the CRC, whereas the Hague Convention has been ratified by only 13 African nations.

Both Article 24 of the ACRWC and Article 21 of the CRC explicitly declare that the best interests of the child should be the paramount consideration in any adoption procedure. Furthermore, these Articles state that intercountry adoption may only be considered “as an alternative means of a child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin”. Governments should ensure that children affected by intercountry adoption enjoy all safeguards and standards necessary, and appropriate measures should be taken to ensure that intercountry adoption does not result in trafficking or improper financial gain for those who are involved in the process.

The Hague Convention reinforces the aforementioned Articles, as well as other principles of the ACRWC and the CRC. It provides a proper legal and administrative framework for intercountry adoption, both at a global and national level. By ratifying the Hague Convention, States strengthen their protection mechanisms for children which relate to intercountry adoption. The ACRWC and the CRC should be regarded as the first layer of protection, the Hague Convention as the second layer and national laws as the third; together these layers should ensure respect for the rights of children. In cases where both the country of origin and the receiving country have ratified the Hague Convention, an improvement in adopted children’s situations is evident. In addition to stipulations on intercountry adoption, the Hague Convention also contains sections on interfamily adoption and it encourages domestic adoption.

The aim of the Hague Convention is to set minimum standards for intercountry adoption on the basis of a number of principles. The principle of the child’s best interests: children should only be adopted when this is in their best interests and when their fundamental rights are safeguarded. In addition, the principle of subsidiarity should be adhered to. According to this principle, children should be raised by their biological parents or members of the extended family whenever possible. Furthermore, the Hague Convention encourages cooperation between States and within States to protect children and to achieve its objectives, including the prevention of improper financial gain or bad practices. States should ensure that only competent bodies are authorised to perform the Convention’s functions. Lastly, the Hague Convention establishes standards, safeguards and procedures to prevent abduction, sale and trafficking of children.

Research indicates that the Hague Convention has had a number of positive effects. First of all, it has led to increased awareness of good practices in general as well as in emergency situations, while stimulating efforts to combat negative practices. In addition, the Convention motivates governments to look at domestic solutions for children in need of care. The Hague Convention empowers countries of origin to resist inappropriate pressure from receiving countries. Finally, the Convention promotes shared responsibilities by countries of origin and receiving countries for the enforcement of good practices and the condemnation of malpractice.

A significant number of 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 of countries where new laws have already been passed are South Africa, Mozambique, Lesotho, Botswana, Malawi, Tanzania, South-Sudan, Sierra Leone and Zanzibar. Furthermore, in Namibia the new Child Care and Protection Bill is



expected to be tabled in Parliament in 2012 and in Uganda an Amendment Bill to the 1997 Children Act is in the process of being drafted. Many African 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.

Given that adoption is primarily a legal transaction in which the formal legal responsibility for a child is transferred to the adoptive parents, thereby terminating the legal status of the birth parents, the law is a very important factor in any adoption procedure. This cannot be achieved without an enabling statute authorising the change of the child's legal family status and providing procedural rules. According to the Hague Convention, minimum standards and safeguards should be established, but the uniformity of internal adoption laws is not required and different methods of adoption procedures are permitted. Municipal legislation is therefore a prerequisite for a well-functioning international adoption apparatus.

In the African context, where States' structures are frequently inadequately resourced and human resources are limited, international legal instruments should not be ratified without contemplating in advance the institution of effective domestic restraints. The omission of this phase may lead, for example, to countries being inundated with requests from overseas agencies for adoptable children, far exceeding the number of children available.

"The Guide to Good Practice to the Hague Convention" requires a legislative framework as part of the pre-planning for implementation of the provisions of the Convention. The Guide further clarifies that the basic principles and minimum standards for intercountry adoption provided by the Hague Convention should be supplemented by provisions in national laws. For instance, with regard to the principle that intercountry adoption should only be considered as a measure of last resort, national laws should clarify how it is to be recorded that sufficient and true efforts for a domestic placement have been exhausted. National legislation should also provide for the

required criminalisation of improper inducements, illegal solicitation, improper financial gain, untoward advertising and trafficking. In this respect the principle *nulla poena sine lege* (no penalty without a law) applies.

