# Adopting better care

**Improving adoption services around the world**

**Positive care choices: Working paper 3**

**EveryChild.**

# Acknowledgements

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## The positive care choices series

Making positive choices about the care of children who are without parental care involves consulting widely with children, families, communities and others, and striving for stable solutions that will enable children to thrive, develop and achieve their rights. It means enabling children and others to make fully informed decisions between a range of high quality care options to choose the form of care best for each individual child. This paper is the third in a series of papers aiming to promote these positive care choices by providing an evidence base on a range of care options and decision-making processes. It is hoped that these papers will form a platform for global debate around children's care that recognises the complexity and challenges of promoting positive care choices on the ground.

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**Front cover image**

George and Desire and their family in Uganda. They recently adopted their baby son, Joey, following support from the Child's i Foundation. See page 22 for more information about adoption in Uganda.

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# Summary

This paper examines domestic and inter-country adoption. It aims to explore why adoption is so rarely used globally, and to examine whether or not an expansion of adoption services could offer a potential solution to the millions of children around the world in need of permanent care and currently languishing in harmful institutions. It is based on a literature review and interviews with experts from around the world.

Adoption is a process whereby a child becomes a permanent member of a new family. Adoption is no longer a universally secretive procedure, with ties to families of origin inextricably cut. There are now forms of adoption aimed at better meeting the needs of children, particularly older children, for whom a continued relationship with parents and relatives is beneficial. Apart from United States (US), Australia, western Europe and some countries in Central Eastern Europe/Commonwealth of Independent States (CEE/CIS), domestic adoption is little utilised as a mechanism for providing children with permanent family care. It is particularly rare in Asia and Africa. Inter-country adoption is restricted to relatively few countries of origin and receiving countries. There is a growing trend of inter-country adoption from Africa, where adoption systems are often unregulated and poorly supported. Adoption trends are shaped by a range of factors including: rates of children without parental care; policies on alternative care and adoption; beliefs regarding adoption and parenthood, and poverty and inequality.

Domestic adoption can offer children, especially young abandoned children who cannot be with their families, a permanent home that lasts into adulthood. For those in need of permanent care, it is a preferable alternative to institutional care and can lead to better outcomes than fostering, especially if placement changes in foster care are frequent. In the long-term at least, adoption can save some costs in settings with already functioning child welfare systems as it can lead to a reduction in the number of children in the care of the state. However, adoption is not appropriate for all children and it is essential that other routes for permanency for children outside of parental care are also available. It is also important to ensure that any investments in domestic adoption are not made at the expense of providing support to parents or families of origin to care for children.

Inter-country adoption carries with it numerous additional challenges including corrupt and exploitative practices, de-motivating the wider reform of care systems and, in some cases, increasing the use of institutional care. In the long-term, it is an unsustainable response to the poverty, social exclusion and violence that pushes children away from their families. It is recognised in international guidance as a last resort, only to be used when options closer to home have been exhausted. However, if countries have ratified and follow the Hague Convention, particularly the subsidiarity principle, it may offer a family life to some children who would otherwise spend their childhood in residential care. This is especially likely to be the case for children with disabilities in some settings, at least in the short term while efforts are made to improve in-country care systems and support for such children.

When adoption is used, it must be used appropriately. This means ensuring that adoption is a care option amongst many care options, that proper individual assessments are made to ensure that adoption is in a child's best interest, and that adopted children and their adopted families are fully supported. Adoption processes must be high quality and ethical, starting from pre-adoption preparation and ending in post adoption or breakdown support. There must be: clear policies and guidance in place; accredited agencies managed and overseen by one central adoption authority; and a suitably trained professional child welfare workforce. Importantly for inter-country adoption, the Hague Convention should be broadly ratified and adhered to.

Using community-based structures to assist with some elements of adoption, and efforts to make

some forms of adoption more accessible and less bureaucratic, can reduce the expense associated with adoption and encourage its wider use in resource constrained settings. However, it must be recognised that effective adoption will require investments, many of which will also benefit the development of broader child protection and foster care services. It must always be remembered that moving a child to a permanent new family is a life changing process, and safeguards are essential for ensuring good outcomes.

**These conclusions point towards the following priority policy recommendations for policy makers and planners:**

1. Prioritise support to families to prevent unnecessary loss of family care and reduce the need for adoption or other forms of alternative care.

2. Develop clear policies and guidance on both domestic and inter-country adoption. Promote the ratification and implementation of the Hague Convention and the development of international guidance on domestic adoption for resource constrained settings.

3. Ensure that children in need of permanent care have adoption, including 'open adoption', as an option. For example before by investing in adoption services, making adoption more accessible and acceptable and reducing the use of parental consent as a barrier to adoption.

4. Ensure that children in need of permanent care also have other forms of permanent or long-term alternative family-based care available as appropriate. Ensure that all children, including those with disabilities, living with HIV or from minority ethnic groups, have the same range of care choices.

5. Improve decision-making processes regarding adoption to balance the need to ensure that decisions are well considered and thorough with the need to promote permanent care arrangements expeditiously. Promote child and family participation in decision-making and consider the use of guardians/statutory professionals to assess and represent children's best interest in adoption and other care proceedings.

6. Develop a child welfare workforce and legal system to both support families and provide high quality alternative care options, including adoption.

**For individuals or agencies involved in decision-making about individual children's care, it is important to:**

1. Properly assess if children really are in need of, and ready for, permanent care outside of their own families. Ensure that all efforts to support care in their own kinship networks and communities have been exhausted before adoption is considered.

2. Consider if children in need of permanent care would benefit from being adopted or if other permanent or long-term forms of care are more suitable – for example because of a desire to keep in touch with families of origin.

3. If adoption is appropriate, select the most appropriate form of adoption, considering the possibility of 'open adoption' and using inter-country adoption only when the possibility of domestic adoption has been exhausted.

4. Make timely but careful decisions regarding adoption or other forms of permanent care to avoid children languishing in indeterminate care.

5. Support children, families of origin and adoptive families through transparent and participatory processes. These can include: efforts to prepare children and families for adoption; properly assessing appropriate prospective adoptive parents; matching children to parents who can meet their needs; carefully introducing children to their new families; and providing follow-up post adoption support.

6. Listen to children and consider their diverse needs, recognising that many children who are adopted have faced numerous challenges in their past, including long periods of harmful institutional care, violence, abuse and neglect.

It is hoped that by promoting the recommendations listed above, adoption can become a positive permanent care option for a wider range of children around the world.

# 1 Introduction

Potentially, adoption offers a family upbringing to babies and children who have been orphaned or abandoned and do not know their parents or relatives. Adoption can also offer a permanent family to children in public care who are not able to live with their parents because of the risk of violence or abuse, and where no suitable kinship care is available. Many such children are currently languishing in low quality and harmful institutional care (EveryChild, 2011a), yet globally adoption is a relatively rarely used form of care (UNDESA, 2009). Adoption is also poorly understood. Outside of Europe, North America and Australia, much of the evidence and global debate on adoption centres on inter-country adoption, yet the vast majority of adoptions around the world are domestic (UNDESA, 2009).

This paper examines the reasons for the limited use of domestic adoption and the arguments for and against more widespread investments in systems to support domestic adoption. It draws together the scant evidence base on domestic adoption in resource constrained settings and examines lessons learnt from other nations that could be applied to improve the quality of domestic adoption services. It also re-visits debates on inter-country adoption, exploring the challenges associated with moving children across borders into new families and looks at the measures needed to ensure that inter-country adoption processes are high quality and ethical.

The paper is divided into five sections. Following on from this introduction, the second section examines definitions and trends in adoption. The third section looks at the place of both domestic and inter-country adoption in the continuum of care choices. The fourth section explores adoption processes. It provides guidance on strategies and structures needed to ensure that domestic and inter-country adoptions are high quality, ethical and appropriately used. The final section summarises findings and provides a list of policy recommendations. The paper is based on a literature review and interviews with key experts working in this field (see Annex 1).