It should be noted that the 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.

Notwithstanding the international instruments available, there is still diversity throughout the world in terms of approaches to intercountry adoption, legislative frameworks, procedural safeguards, resource allocation and alternative care systems in place, both in receiving countries and in countries of origin. This diversity is by no means always in response to differing cultural situations and needs, but to a range of other factors, such as those that lead to intercountry adoption.

Even though the majority of receiving countries have ratified the Hague Convention, which implies that domestic laws and procedures are generally compatible with this Convention, very different practices exist. For instance, legislation in France and the US allow for privately-arranged adoptions, also known as independent adoptions, from countries that have not ratified the Hague Convention, whereas other countries such as Italy and Sweden outlaw all independent adoptions. Another example relates to the number of accredited adoption agencies. The US has accredited more than 150 adoption bodies for approximately 10,000 intercountry adoptions per year; in France 34 accredited agencies handle 3,500 adoptions, whereas in Sweden only five accredited agencies process 900 adoptions per year. The proliferation of adoption agencies in some countries of origin has led to great concern over accreditation and monitoring.

With regard to countries of origin, a variety of legal frameworks are in place, ranging from outdated, colonial laws to laws which provide for swift adoption procedures. Due to the sudden increase



## 4 EXPERIENCES FROM COUNTRIES OF ORIGIN



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

According to the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography the family forms the first shield of protection for any child. In most African countries the term 'family' does not only refer to the nuclear or elementary family, but also to extended family members and, in certain cases, neighbours and community members. A child's family environment may be affected by many factors and in the African context a long history of natural and man-made disasters has diminished the capacity of the traditional family network of protection. Children have the right to grow up in a safe family environment and social support should be provided to parents and families who lack adequate means to take care of their children, thus enabling them to raise their children in line with the CRC provisions.

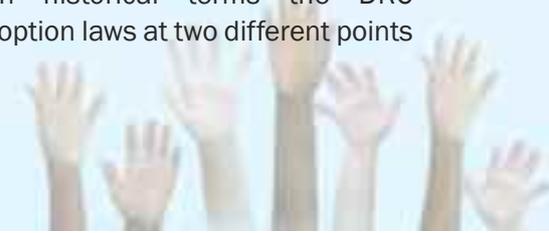
Intercountry adoption practices deserve special attention and should be regulated, monitored and controlled. In situations where a legal framework is not in place, there is a high risk of premature, illegal adoptions and the sale of children. Adoption should not be utilised as a solution to poverty or

an alternative for families in precarious situations; instead, it should only be contemplated as a measure of last resort and the interests of the child should always be the paramount consideration. The fact that the birth of a child has not been registered should not lead to the conclusion that the child in question is adoptable, especially in situations where births of newborns are deliberately not registered, with a view to facilitating their sale.

Countries of origin should make every effort to implement reliable and credible information systems, containing data on all children, such as birth registrations and risk factors. At the same time, receiving countries should ensure that all obligations of the Hague Convention are respected, even when the country of origin has not ratified the Convention.

### DEMOCRATIC REPUBLIC OF CONGO

The 1987 Adoption Law was drafted for the protection of children deprived of a family environment. In historical terms the DRC implemented adoption laws at two different points



in time: before and after 1987. During the period before 1987 the main goal of adoption was to provide a family with a child in cases of childless families or situations where an heir was lacking. As of 1987, the focus shifted from parent-centred to child-centred practices, aimed at providing children in need of parental care with a family. Only two provisions in the Adoption Law relate to intercountry adoption. 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.