This paper draws heavily on key global guidance on alternative care and adoption, with particular reference to Guidelines for the Alternative Care of Children (UN, 2010), the UN Convention on the Rights of the Child (CRC) (UN, 1989) and the Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (Hague Conference on Private International Law, 1993), otherwise known as the Hague Convention. This paper is the third in a series of EveryChild papers on children's care choices, with the first two papers covering residential care and foster care (EveryChild, 2011a/b). This series aims to promote better decision-making about children's care by providing an evidence base on a range of care options and decision-making processes.

# 2 Definitions and trends in adoption

## Definitions and types of adoption

Adoption is a social and legal protective measure for children. It is a process whereby a child becomes a member of a new family and is a mechanism of providing a new family for children who cannot be brought up by their own parents (ISS, 2004). Adoption is designed as a permanent arrangement. In most cases the child's parents (and relatives) relinquish all responsibility for the child. Usually an adopted child loses all legal ties with their parents, including inheritance rights, and becomes a full member of the new family, commonly taking the family's name, with all the parental responsibility transferred to the adopters. Adoption is a formal arrangement. There are a set of processes leading to adoption that are governed by law and undertaken by professionals working to agreed standards and codes of ethics. It is the duty of the state to ensure that the laws, procedures and processes promote decisions that are in the best interests of the child.

Around this general definition of adoption there are different types of adoption that more closely define the rights and responsibilities of the child, new parents and family of origin:

- **Domestic adoption**: An adoption that involves adoptive parents and a child in the same country of residence and usually, but not necessarily, of the same nationality.

- **Inter-country adoption**: An adoption that involves a change in the child's habitual country of residence, whatever the nationality of the adopting parents. Usually the child takes the nationality of the country he/she is moving to.

- **Full adoption**: An adoption which involves irrevocably and completely terminating the relationship between the child and his or her birthparents, and creating in its place an analogous relationship between the child and the adoptive parents.

- **Simple adoption:** When the adoptive parents acquire legal rights without cutting ties with the birth family. This may include the child keeping the birth family name and inheritance rights.

- **Open adoptions:** Cases when it is deemed to be in the child's best interests to maintain some contact with the birth parents (see Scottish Executive, 2005).

Not all these adoption examples exist in all countries. For example, simple adoption is not available in the United Kingdom (UK) while it is in France. Different countries may also use different terms to express similar concepts. In the UK 'adoption with contact' is preferred to 'open adoption' for example.

In addition to these formal arrangements, some other processes are also commonly described as adoption or similar to adoption. These are not legal mechanisms in every country. They include:

- **Private adoptions:** An arrangement directly between birth parents and prospective adoptive parents.

- **Independent adoptions**: When a person has been approved as eligible and suitable to adopt in their own country by an accredited authority and they then travel independently to another country to find a child.

- **De facto adoptions:** Permanent childcare arrangements decided between families on the death of parents or when a couple is childless. These arrangements are normally not regulated by the state, but are often overseen by the extended family, clan and community. Although the children may not

be consulted in these arrangements, they are not secret, there is no change of identity, knowledge of family is preserved and in some cases these children will inherit their property. In many cases these arrangements are part of the wider familial obligations to look after relatives' children.

- **Extra-judicial adoption**: This may involve the taking in of someone else's child by an individual or couple who then register the child as though he/she were their own. This practice was quite common in post-war El Salvador (Tolfree, 2004).

- **Special guardianship**: This provides a legally secure foundation for building a permanent relationship between the child and their special guardian, while preserving the legal link between the child and their birth family. While birth parents retain some parental responsibility, the special guardians exercise all day-to-day responsibility until the child is 18. However, the child's birth name is kept and contact is kept with the families of origin, including birth parents[1].

Both private and independent adoptions fall outside the remit of the Hague Convention, which provides key guidance on Inter-country Adoption (Hague Conference on Private International Law, 1993). These adoptions do not constitute good practice, as they do not satisfy the Convention's requirements and cannot therefore be certified as a Convention Adoption (Hague Conference on Private International Law, 2008). The European Commissioner for Human Rights recommends that member states of the Council of Europe should, 'Explicitly ban non-regulated and private adoptions from any country of origin' (Council of Europe, 2011). As they are not formal processes, involving accredited authorities, they are outside the scope of this paper. De facto adoptions are informal arrangements within families and kinship groups, and are better described as kinship care. Kinship care is covered in the next paper in this series. Special guardianship has similarities with open adoption. However it is distinct, as adoption legally gives a child a new family for life while special guardianship legally ends when the child is 18 years, although contact may continue long after as can also be the case with long-term fostering. Special guardianship is also not covered by this paper.

Islamic law does not recognise the concept of adoption. Under Islamic law, kafalah refers to a variety of means for providing childcare for vulnerable children or those deprived of their family environment (for example abandoned or orphaned children). Kafalah is similar to guardianship and some simple adoptions and is recognised under Sharia law and by article 20, UNCRC. Under most forms of kafalah, a family may take a child to live with them on a permanent, legal basis but that child is not entitled to use the family's name or to have the right to inherit from the family. However, a member of a kafalah family can give a child under kafalah a third of his inheritance. Kafalah does not terminate the legal ties between the child and the birth family nor annul the child's right to inheritance. Children benefitting from kafalah invariably preserve the name of their birth father. Some countries allow international kafalah, while other countries deal with the issues on a case by case basis (Ishaque, 2008; ISS/IRC, 2007). Kafalah requires more in-depth analysis and understanding than there is scope for here and it is therefore not covered in the remainder of this paper.

## Trends in adoption

Overall, adoption is relatively uncommon with an estimated quarter of a million children, or 12 in every 100,000, adopted each year. In most countries, there are far more children in either extended family care, foster care or residential care than are adopted (UNDESA, 2009).

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1 Special guardianship in UK arose from a review which showed that the disruption rates for adoption and long-term fostering were not dissimilar. There was a certain group of older children who preferred the feeling of security that adoption would provide beyond foster care but did not wish to make the absolute break with their birth family. Special guardianship also overcame the religious and cultural objections to adoption for children expressed by some communities. It was also designed to help overcome the problems of caring for asylum seeking children in UK who had strong family ties abroad (DfES 2005).

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## Domestic adoption

Domestic adoption accounts for almost 85% of all adoptions (UNDESA, 2009). Rates of domestic adoption vary greatly between countries and do not always follow neat regional trends. Many Asian and African countries have extremely low rates of domestic adoption as a percentage of the total child population. Rates within Europe vary greatly, with countries like the UK exhibiting much higher rates of domestic adoption than many Nordic countries (Selman, 2006; UNDESA, 2009).

86% of domestic adoptions take place in just 10 countries. Rates are especially high in the United States (US). With over 108,000 domestic adoptions in 2001, America accounted for nearly half of all domestic adoptions worldwide (UNDESA, 2009). China[2] and the Russian Federation are the next major domestic adopters, 37,200 and 17,331 respectively, followed by the UK, Ukraine, Brazil and Germany with 3-6,000 domestic adoptions annually (UNDESA, 2009). Data tracking adoption trends over time is not always available. In countries like the US and the UK there was a steady rise in domestic adoptions from World War Two until the 1970s. In the UK in 1974 there were 22,502 adoptions registered, since this time this number has declined to 2,450 (UNDESA, 2009).

Evidence further suggests that in settings such as France and the UK, domestic adoptions are becoming increasingly open. There has been a shift away from full adoptions towards simple or open adoptions, or other arrangements, such as special guardianship, where ties with family of origin are not irreversibly severed (Scottish Executive, 2005).

## Inter-country adoption

The movement of children in inter-country adoption is largely from poorer to richer countries. The US accounted for nearly 20,000 inter-country adoptions in 2007 (Selman, 2009). This is by far the most, though inter-country adoption rates as a percentage of the total adoptions are highest in western Europe, with some exceptions, such as the UK and Germany. In France, Belgium, the Netherlands, Norway, Spain and Switzerland, at least 75% of adoptions are inter-country (UNDESA, 2009). Common countries of origin for inter-country adoption include China, Russia, Bulgaria, Guatemala, Republic of Korea, Ukraine, India and Vietnam. Though owing to the size of populations in countries like India, rates of inter-country adoptions per 100,000 of the child population are actually quite low (UNDESA, 2009).

From the 1980s the number of inter-country adoptions worldwide increased, most noticeably from 1998 to 2004, when it is estimated there was a 40% rise. The number of inter-country adoptions peaked in 2004 but has since declined steadily due to a variety of limitations imposed by countries of origin, though the numbers were still higher in 2007 than in 1998 (Selman, 2009). A key factor in the rise of inter-country adoption in Europe from the 1970s was the reduction in the availability of young babies for domestic adoption. This is particularly relevant in France, Sweden and Norway (Halifax, 2006).

The number of children sent by China, Russia and South Korea for inter-country adoption has declined, and is expected to decline further, and the upward trend in Guatemala is predicted to reverse. Inter-country adoptions to the US declined by 14% from 2004/5 to 2007 and a further 11% from 2007 to 2008 (Selman, 2009). Global inter-country adoption numbers seem likely to fall even more rapidly in the future, unless new countries of origin emerge.

Inter-country adoption from countries of origin can be very volatile. Ethiopia has seen a particularly dramatic rise in inter-country adoption in recent years (see Box 1 and ISS/IRC, 2011). Nearly 80% of inter-country adoptions from Ethiopia are for the US, Spain and Italy. This increase in inter-country adoption from Ethiopia may be attributed to a mix of poverty, institutionalisation, doubtful consents, demand and the availability of high adoption fees (ISS/IRC, 2011). This rapid rise seems likely to be reversed due to a change in Ethiopian government policy (see Box 1). Other countries

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2   Though in China, these figures reflect the large population size and rates of under five adoption per 100,000 of the population are actually relatively low (UNDESA 2009).

in Africa have also seen rises in inter-country adoption. In recent years, countries such as Chad, Egypt, Equatorial Guinea, Ghana, Kenya, Liberia and Rwanda have experienced instances of illicit activities in relation to inter-country adoption (ISS/IRC, 2011; ISS/IRC, 2008). Some have argued that Africa because of its high numbers of orphans and relative poverty will be the new source continent for inter-country adoption in coming years (Selman, 2009).

## Explanations for adoption trends

There are numerous explanations for these over-arching trends in domestic and inter-country adoption. Explanations are likely to be context specific, though from the literature it seems that the following have a significant role to play:

- **Rates of children without parental care.** The lower rates of children adopted domestically in Nordic countries as compared to countries such as the UK may be partially attributed to a stronger focus on preventing a loss of parental care and greater investments in social protection and child welfare in these settings (Selman and Mason, 2005). However, the relationship between a loss of parental care and adoption is by no means straightforward. For example, many African countries have high rates of orphanhood

and children living away from their parents. However, many children are absorbed into kinship care. Therefore these countries have extremely low rates of adoption (EveryChild, 2010; UNDESA, 2009).

- **Adoption policies.** National policy about whether to invest in or support adoption, or to focus on other forms of care can have an impact on rates of adoption. For example, policy in the UK allows courts to override parental consent to declare that the child can be adopted; other European countries do not override parental rights when securing permanence for children (Selman and Mason, 2005). In relation to inter-country adoption, concerns about poor practice have led to the suspension of inter-country adoption by countries of origin or receiving countries for short or extensive periods (Selman, 2009).

- **Cultural beliefs about adoption.** There is some evidence to suggest that the idea of adoption is quite alien in many African cultures as children are considered to be the responsibility of the family and clan. One of the barriers to adoption in many African societies is the strong perceived link with ancestors, which causes communities to see difficulties in rearing a child of unknown ancestry (Tolfree, 1995). However, changes such as the proactive

## Box 1: Inter-country adoption in Ethiopia

From 1986 and until the end of the 1990s, inter-country adoption was limited to approximately 200 adoptions a year in Ethiopia. This increased to 4,500 inter-country adoptions from Ethiopia in 2010 (Delepière, 2011). In December 2010, the US state department issued a statement expressing concern about reports of adoption-related fraud, malfeasance and abuse in Ethiopia (US State Department, 2011a). Some reports also suggested that institutions were being established or maintained to provide babies for inter-country adoption (VOA News, 2010a/b). Under pressure from foreign media and child rights organisations, Ethiopia has been planning a programme of de-institutionalisation and to withdraw accreditation from several foreign adoption agencies (VOA News 2010a/b). Citing the need to work on quality and focus on more important strategic issues, the government of Ethiopia's Ministry of Women, Children, and Youth Affairs (MOWCYA) has indicated a reduction in the number of adoption cases it processes per day from 50 to a maximum of five, effective 10 March 2011. Under Ethiopian adoption procedures, MOWCYA approves every match between prospective adoptive parents and an Ethiopian child before that case can be forwarded for a court hearing (US State Department, 2011a). Eight orphanages are also to be closed due to revocation of their licenses to operate by Ethiopian authorities.

*Additional source: US State Department, 2011b*

promotion of adoption and the effects of urbanisation have led to local adoption agencies successfully promoting adoption in Kenya and Uganda, where resistance has historically been strong (Njoka and Parry-Williams, 2008 and see Box 5).

- **Attitudes towards marriage and single parenthood.** The decline in domestic adoption in wealthier nations has been attributed to greater acceptance and support of single parenthood. This has led to fewer single mothers placing children for adoption. There has also been a sharp reduction in step-parents adopting children as re-marriage is less common. Formal adoption by step-parents is no longer seen as necessary in many settings (UNDESA, 2009).

- **Fertility and the availability of babies to adopt.** The decline in domestic adoption has been attributed to the reduction in unwanted pregnancies and fewer babies available for adoption (UNDESA, 2009).

- **Poverty.** Poverty and lack of access to basic services is a reason frequently cited in Africa and CEE/CIS for parents placing children in institutions or other forms of public care (EveryChild, 2011a). Many children are adopted from residential and/or public care both for domestic and inter-country adoption. Costs associated with adoption can also prevent prospective parents from adopting, as has shown to be the case in Kenya (Njoka and Parry-Williams, 2008).

- **Global inequalities.** The flows of children for inter-country adoption reflect regional and global inequalities, with the per capita Gross National Income between US$16–38,000 for receiving countries while for countries of origin it is less than US$3,000, with the exception of South Korea (US$12,630) (Selman, 2006). Changes in wealth over time have also led to changes in inter-country adoption trends. South Korea is an example of a country that has reduced inter-country adoption after transforming from a war torn country to one of the richest in the world with low fertility rates. Countries that develop similarly may well review their inter-country adoption policy.

As the examples in Box 2 below suggest, it is often a complex range of interrelated factors that determine the extent and nature of adoption use in any one setting.

## Who can adopt and is adopted?

Globally in domestic and inter-country adoption girls outnumber boys by 100:87, though this may vary by country. For example, in relation to inter-country adoption, three countries of origin, China, India and Vietnam, had a clear majority of girls sent to Europe, US and Canada, while Ukraine and South Korea sent more boys. The higher rates of girls available for adoption in China and India may be explained by the higher value placed on boys in those countries (Sen, 1990; UNDESA, 2009).