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

The 1987 Adoption Law contains a number of requirements for adoptive parents: they have to 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 three children alive at the time of adoption. Furthermore, the Law stipulates that official documents, such as a marriage certificate and proof of health of both parents are required.

The Government of the DRC is actively involved in the process of intercountry adoption through Parliament, the Ministry of Justice and the Ministry of Social Affairs. However, there is no Central Authority governing intercountry adoption, which is a major concern as the lack of such an authority fragments the regulation and monitoring of orphanages, adoption agencies and adoptions in general. This potentially leads to illicit adoption practices. The harmonisation of domestic laws with international principles on intercountry adoption is therefore vital.

## FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Ethiopia has ratified most international legal instruments relating to the protection of children, namely the CRC, ACRWC, ILO Convention on the Minimum Age of Employment and the ILO Convention on the Worst Forms of Child Labour. Furthermore, the principle of the best interests of the child has been incorporated in the Constitution and the Revised Family Code. The latter contains provisions relating to both domestic and intercountry adoption. In addition to these laws, a policy framework aimed at children and youth was developed by the Government of Ethiopia.

In 2011, the population of Ethiopia was estimated at more than 82 million people of whom 55% are children. Approximately 6 million children are considered 'vulnerable'; these children are deprived of their family, neglected, displaced, living in the streets, abandoned or disabled. Structural causes leading to the vulnerability of this vast number of children include extreme poverty, HIV/AIDS and urbanisation, while underlying factors of vulnerability are family instability and disintegration, violence in the home, abuse and disability. In an attempt to combat children's 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 regarded as a measure of last resort and is least-promoted. In the year 2011, more than 700,000 children received government funded support, primarily within their own family or community and an estimated 7,000 children lived in an institution.

In 2011, approximately 3,000 children left Ethiopia through an intercountry adoption procedure. A number of challenges with regard to intercountry adoption may be discerned. First and foremost, the availability of domestic alternative care options is very limited. Furthermore, there is a lack of



accurate and reliable data on children's situations and a comprehensive information system is not in place, all of which is further complicated by the non-compulsory nature of birth certificates. Other challenges include a lack of post-placement follow-ups and the fact that a large part of the population is not familiar with the concept of intercountry adoption.

The Ethiopian alternative care system is currently in the process of being amended and national laws are assessed on the basis of international laws and treaties. The regulatory framework will be strengthened and an adequate data management system is being set up. In addition the Ethio-alternative care network has recently been launched, a national alternative care network that serves as a platform for public-private partnerships to share information and resources among relevant stakeholders in the area of alternative care. In addition, community-based child care programmes, as well as local adoption and reunification are promoted by means of national and local media. Social cash transfer programmes targeting vulnerable households have also been rolled out.

The Government of Ethiopia has indicated its intention to ratify the Hague Convention, as well as the further development of family-based care programmes.

## REPUBLIC OF MALAWI

Many children in Malawi are unprotected and there is an urgent need for an integrated child protection system. Despite efforts to reduce poverty, 52% of the population in Malawi lives 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.

Attitudes with regard to intercountry adoption differ significantly in Malawi, ranging from people fully supporting it to those who argue that it is harmful for children. The legal framework in Malawi offers protection to children who are in need of care and includes provisions with regard to both national and intercountry adoption. The Constitution, the Child Care, Protection and Justice Act, and the Adoption of Children Act consolidate rules and regulations relating to children and govern adoption procedures. These laws are based on the fundamental principle of the best interests of the child. The "Adoption of Children Act" was enacted in 1949, based on an old English statute of 1926, and laws on adoption have largely remained unchanged since then. These laws are now outdated and incompatible with current trends and realities.

Due to the increased number of children adopted from Malawi, a Practice Direction on intercountry adoption was issued in 2009. However, a replacement of existing adoption laws is urgently needed. A review of the "Adoption of Children 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.