In its global overview of adoption, the UN's population division found that children with disabilities are less likely to be adopted and more likely to be found in residential care (UNDESA, 2009). This appears to be especially the case with domestic adoption. In China (Dowling and Brown, 2008), Namibia (Government of Namibia, 2009), Ukraine (Cantwell et al, 2005) and Nepal (Terre des Hommes and UNICEF, 2008), children with disabilities have not had the same access to already limited domestic adoption as other children. Reasons cited in these studies suggest that stigma and discrimination, the high direct and indirect costs of caring for a child with disabilities, and the lack of services and support all reduce the likelihood of children with disabilities being adopted domestically. Evidence suggests that inter-country adoption is an option open to a wider range of children with disabilities than domestic adoption in many settings (Boechat and Cantwell, 2007; Cantwell et al, 2005; Dowling and Brown, 2008; Gamer, 2011).

Ethnicity may also have an impact on discrimination and adoption. South Korea and Guatemala are both examples of countries where mixed race or minority children have been disproportionately sent for inter-country adoption (Sargent, 2009). HIV also affects adoption. In countries such as Ukraine, it is extremely rare for children living with HIV in the care system to be adopted (EveryChild, 2010).

## Box 2: Challenges to enabling adoption in Moldova and Georgia

In Moldova, the number of domestic adoptions has declined from 320 in 2006 to 162 in 2010, and international adoptions have fallen from 95 in 2007 to 20 in 2010. Moldova has been working for several years to implement adoption legislation. This has led to some improvements; there is now a greater focus on adoption meeting the best interests of the child as opposed to the best interest of the adoptive parents. However, problems remain with the system. It has become complicated and difficult to administer. Social workers are not trained for adoption and will often instigate other forms of care, such as guardianship, instead of adoption to avoid the complex procedures associated with it. Babies also often have to spend at least six months in care before they can be placed for adoption as mothers are given this period to make their final choice. Children commonly remain in institutional care for many years without their status being determined and are therefore not available for adoption while there are many adults approved for adoption who continue to wait for a child to adopt. The babies and children who remain in the care of the state are often in harmful institutional care. This is known to be particularly damaging to the development of young children, even if such children only spend a relatively short amount of time in institutional care (EveryChild, 2011a).

In Georgia, domestic adoption is at a similarly low rate to Moldova. As in Moldova, the legal and social work decision-making processes for providing adoption are complex and time consuming, and it is far easier to place a child in institutional care. Parents who place children in institutional care are often unwilling to give their consent for children to be placed for adoption. Although this can be overturned, it takes a minimum of three months to define a child as suitable for adoption. Until recently, prospective adoptive parents would often register as foster carers rather than adopters as this is a much easier route to receive a child. Social workers and their managers may also de-prioritise complex adoption cases in favour of simpler foster or institutional care placements. In recent years, efforts have been made to reverse the underuse of domestic adoption. For example, it is now prohibited by law to place a child having a status of an 'Adoptable Child' into foster care.

*Source: Interviews with EveryChild country office staff in Moldova and Georgia*

In some countries, the norms over who can adopt have changed considerably over recent years. There has been an increased acceptance of same-sex couples or single parents adopting. In other countries there remains continued resistance to same-sex couples adopting (Selman, 2009). There is also considerable variation in the ages of adoptive parents (UNDESA, 2009).

# 3 The place of adoption in the continuum of care

In this section of the paper, the role of adoption in the range of permanent care choices open to children is explored. Here, the CRC can be used as a useful starting point. Article 21 of the CRC states that,

❝❝ **States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration.** ❞❞ (UN, 1989: Art 21)

The CRC is most concerned that if adoptions are permitted and carried out they are in the child's best interests, with decisions made on a case-by-case basis, by competent authorities in accordance with applicable laws and laid down procedures. As such adoption is not a right and is not universally applicable, and adoption must only be used when appropriate for an individual child. This said, it is useful for both those involved in decision-making about individual children's adoption and governments determining where to invest resources aimed at improving alternative care to understand some of the common advantages and disadvantages of both domestic and inter-country adoption.

## The place of domestic adoption in the continuum of care choices

### Adoption as a route to permanency, but not the only route

Opportunities for attachment with a continuous carer and stability and permanency in care relationships are widely acknowledged as important for children. For example, the Guidelines for Alternative Care of Children (UN, 2010) stress the importance of only using short-term alternative care placements as a means to enabling a more permanent placement to be found. These guidelines emphasise the damage that can be caused by changes of placement and call for planning for care provision and permanency to be carried out from the earliest possible time.

Adoption can offer permanent care for children who have been abandoned, who have no parents or relatives, or whose parents/relatives cannot be traced, and for those abused and neglected children where it would not be safe for them to return to their family. Due to the permanent nature of adoption, successful adoption also avoids the difficult transition from public care to independent living by providing children with a family into adulthood. Children in care are often expected to become independent at an early age and the move to independence is likely to be more abrupt than for children who grow up within their families[3].

However, adoption is not the only route to permanency, and two other key strategies for achieving this important goal must be considered. Firstly, it is important to remember that maximum efforts must be made to support permanent care for children in their own families. For some children placed for adoption, separation from parents is unavoidable or in their best interests. However, many children are placed in care because of poverty or to access health or education. These children have parents wanting to care but who lack the resources (EveryChild, 2010/2011a). Support to families through prevention and reintegration efforts offers a better route to permanency than adoption for these children. The Guidelines for the Alternative Care of Children are clear that prevention and support to families are a key priority (UN, 2010). The guidelines also call on

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3   See **www.leavingcare.org** for more information on the impacts of leaving care.

decisions about whether children can return to parents or not to be made in a careful but expeditious manner so that children are not left with undetermined status for long periods of time[4]. Secondly, as noted above, many countries are developing other forms of family-based care that offer permanent or semi-permanent homes for children that are different from adoption and that acknowledge the child's identity and family ties (see also EveryChild, 2011b). These may include forms of long-term fostering used in many African settings or the 'special guardianship' used in the UK. Such forms of care offer a preferable alternative to adoption for some, but by no means all, children:

■ Full adoption involves severing all existing legal bonds and making new ones, it does not offer flexibility to meet the range of circumstances experienced by older children.

■ Finding adoptive families for older children who have been placed in care presents challenges. Some carers are willing to provide long-term homes but may be reluctant to adopt, at least initially.

■ Older children might want to maintain a relationship with their birth parents or other members of their family of origin and adoption can lead to problems with this contact (EveryChild, 2011b; Scottish Executive, 2005).

It is also the case that it can be hard to establish adoption in some settings where cultural resistance is high and long-term foster care or similar more culturally acceptable (EveryChild, 2011b). As noted previously, examples from Uganda (see Box 5) and Kenya suggest that such resistance can be overcome in some cases.

It should be noted that evidence on outcomes on these alternative forms of family-based care is mixed. Factors such as the ambiguous nature of a child's status, frequent placement changes and the lack of power of foster parents to make decisions about children's lives can lead to a negative outcome for a child's

wellbeing (see the second paper in this series for a full discussion of these issues: EveryChild, 2011b). However, some evidence does suggest that if long-term foster care placements are high quality and are stable, children can do as well emotionally and behaviourally, and also in participation and progress in education, as those who were adopted (Biehal et al, 2009).

Of course for many children in need of permanent care, choices are not being made between foster care and adoption. In many settings children are far more likely to be found languishing in long-term residential care (see for example Box 2 in relation to Moldova and Georgia). This form of care is widely acknowledged as preventing children from forming lasting bonds with a carer with devastating implications for child development and wellbeing (EveryChild, 2011a).

## The costs of developing adoption services

In order to be sure that domestic adoptions are in the child's best interests, considerable investment is needed in a social and legal system to make these decisions. In many resource constrained settings, where adoption is currently limited, there is no comprehensive system of public care, only the rudiments of a child protection system, few trained social workers, no family courts and relatively heavy legal costs (EveryChild, 2012). In these settings, there are significant challenges associated with building structures, developing laws and training sufficient social workers to make adoption effective.

This said, the development of such structures and systems are important, not only for adoption programmes, but also for children's protection and for the development of other forms of alternative care such as foster care and support to kinship carers (EveryChild, 2012). As shown below, it may not always be necessary or appropriate to develop resource intensive western case management social work models to manage adoption processes and other

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4   The balance between supporting families and promoting adoption has been hotly debated in the UK. See for example: **http://www.familylawweek.co.uk/ site.aspx?i=ed84455/** and **http://www.guardian.co.uk/society/2011/jul/26/adoption-tsar-martin-narey-spotlight** (accessed 10/02/12).

forms of alternative care. Other systems that draw on community resources, for example to help monitor adoptive placements or identify prospective adoptive parents, may also be appropriate (see also EveryChild, 2012). Such systems have been used with some success in supporting foster care programmes in Africa (EveryChild, 2011b). It may also be the case that adoption, and forms of alternative family-based care, may save governments money in the long run. After periods of follow-up, children who have been adopted often cease to be in the care of the state and will draw less on state resources, and family-based care is generally recognised as being much less expensive than residential care (EveryChild, 2011a).

# The place of inter-country adoption in the continuum of care choices

## The challenges associated with inter-country adoption

Many of the advantages and disadvantages of domestic adoption also apply to inter-country adoption. However, inter-country adoption also carries with it a number of challenges that are unique to, or more frequently associated with, the transfer of children across borders.

### Corrupt and exploitative practice is common

There are numerous examples of inter-country adoption being associated with corrupt and exploitative practices. In China fees between US$3-5,000 have been charged for foreign adoptions. When the numbers declined it is said that children's homes that had become dependent on international fees went out to 'harvest' young children (Smolin, 2010). The US has been accused of failing to provide a mechanism or legal authority for limiting the amount of money US adoption agencies provide or spend within countries of origin,

thereby permitting agencies to continue to incentivise corruption (Smolin, 2010). In Nepal, before its recent suspension, inter-country adoption had become an industry with a lack of regulation and oversight. This, coupled with the potential for financial gain, led to abuses including the sale and abduction of children, coercion of parents and bribery. Full parental consent was not guaranteed and there were reported to be agents promising to bypass regulations and illegally procure babies for potential adoptive parents in exchange for large sums of money (Terre des Homme and UNICEF, 2008). In Liberia, inter-country adoption was suspended in 2009 due to allegations of mismanagement and corruption in the adoption process (Holt International, 2007).

With cases such as these, there are grounds for claims that child trafficking has infiltrated the practice of inter-country adoption. In 2001 the CRC Committee recommended that Guatemala should[5],

**❝ … Suspend adoptions in order to take the adequate legislative and institutional measures to prevent the sale and trafficking of children… ❞** (UN CRC, 2001)

Corrupt and exploitative practice has occurred in emergency settings. In these times children are more likely to be separated from families and child protection systems commonly become weakened or breakdown. Children are also vulnerable to individuals and organisations who would like to 'save' a child by trying to have the them adopted (Save the Children, 2010). The example from Haiti in Box 3 illustrates the challenges associated with inter-country adoption in emergency periods.

Poor practice during emergencies has led to some countries placing temporary bans on inter-country adoption during these periods. The Sri Lankan government banned all adoptions (domestic and inter-country) after the 2004 tsunami (Save the Children, 2006) and Japan did likewise after the 2011 tsunami. This was a policy recommended by the Inter-Agency Standing Committee (IASC), which is

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5   It is important to note that the concerns generally relate to trafficking *for* adoption and not trafficking *through* adoption. The trafficking is said to take place before the prospective adopters become involved in the process and there is no intention of exploiting the child once he or she is abroad.

## Box 3: Inter-country adoption and the Haiti earthquake

The adoption process in Haiti was already inadequate before the earthquake struck in 2010. Despite calls for a ban on inter-country adoption in such an emergency setting, the desire to 'expedite' adoptions already in the 'pipeline' before the earthquake caused a doubling of inter-country adoption from Haiti in 2010:

**❝ Despite the agreed standards and common obligations; the emergency context gave rise to rushed, 'expedited' actions, whereby the supposed urgency led to principles and procedures being circumvented, which are otherwise rightly viewed as essential and indispensable safeguards. ❞** (ISS, 2010: 2)

Receiving countries acted differently, some suspending adoptions while others witnessed a tripling in inter-country adoption in the first three months after the earthquake.

*Source: ISS, 2010*

the primary mechanism for inter-agency coordination of humanitarian assistance[6].

Corrupt and exploitative practices are not an inevitable or intrinsic feature of inter-country adoption, and with proper systems and oversight it is possible to tackle such problems. However, as with domestic adoption, providing proper oversight and systems may require considerable investment in the child welfare and protection infrastructure in many resource constrained settings.

### Inter-country adoption increasing or preventing a reduction in institutional care

It has been argued that inter-country adoption will reduce the number of children in institutions, yet a study of 124 Romanian children who had been adopted across countries showed only 51 percent came from institutions (Chou and Browne, 2008). Evidence from other settings seems to indicate that a rise in inter-country adoptions may be accompanied by an increase in institutional placements rather than a fall. The availability and prominence of inter-country adoption may lead to some parents abandoning their children in residential care in the hope that it will lead to a better life in the west (Chou and Browne, 2008; see also Box 1). Research in Nepal found that when inter-country

adoption was temporarily suspended, rates of child abandonment to residential care fell and increased again when inter-country adoption resumed (Terre des Homme and Unicef, 2008).

### Inter-country adoption undermining a country's child protection and social care system

In economically disadvantaged countries, the income from inter-country adoption rarely directly benefits domestic childcare services or families in need. Instead, it tends to normalise international adoption, reduce the motivation to reform local services for children and inhibit the development of family support, reintegration, foster care or domestic adoption (Mulheir et al, 2004). As a result the factors associated with infant and child abandonment are rarely addressed so children who leave institutions to be adopted internationally are quickly replaced by new admissions (Chou and Browne, 2008).

### The CRC and the Hague Convention call for restrictions on the use of inter-country adoption

In acknowledgement of the problems articulated above, Article 21 of the CRC views inter-country adoption as a form of care only to be used once other forms of care closer to home have been exhausted. The CRC calls on states to,

3   For more information see: **http://www.humanitarianinfo.org/iasc/**

**❝ Recognize that inter-country adoption may be considered as an alternative means of 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... ❞** (UN, 1989: Art 21b)

Article 4b of the Hague Convention also includes what is referred to as the `subsidiarity principle'. The Guide on Good Practice that accompanies the Convention states,

**❝ Subsidiarity means that States Party to the Convention recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should inter-country adoption be considered, and then only if it is in the child's best interests. ❞** (Hague Conference on Private International Law, 2008: para 47)

The guide continues,

**❝ The subsidiarity principle is central to the success of the Convention. It implies that efforts should be made to assist families in remaining intact or in being reunited, or to ensure that a child has the opportunity to be adopted or cared for nationally. It implies also that inter-country adoption procedures should be set within an integrated child protection and care system, which maintains these priorities. ❞** (Hague Conference on Private International Law, 2008: para 48)

Several regional legal instruments also acknowledge the limited role for inter-country adoption. For example, the African Charter on the Rights and Welfare of the Child states that inter-country adoption should be considered as a last resort as an alternative means of childcare (OAU, 1999: Art 24b).