Despite legislation, the concept of adoption was relatively unknown in Malawi until very recently and people have little or no knowledge of intercountry adoption. In most cases, parents consent to adoption in the understanding that it is a temporary arrangement, rather than a permanent one. This misconception is frequently exploited by adoption agencies, who omit to explain the legal consequences of adoption to the biological parents or family of a child. It is therefore essential to improve general knowledge on the concept of adoption. The Government of Malawi recognises that domestic adoption should be a first consideration, while intercountry adoption should be regarded as a measure of last resort. The government also acknowledges the need for ratification of the Hague Convention.



## FEDERAL REPUBLIC OF 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 are adopted for reasons other than their welfare. In some instances, the main purpose for adoption is child labour or ritual child abuse. Vital records and data required for planning and improvement of services are frequently unavailable or difficult to obtain.



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

In Nigeria, the phenomenon of adoption was introduced as a legal institution in 1965. At present, adoption is mainly regulated by the Child Rights Act 2003, as well as by a number of other statutes. However, the rules and regulations in place are strictly limited to domestic adoption and none of the provisions relate to intercountry adoption.

According to the Child Rights Act, various categories of children are considered adoptable. First of all, abandoned children may be adopted. In Nigeria, abandoned babies constitute the largest percentage of children who are adopted. Secondly, orphans or children who are deprived of a family environment can be adopted. Children whose well-being and development are threatened due to inadequate care by their parents, are adoptable if parents consent to adoption.

The Child Rights Act 2003 also provides rules and regulations with regard to adoptive parents. Every adoptive parent must be at least 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. Couples who are unable to have children of their own may adopt. Also, any adult, whether married or single who can provide a permanent, stable and caring home for a child 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 (singles are not allowed to adopt children of the opposite sex). It is prohibited for other nationals to adopt a child in Nigeria.

The absence of intercountry adoption services and/or accredited adoption agencies in Nigeria has led to the situation that 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, as well as procedures based on international best practices. Ratification of the Hague Convention should be considered by the Government of Nigeria.

## 5 EXPERIENCES FROM RECEIVING COUNTRIES

With the decrease in the number of adoptable children in China, one of the most popular countries of origin during the past decade, the pressure on other countries of origin has increased, most notably in Africa. There is still a surplus of people wishing to adopt, while the number of children for whom intercountry adoption is considered to be a suitable alternative is declining. In many countries of origin the promotion of the application of the principle of subsidiarity has resulted in a revision of their child protection systems and the strengthening of domestic alternative care programmes. Rather than resort to intercountry adoption, solutions such as programmes for family preservation, reunification, foster care or national adoption are pursued, in conformity with the principle of subsidiarity.

The fact that some receiving countries, despite their ratification of the Hague Convention, allow for independent adoptions is highly questionable as the principle of the best interests of the child may be compromised as a result.

### FRANCE

In France, intercountry adoption is not a new phenomenon. After World War II charities utilised intercountry adoption to provide childless families with one or more children. In the past the focus was on the adoptive family, whereas nowadays the adopted child is of central importance.

France has ratified the Hague Convention and has established a Central Authority as well as the requisite bodies to oversee all adoption procedures. Nevertheless, France adopts children from both Hague and non-Hague countries and individual adoptions are not prohibited, despite this being a violation of the Hague Convention. The prohibition of independent adoptions requires an amendment of the law, a complicated and lengthy procedure. Adoption agencies provide adoptive

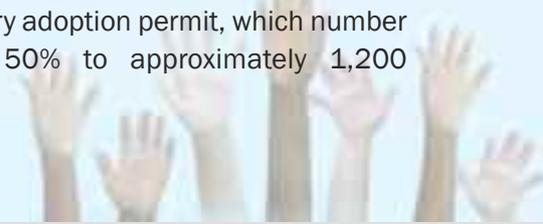
parents with all the necessary information, including the cultural aspects that need to be taken into account in cases of intercountry adoption. In addition, networks have been set up for adoptive parents to share experiences and information. Protection mechanisms are in place and adopted children are continuously monitored by the French Social Services. In France, a total of 34 adoption agencies have been accredited; agencies are not allowed to operate without accreditation. The failure rate of intercountry adoption is a mere 1%.