## Recognising a limited role for inter-country adoption?

Despite the challenges associated with inter-country adoption, many argue that there continues to be a role for it in the range of care choices for children; though only if the key principles in the CRC and the Hague Convention are recognised. In particular, some have argued that for children with disabilities who cannot be cared for by parents, the levels of stigma and discrimination, the widespread use of harmful institutional care, and the poor quality of service provision in their countries of origin mean that inter-country adoption is often the only immediate choice (see BCN and EveryChild, 2012). Given the particular needs of children with disabilities, governments such as Sweden actively frame all inter-country adoption as special needs adoption (Sparks et al, 2008). However, others have stressed the need to focus on developing in-country services for children with disabilities, and on ensuring that no assumptions are made about the lack of capacity of families and communities to care for such children, providing they are given proper support (see BCN and EveryChild, 2012).

If inter-country adoption is to be used within the continuum of care choices for a limited number of children for whom options closer to home are not available, it is especially important that the full implications of the subsidiarity principle of the Hague Convention are realised. In addition to ensuring that children really cannot be cared for properly in home communities, the subsidiarity principle suggests that childcare and protection practice in countries should be improved in order to reduce their inter-country adoption. It is also important to ensure that both sending and receiving countries take appropriate action, and prospective adoptive parents receive proper information about the implications of inter-country adoption so as to make informed choices.

# 4 The adoption process

## Ensuring that adoption is only used when appropriate

As identified above, there is a vital role for domestic adoption in childcare systems, and a limited role for inter-country adoption, but adoption isn't suitable for all children. In this section, the mechanisms for ensuring that adoption is used only when appropriate and in children's best interest are examined.

## Supporting children and families to stay together

As noted previously, the Hague Convention and its accompanying guide, the CRC and the Guidelines for the Alternative Care of Children all call for the prioritisation of support to parents and extended families in caring for children in order to prevent the use of alternative care and to ensure adoption is only used when essential. Implicit in this guidance, and argued elsewhere, is the belief that taking the child (and the family) out of poverty rather than taking the child out of their family, culture, language and birthright better addresses principles of social justice and the rights of the child (Gair, 2010),

**❝❝ That adoptive parents would not love their adopted children is not argued here, in many cases they seek to create safe and nurturing families. Yet we probably would all agree on another level that a socially just world would ensure that the humanity of all peoples is preserved, their rights to resources and freedoms are upheld, that all women and families can afford to nurture their babies. ❞❞** (Gair, 2010: 6)

Measures to support families to care for their children are discussed extensively elsewhere,

including in the previous papers in this series (EveryChild, 2011a) and may include social protection and other poverty alleviation efforts, such as measures to address violence, abuse and neglect in the home, and providing basic health, education and other services close to home.

## Entry into care and decisions about permanency

The CRC states that adoption must be,

**❝❝ Authorised only by competent authorities who determine, in accordance with applicable law... That the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary. ❞❞** (UN, 1989: Art 21)

As articulated in the CRC, all decisions about children's care, including whether adoption is a suitable choice, must be made on a case-by-case basis and the needs of the child should be considered. Children should only ever be separated from their parents if it is deemed by proper authorities to be in their best interests.

As outlined in the Guidelines for the Alternative Care for Children (UN, 2010) proper systems must be in place to regulate children's entry into care, involving professional assessments and full consultations with children and their carers (see EveryChild, 2011a/b for a fuller discussion of such gatekeeping).

Decisions about whether to place a child who is in care for adoption, as opposed to in other, less permanent forms of care, such as foster care, requires a careful process involving the child and his/her family. Here it is important to

consider both the relinquishment of parental rights and the child's wishes and needs. As adoption is a permanent decision, it must be demonstrated that all efforts have failed to improve the likelihood of the child returning to live with parents or relatives. Adoption must be fully understood by parents, and robust efforts to check that adoption is appropriate may well need to include the extended family. It must be made certain that a child's relinquished status is not the result of coercion, trafficking, sale or kidnapping (ISS, 2004). A period of reflection for families is advisable (Council of Europe, European Convention, 2008) and clear legal proceedings necessary in cases where birth parents have not given consent to adoption (UK Adoption and Children Act, 2002).

Children must be properly assessed to identify their needs and to ensure that adoptive parents are fully aware of the child's background and appropriate support can be provided. The decision must also involve the child as appropriate according to their understanding. It is important to note that whilst proper assessment is necessary, delays in decisions to place children for adoption can also be harmful. Delays can also increase the likelihood of placement breakdown (Barth and Berry, 1988). In some countries, standards are established to prevent delays, limiting the time that children spend in care before a permanency plan is made (Department of Health UK, 2001)[7].

The social and legal processes of adoption cannot be ignored in emergency situations. It is unacceptable that individual agencies and governments do not follow best practice guidance laid down in The Inter-Agency Guiding Principles on Unaccompanied and Separated Children (ICRC, 2004).

# Ensuring that adoption processes are high quality and ethical

Once a decision has been made that adoption is in the best interests of the child, there are several processes that need to be put in place to ensure that adoption is high quality and ethical. These include:

- **Pre-adoption preparation –** Preparing children, birth families and prospective adoptive parents for adoption, so that all understand what the process will entail, and the emotional, social and legal implications of adoption. These processes should be transparent and participatory, and if the child is old enough should include ensuring their consent to adoption[8].

- **Identification and eligibility of adoptive parents –** Rigorous assessment to ensure that prospective adoptive parents are able to look after children in a safe and responsible way that meets their developmental needs[9]. It should be recognised that adults do not have a right to adopt and should only be allowed to do so if they are deemed able to meet the child's needs, which may be complex due to challenges faced prior to adoption (ISS, 2004). Specific efforts are often needed to recruit adoptive parents able to care for children with special needs (see Cousins, 2007a; EveryChild, 2010; EveryChild and BCN, 2012).

- **Ensuring children are properly represented in court proceedings –** This can be achieved using children's guardians or social workers to represent children's interests in court proceedings. Guardians are particularly valuable as they are independent of all parties involved and can concentrate solely on a consideration of children's best interests. Guardians can spend time explaining processes to children, and assessing their needs through discussions with them, their families and others involved in their care[10].

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7   See also the US Adoption and Safe Families Act, 1997.

8   For example, in India a child aged seven or over who can understand shall only be declared free for adoption with his/her consent (Guidelines Governing the Adoption of Children, 2011, 16(4), India,). In Brazil the Statute of the Child and Adolescent requires the consent of the child if over 12 years old (Government of Brazil, 1990).

9   See for example UK white paper *Adoption – a new approach*, Department of Health, 2000, CM5017

10  See **www.nalgaro.com** for more details on the use of Guardians in the UK.

- **Matching children in need of adoption to carers** – Social workers and other professionals need to determine if prospective parents can meet the needs of the child being adopted (ISS, 2004; Department of Health, 2001). This is essential as poor matching is a major cause of breakdown (McRoy, 1999) and a considered matching process is often not done in resource constrained settings (Terre des Homme and UNICEF, 2008). Matching a child's ethnic, cultural and linguistic background can be important, but many feel if this cannot be done it should not block opportunities for children to have a permanent home (Cousins, 2011).

- **Introductions and periods of fostering** – Supervised meetings and visits between prospective adoptive parents and the child, as part of the process of assessing suitability to adopt and before final decisions have been made about adoption. In some cases a period of fostering is also of value before adoption. This in particular can help to promote the adoption of children with special needs as adoptive parents may feel unable to commit to a permanent relationship before they have spent time with the child in their home (Cousins, 2007b; Romaine and Turley, 2007).