The adoption of African children by French citizens is common, although figures stabilised in the year 2005 at approximately 3,500 children and dropped in 2011 to an estimated 2,000. There are no quantitative limits to adoptions from any geographic area. Due to the current downward trend of intercountry adoption, the number of domestic adoptions in France has risen. It is also noteworthy that there is an increasing number of adoptions of slightly older children, rather than infants. Furthermore, there is an increase in adoptions of children with special needs. Due to more stringent and lengthier procedures, a decrease in the number of applications for intercountry adoption is observed. There is a risk that this may lead to families resorting to independent and illegal adoption procedures, which are significantly shorter.

France considers intercountry adoption to be a measure of last resort.

### THE NETHERLANDS

The Dutch government ratified the Hague Convention in 1998. A quality framework has been put in place to accredit adoption agencies and all agencies are subject to monitoring. In 2007, more than 2,400 prospective adoptive parents applied for an intercountry adoption permit, which number had fallen by 50% to approximately 1,200



applications in 2011. In practice, a total of 782 children were adopted into The Netherlands in 2007 and 528 children in 2011. The reduction in both applications and actual adoptions may be attributed to the global economic crisis and the costs incurred in intercountry adoption. Another contributing factor to the decline is a change in the profiles of children who are adoptable: an increased number of children made available for adoption fall into the category 'special needs'.

Despite the overall decline in the number of intercountry adoptions, the percentage of children adopted from African countries to The Netherlands increased from 18% in 2007 to 27% in 2011. The main countries of origin are Kenya, the DRC, South Africa, Ethiopia, Nigeria and Uganda. During the period 2007 – 2011 there was a decrease of 9% of adoptions from Asian countries.

In The Netherlands, great importance is attached to the exchange of information with countries of origin. To enable prospective adoptive parents and the authorities of the receiving country to make an informed choice, they need to be fully informed about the medical, social and psychological background of the child. Equally important are reports containing all the relevant information about prospective adoptive parents. Free exchange of information between countries of origin and receiving countries is therefore essential and all parties should cooperate fully, on the basis of the Hague Convention. Post-placement reports are provided when required by countries of origin.

It is essential that there is a balance between the needs of children, the desire of prospective adoptive parents and the ability to resist the pressure from receiving countries by countries of origin. In this

respect, a well-developed child protection system is required. Intercountry adoption should only be considered when it is an option in conformity with the principle of a child's best interests and when suitable adoptive parents are available.

## UNITED STATES OF AMERICA (US)

The US fully endorses intercountry adoption and does not regard it as a measure of last resort. Despite the acknowledgement of the principle of subsidiarity, the main purpose of intercountry adoption is considered to be the upbringing of a child by a loving family, even when this entails the physical removal of a child from his or her family or country of origin.

The main motivation for the US to ratify the Hague Convention was to bring trafficking and the sale of children to a halt. US laws on trafficking only apply to activities relating to labour and sex, and illicit intercountry adoptions are therefore not regarded as trafficking. In the US it is permissible to adopt children from countries that have ratified the Hague Convention as well as from non-Hague countries. Privately arranged adoptions are also allowed. All parties involved have the obligation that the rules governing intercountry adoption are adhered to and to monitor procedures. The US government shuts down intercountry adoption operations when improper practices occur.

The US functions both as a receiving country and as 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.



# 6 ALTERNATIVES TO INTERCOUNTRY ADOPTION

## GOOD PRACTICES IN AFRICA

**D**omestic adoption is not an alien concept in every African country; however, in some countries national adoption procedures are more cumbersome than intercountry adoption processes. In countries where domestic adoption is not available or is uncommon, awareness campaigns should be launched.



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

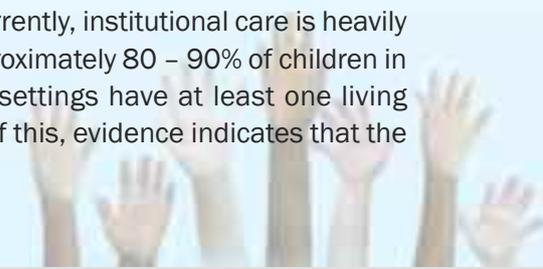
With regard to intercountry adoption in general, the principle of the best interests of the child is of paramount importance. In addition, the principle of subsidiarity is of great significance. Due to the fact that intercountry adoption is regarded as a measure of last resort both in the ACRWC (Article 24) and in the CRC (Article 21), there is a rights-based argument for alternatives to intercountry adoption.

Family preservation should be considered as 'first resort' and deserves special attention in all countries. In many parts of Africa various economic family strengthening programmes have been developed and launched. Good practices of family support programmes include the South African Child Support Grant and the Safety-net Programme

in Ethiopia. However, poverty reduction alone cannot resolve all child protection issues and in conjunction with social protection systems, national child protection systems should be in place for children to benefit sufficiently.

Besides family preservation, family reunification will lead to a significant reduction in the number of children who need alternative care and the importance of family reunification and reintegration programmes should be acknowledged. 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 possible 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'? In all cases of separation or displacement of children, an adequate birth registration system is vital. An example of a good practice in this regard 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.

With regard to community-based care, foster care and kinship care, good practices exist in a number of countries, including Ethiopia, Kenya and Malawi. It is noteworthy that in Namibia permanent kinship care is embedded in the law. Institutionalisation of children has been documented as having a negative impact on their growth, development and capacity to form attachments and should therefore be avoided wherever possible. Depending on the type of residence and the specific situation of a child, institutional care may be employed on a temporary basis or in the process of family reunification. Currently, institutional care is heavily overused as approximately 80 - 90% of children in residential care settings have at least one living parent. In spite of this, 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. In Liberia, the number of orphanages increased from 10 in 1989 to 121 in 1991 due to the war. However, in 2008 at least 117 orphanages still existed, of which more than half were unregistered and unmonitored.

Rather than rely heavily on donors and external assistance, African governments should join forces, sharing regional experiences and implementing good practices from neighbouring countries.

## NORTH AFRICAN EXPERIENCES

The MENA (Middle East and North Africa) countries have not ratified the Hague Convention, due to the fact that adoption is prohibited by law in these countries, with the exception of Tunisia. Instead, the MENA countries provide for a form of alternative care known as kafalah, which is the commitment to voluntarily take care of the maintenance, education and protection of a minor, in the same way “as a father would do for his son”.

Advantages of kafalah are:

- the preservation of a child’s blood lineage (adoption changes this)
- children can carry the fourth surname of their new parents (important in social Muslim traditions)
- it provides for appropriate financial support and family-based care
- it reduces the dependence on institutional care.

Disadvantages of kafalah are:

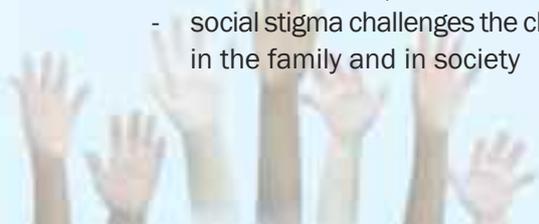
- it is a cumbersome process
- the best interests of the child is not a central consideration
- a child is not entitled to the same rights as biological children (most notably that of name and inheritance)
- social stigma challenges the child’s full integration in the family and in society

- the practical implementation of kafalah is beset by a tremendous gender bias.

Gender discrimination affects the observation of children’s rights in Egypt. For instance, 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, leading to births remaining unregistered. Furthermore, Orfi (unregistered) marriages subject women to immense social stigmatisation, whereas this is not the case for men. Children born in Orfi marriages have no rights and are virtually non-existent in the eyes of the law.