- **Follow-up and support services to adoptive families** – Continued supervision including, in the case of inter-country adoption, reporting back to adoption authorities in the country of origin (Hague Conference on Private International Law, 1993: Art 20)[11]. Support in the form of financial support, access to services, counselling or self-help support groups with other adoptive families may be crucial (Department of Health, 2000)[12]. Support should recognise that many adopted children have special needs and challenges caused by their past lives, for example long periods in institutional care, changes of carers, or experiences of abuse or neglect. Children who have been adopted may be over-represented in child and adolescent psychiatry, and depression and suicide is more common than amongst the general population. These problems may be due to stresses before adoption, but may also be linked to fractured identity and other issues associated with adoption, which are likely to increase with the age of the child being adopted (Alm and Kim, 2007). Follow-up support is also important as a means of enabling recruitment, as families may be more likely to adopt if they know they will be supported afterwards (Cousins, 2007b).

- **Links with birth families if appropriate** – Determining if (and what type of) contact with families of origin is in children's best interest, and arranging, supporting and supervising such contact. Potential benefits include a sense of identity and wellbeing, but there are also risks involved not least those posed by the increased opportunities for unsupervised contact provided by new social media (see EveryChild, 2011b for a fuller discussion, and also Article 9 and 20 of the Hague Convention, Hague Conference on Private International Law, 1993).

- **Preventing and responding to breakdown** – Supporting children and families if breakdown occurs and finding appropriate alternative care (ISS, 2007, see also article 9 and 20 of the Hague Convention, Hague Conference on Private International Law, 1993). In western settings, breakdown rates are estimated at 6-20% depending on definitions used, with lower rates for children under three (Oakley and Berwick, 2008; Rushton and Dance, 2006). Limited evidence exists on breakdown for inter-country adoption, but rates appear to be lower, with one study in the Netherlands placing rates at 2.8%, and another study in Spain placing rates at around 0.8% (Palacios et al, 2005). Breakdown maybe due to the behavioural, emotional and social difficulties a child brings to a placement, children having been placed separately from siblings, the effects of a long time spent in care and multiple moves of placement. Older children are also more vulnerable, and breakdown is more common if adoptive parents receive

11  For example: Indian guidelines state that there should be quarterly reports in the first year and six monthly in the second year and continue like that for two years after the child is given citizenship. *Guidelines Governing the Adoption of Children*. Central Adoption Resource Authority (CARA); Ministry of Women and Child Development, 2011, India.

12  The Hague Convention states that Central Authorities shall promote the development of adoption counselling and post-adoption services.

only limited support (Rushton and Dance, 2006; Oakley and Berwich, 2008). The lower rates of breakdown for inter-country adoption may perhaps be attributed to the younger average age of children adopted internationally compared to those adopted domestically (Palacios et al, 2005).

- **Relationships with family of origin –** Ensuring openness in adoptive relationships so that children know where they come from. This can also avoid resentment and a breach of trust if adoption has been hidden and becomes revealed (Scottish Executive, 2005; Save the Children, 2004). Young people and families can be helped through the process of finding out more about the family of origin or supported to actually trace them if appropriate. A record of a child's history could be kept using life books for example to help maintain a sense of identity. This relates to children's rights to identity as articulated in article 7 and 8 of the CRC (UN, 1989).

It is essential to ensure that children are informed and consulted throughout the adoption process and that their views and feedback are sought and used to shape policies regarding adoption. It is also important to consider the diverse needs of children, including the particular needs of those with disabilities, minority ethnic status or living with HIV. This will help to reverse current trends outlined previously that see such groups excluded from adoption processes.

It is acknowledged that while these processes are best practice, they also demand a level of service that is not available or affordable in many countries. It is therefore recommended that international guidelines and standards for permanency planning and adoption be developed. It is hoped that these will bring to the attention of governments good practice requirements for managing a domestic adoption system that is suitable to the culture and local requirements. Such guidance must build on examples from non-western contexts. It is currently difficult to provide well documented and evaluated examples of domestic adoption programmes from such settings. Boxes 4 and 5 give some examples to illustrate adoption processes in Brazil and Uganda.

## Box 4: Domestic adoption in Brazil

In Brazil adoption is governed by Federal Law (The Statute of Child and Adolescent Rights, 1990), which deals with fundamental rights related to children and adolescents, including the right to family and community living/care. Adoption is regarded as full adoption as it is irrevocable and should only be used when the resources to maintain the child in the natural family or extended family have been exhausted. Every judicial district has a list of children available for adoption, including orphans or children whose parents have already been deprived of parental rights. Prospective adoptive parents are evaluated and prepared by a multidisciplinary team. Inter-country adoption is only explored when the attempts for adoption within the country have been exhausted.

There is a recognised fostering period, in which prospective adoptive parents care for children prior to adoption being authorised. Its length is decided on a case-by-case basis, taking into account the child's needs, age and previous history, and also the needs of the prospective adopters. In the case of inter-country adoption, the minimum period spent in such foster care in Brazil is 30 days. During this fostering period there may be a renunciation of the process by any party.

Providing follow-up support during the fostering period has been found to be essential for preventing breakdown. According to the Statute, this should be done by a multi-disciplinary professional team, formed of psychologists and social workers, and follow-up includes supervision interviews and home visits, counselling and access to services. Self-help support groups are well organized and play a very important role in supporting adoption in Brazil.

*Source: Associascao Brasileira Terra dos Homens, Brazil*

# Box 5: Domestic adoption in Uganda

In Uganda, non governmental organisation (NGO) Child's i Foundation are currently working to establish and improve domestic adoption in an effort to reduce the number of children under three years old in residential care, and have placed 18 children with adoptive families over the last year.

Child's i Foundation found that many individuals and couples in Uganda wanted to adopt, but lacked the information about how to do so. Some were prevented from adopting by cultural barriers, which stop non-blood relatives from being accepted into the family. Many prospective parents are anxious about any long-term health problems the child may be experiencing, and some were concerned that insufficient checks had been completed to assess if there are any living relatives available to care for the child. Others assumed from the publicity around inter-country adoption that adoption services were only available to foreign parents or to people who were wealthy. Child's i Foundation launched a mass media campaign using simple messages and testimonies from parents who had already adopted children. They designed a website[13], and ran a TV, radio and billboard campaign, generating press coverage in the national newspapers. As a result, Child's i Foundation were able to overcome some of these barriers and encourage over 150 prospective parents to come forward to find out more about adoption.

Child's i Foundation social workers assess these prospective parents and match those deemed suitable to adopt with children under three. Before children can be placed for adoption, full efforts are made to trace parents and families, and to reintegrate the children where possible. Child's i Foundation social workers make recommendations to an adoption panel, which consists of representatives from various government departments including the Ministry of Gender, Labour and Social Development, the Probation Service, the police Child Protection Unit, a lawyer and an adoptive parent. This panel makes the final decision whether the process of adoption can proceed. Once children have been matched with suitable parents, and this match approved by the panel, a gradual period of introduction takes place before children go to live with their new parents with a view to it becoming a permanent placement.

Children who have been placed with adoptive parents are visited regularly by Child's i Foundation social workers who make regular reports to government social workers. Under Ugandan law, children must live with prospective adoptive parents for three years before they can be finally formally adopted, and this adoption must be approved by a government social worker. The prospective adoptive parents do not receive any state benefits during this period, or indeed after adoption has been formally approved.

The government of Uganda has set up an Alternative Care Task Force to develop a comprehensive national framework for alternative care. It outlines the continuum of care for children covering six core care options for children in need of care from family reunification, which is accorded highest priority through to kinship and community care, domestic adoption, foster care, inter-country adoption and institutional care as a last resort. Recommendations include strengthening the government agencies responsible for children and establishing a central fostering and adoption agency.

*Source: Child's i Foundation, Uganda*[14]

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13 **http://ugandansadopt.ug**

14 For more information see: **http://www.childsifoundation.org**

# Policies, structures and mechanisms needed to promote appropriate, high quality adoption

In order to ensure that adoption is used appropriately, and to deliver a high quality and ethical service, it is essential that certain policies, structures and mechanisms are in place. These are discussed in this section.