The Egypt Child Law No. 126/2008 provides 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 the Child Law. In addition, the right to an identity and a nationality as well as the right to education are covered. The Law also provides for three new child protection mechanisms, namely General Child Protection Committees at Governorate level, District Protection Committees as well as a Child Helpline, a national, toll-free, 24-hour service.

With regard to the implementation of the Child Law, a number of challenges remain. The best interests principle is not always the paramount consideration in all actions concerning children. For example, the care for a child in need of alternative care can be sought after as a source of income. Inspection of alternative care settings is inadequate and there are no follow-up mechanisms in place. As the Law is still relatively new, there is inadequate for: advocacy to raise awareness for its benefits; capacity building of all professionals dealing with vulnerable families and children; financial and human resources. Due to the current political situation in Egypt, some of the legislative gains achieved are under threat.



## ALTERNATIVES IN BURKINA FASO

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. Three main forms of alternative care are practised in Burkina Faso, namely guardianship, care placements and intercountry adoption. There are numerous challenges relating to intercountry adoption, the principal being that procedures are lengthy and most people do not support this form of alternative care. When considering alternative care options for children, intercountry adoption is a measure of last resort.

The Government of Burkina Faso promotes support for children in their country of origin. Therefore, an awareness campaign aimed at familiarising people with domestic adoption has been launched. Furthermore, efforts are being made to support families through social protection programmes in order to ensure that vulnerable children are provided for within their own environment, thereby reducing the need for intercountry adoption.

## ALTERNATIVE CARE IN KENYA

In Kenya, legislation governing children's issues are the 2010 Constitution and the Children's Act 2001. The Children's Act gives effect to the principles of the ACRWC and CRC, and contains provisions with regard to parental responsibility as well as different forms of alternative care. Despite legislation, children are faced with many challenges, such as poverty, HIV/AIDS, child labour, harmful practices and child abuse. Statistics show that more than 2.5 million children fall into the category 'vulnerable', approximately 700,000 children are involved in child labour, more than 300,000 children live on the streets and about 1 million children of school-going age are out of school.

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 in the meantime by the aforementioned Children's Act. Adoption is defined as the complete severance of ties with biological parents and the establishment of a new legal relationship between the adopted child and the adoptive parents.

Kenya ratified the Hague Convention in 2007. In line with the Convention, a National Adoption Committee has been established which approves every prospective intercountry adoption procedure before the adoption process can begin. Other duties assigned to the Committee are policymaking, the registration of adoption agencies and the monitoring of all adoption activities in Kenya. More than 200 adoptions are concluded every year, of which 60% are domestic. A number of these national adoptions are problematic in that adoptive parents shy away from registering the adoption of a child, an essential step in the finalisation of the process. Furthermore, adoptive parents sometimes do not inform their adopted children about their true identity. In some cases, Kenyan citizens living abroad employ the domestic adoption procedure, while in fact the adopted child will be transferred to another country and intercountry adoption rules should apply.

In 2004 the Cash Transfer–Orphans and Vulnerable Children (CT-OVC) Programme was established, with very positive results. The objective of this programme is to ensure that orphans and vulnerable children are retained within their households, families or communities, providing them with access to basic services. Initially, about 500 families benefited from the programme; today approximately 134,000 families are supported. To date, the primary benefits of the programme 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%
- improved access to secondary school by 6%.

The only disadvantage of the CT-OVC Programme is that there is no national coverage as yet.

Under the Children's Act 2001, the system of foster care has been revised. Formal foster care is defined as 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. At present, 640 children are recorded as being in formal foster care. However, in Kenya fostering is usually carried out on an informal basis. There is no data relating to children in informal foster care settings.



Furthermore, the Children's Act provides for guardianship. A guardian is defined as a person appointed by will or deed by a parent or by court order to assume parental responsibility for a child upon the death of the parent, either alone or in conjunction with the surviving parent of the child. This form of alternative care is relatively unknown and not commonly practised.

The last alternative care modality laid down in the Children's Act is residential care in the form of the Charitable Children's Institution (CCI). A CCI is defined as a home or institution which has been established by a person, corporation, religious organisation or an NGO and has been granted approval by the National Council for Children's Services to manage a programme for the care, protection, rehabilitation or control of children. CCIs must renew their registration every three years and have to meet set standards. Currently, more than 700 CCIs are operational, hosting approximately 41,000 children. The biggest controversy surrounding residential care is that in some instances it appears to be a first choice as opposed to a measure of last resort for children in need of alternative care.

## POLICY MEASURES IN MALAWI

In Malawi, there are approximately 1.2 million orphaned children, 50% of which cases are due to HIV/AIDS. The government has recently revised various legislative provisions in order to provide adequate safeguards for the protection of these children. 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 in the process of developing implementation guidelines for the Act, aimed at improving access to justice for all children. Furthermore, government policies prescribe the promotion of community-based approaches for the care, protection and support of children. For

instance, the Orphans and Other Vulnerable Children Policy promotes formal and informal foster care by relatives and non-relatives.

Intercountry adoption has become a reality in Malawi. The situation has led to the urgent review of the Adoption Act to avoid putting Malawian children at risk of trafficking and exploitation. Principles from the CRC and the Hague Convention have been domesticated in the new Adoption Act. 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. As stipulated by both the ACRWC and the CRC this policy considers adoption as a measure of last resort.

The review process of the Adoption Act is nearing completion and 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 a child and the 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 outcome of the consultations was the fact that the majority of Malawians is not in favour of adoption agencies operating in their country because agencies are often associated with child trafficking.

In order to reduce the need for intercountry adoption, Malawi has embarked on the promotion of child protection strategies that address the problems of poverty, social security, nutrition and health in order to fulfil 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.



## 7 TOWARDS A PAN-AFRICAN FRAMEWORK

The number of children in need of alternative care is still on the increase. Therefore, the development and implementation of adequate care systems which guarantee children in Africa a family- and community-based upbringing is essential. Africa has the ability as well as the space to develop effective child care programmes.

With regard to intercountry adoption there are two major viewpoints:

- those who accept it as a child protection measure
- those who oppose the practice, owing to the fact that, generally, it is not in the child's best interests to be removed from his family and community, and should be a measure of last resort.

From an Africa-wide perspective there is an urgent need for a regulatory framework for intercountry adoption. Only when international and regional standards are implemented and adhered to, can children's rights be guaranteed.

In aid of the realisation of a Pan-African framework, the draft Addis Ababa Communiqué on Intercountry Adoption (Annex 1) was drawn up by a Task Force

which was composed of a pool of experts from diverse backgrounds. The development of the Communiqué was a shared effort based on the deliberations, presentations, debates and comments made during the conference. The Task Force comprised:

- Ambassador Moushira Khattab, PhD (Egypt)
- Dr Benyam Dawit Mezmur – Vice-Chair, ACEWRC (Ethiopia)
- Ms Violet Odala – ACPF (Ethiopia)
- Mr Shimelis Tsegaye – ACPF (Ethiopia)
- Justice Edward Twea – National Child Justice Forum (Malawi)
- Ms Laura Martinez – HCCH (Netherlands)
- Mr Gorqui Sow – ANCEFA (Senegal)
- Mr Hervé Boéchat – ISS (Switzerland)
- Mr Nigel Cantwell – Independent Consultant (Switzerland)
- Ms Freda Luzinda – Child Advocacy Africa (Uganda).

The Guidelines for Action on Intercountry Adoption of Children in Africa will be submitted to the ACERWC for consideration.

For the full text of the Guidelines, please click [here](#).



**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. Almw Mengist, State Minister of Women, Children and Youth Affairs, Federal Democratic 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,

# 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 well-being 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 well-being 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)