## Clearly defined policies and standards on adoption

As noted above, in line with the Guidelines for the Alternative Care of Children (UN, 2010) and Hague Convention, countries should work first to keep families together and should promote alternative family-based care over institutional care. Each country then has to decide what degree of emphasis in childcare policies it gives to adoption, and the extent to which domestic adoption is promoted over inter-country adoption. Countries may decide to ensure that structures and incentives are put in place to give a wider range of children an opportunity to be adopted domestically. For example, Latvia gives payment to adoptive parents (UNDESA, 2009), and India gives priority in the waiting list to prospective adopting parents who wish to adopt children with special needs (CARA, 2011). Given the problems outlined above, some countries of origin have decided to end the use of inter-country adoption, for the short or long-term or to restrict the use of inter-country adoption to a few specified countries. Others may decide on targets in relation to the proportion of children who are internationally adopted. For example, India has set itself a percentage target of 80% domestic and 20% inter-country adoption, excluding children with special needs (CARA, 2011).

Governments also need to develop and implement detailed policies and guidance on adoption processes. The generic principles outlined above and the guidance provided on the stages of adoption can both be of assistance here, and it is of course important to ensure that countries adhere to relevant articles of the CRC and sign and adhere to the Hague Convention. It is important to remember that becoming a party to the Hague Convention 'does not obligate States to engage in inter-country adoption' (Hague Conference on Private International Law, 2008, para 458). Annex 2 outlines some of the standards in the Hague Convention, these are designed for inter-country adoption but many could equally be applied to domestic adoption.

It is of concern that so many inter-country adoptions are outside the Hague process. By November 2011, 85 countries had either ratified or acceded to the Convention and its provisions had entered into force. Globally less than half of all countries are party to the Convention[15]. According to International Social Services, the Hague Convention contracted adoptions in 2008 accounted for only 29% (6,686) of inter-country adoptions in the largest receiving countries from the 10 main countries of origin. There is more opportunity in the non Hague cases for malpractice (Boechat and Fuentes, 2010). As noted previously, there is concern about any growth of inter-country adoption from Africa stemming from demand pressures. It is of particular concern that few African countries have signed up to the Hague Convention.

## Establishing a central authority

In the CRC, article 21 on adoption states that states should,

> ❝ **Ensure that the adoption of a child is authorised only by competent authorities who determine in accordance with applicable law and procedures and on the basis of all pertinent and reliable information that the adoption is permissible...** ❞ (UN, 1989: Art 21)

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15 Hague Convention on Private International Law, status table, October 2011: **www.hcch.net**

Under the Hague Convention each country has to establish a central authority for inter-country adoption so as to fulfil its obligations to the Convention. It would seem beneficial in terms of consistency of good practice if one central authority or state agency regulates and monitors both domestic adoption and inter-country adoption. For all adoptions a central authority or state agency would have the capacity to:

- Ensure that domestic adoption is available.

- Accredit any necessary agencies.

- Collect and manage information in a transparent way.

- Ensure provision of training.

- Set standards, issue guidelines and monitor compliance.

- Develop best practice; manage and monitor the processes.

An example of a centralised body having oversight over adoption, including the accreditation of adoption agencies, is the Central Adoption Resource Authority (CARA) in India, described in Box 6 below[16]:

## Accreditation and monitoring of adoption agencies and processes

All adoption agencies should be accredited by a central authority and require their staff to be professionally trained with expertise in good adoption practice. Appropriate sources of funding is vital. Adoption agencies can be run by the state under a local authority or be private bodies accredited and monitored by the state. Cooperation with other accredited adoption bodies, expeditious action, transparency and the keeping of minimum standards should be features of central authorities and accredited bodies. Agencies dealing with inter-country adoption in the country of origin should not be directly managed, run or funded by foreign organisations, whose horizons may be limited to inter-country adoption (Hague Conference on Private International Law, 2008).

States need to put in place safeguards to prevent children adopted domestically or internationally being used for immoral or harmful purposes. Monitoring of adoption processes should also extend to the collection of disaggregated data on children who are adopted and on prospective adoptive parents.

## Box 6: An example of a centralised adoption agency from India

CARA (Central Adoption Resource Authority) is an autonomous body under the Ministry of Women and Child Development, Government of India. It functions as a nodal body for the adoption of Indian children and is mandated to monitor and regulate domestic and inter-country adoption. CARA is delegated as the central authority to deal with inter-country adoptions in accordance with the Hague Convention 1993, ratified by India in 2003. CARA primarily deals with adoption of orphans, abandoned and surrendered children through its associated, recognised adoption agencies in each state.

*Source: CARA, 2011*

16 See also **www.adoptionindia.nic.in**

## A functioning childcare and protection system

To enable adoption to be used appropriately and to be high quality, it is essential that there is a functioning system of child protection and care that prevents unnecessary loss of parental care, ensures proper decision-making about children's care, promotes principles of good practice in adoption processes and ensures that children have a range of care options. Some of the functions associated with appropriate, ethical and high quality adoption services could be fulfilled by other community or traditional structures, as happens in relation to foster care in some settings (EveryChild, 2011b). For example, such structures could be used to identify prospective parents, and provide post adoption support and monitoring. Self-help groups for adoptive parents and children are also of considerable value (see Box 4 on Brazil). However, many functions do require trained professionals able to make objective judgements regarding children's best interests and to deal with complaints, neglect or exploitation. Unfortunately in many countries there are very few independent, qualified and professional social workers that have the skills and knowledge to fulfil these functions (EveryChild, 2012). It therefore appears that in order for adoption systems to operate to a high standard, it is necessary to invest more resources in a well-trained child welfare workforce. Such investments are important for domestic and inter-country adoption alike, as well as family and alternative care, and are acknowledged in the Hague Convention guide on good practice,

**The child's best interests must be the fundamental principle that supports the development of an internal child care and protection system as well as a system for inter-country adoption. The implementation of the subsidiarity principle implies that there is a functioning care and protection system in place in the country and that sufficient human and financial resources are provided to allow a consideration of national solutions for a child before deciding that an inter-country adoption is in the child's best interests.** (Hague Conference on Private International Law, 2008: para 251)

## Making adoption accessible

It is important to make adoption accessible to all wealth groups and, as illustrated in Box 2 relating to Moldova and Georgia, complex adoption procedures can be a factor that restricts the use of domestic adoption. Pressure from public opinion and prospective adoptive parents have led to changes in procedures, requirements and the effects of adoption laws (UNDESA, 2009). In countries such as Uruguay and Madagascar simple adoptions can be done by a notarised deed or a declaration in front of a registrar (UNDESA, 2009). It may be possible in other countries to reduce the costs of simple domestic adoption or adoption by relatives by allowing decisions to be made by lower courts or legal bodies. However, full adoption is a necessarily formal process and a permanent decision. In the absence of evaluations of systems that use less costly lower court systems, it may not be advisable to attempt to make full adoption processes less formal.

# 5 Conclusions and recommendations

Adoption is a process whereby a child becomes a permanent member of a new family. Adoption is no longer a universally secretive process with ties to families of origin inextricably cut. There are now forms of adoption aimed at better meeting the needs of children, particularly older children, for whom a continued relationship with parents and relatives is beneficial. Apart from in the US, Australia, western Europe and some CEE/CIS states, domestic adoption is little utilised as a mechanism for providing children with permanent family care. It is particularly rare in Asia and Africa. Inter-country adoption is restricted to relatively few countries of origin and receiving countries. There is a growing trend of inter-country adoption from Africa, where adoption systems are often unregulated and poorly supported. Adoption trends are shaped by a range of factors including: rates of children without parental care; policies on alternative care and adoption; beliefs regarding adoption and parenthood; and poverty and inequality.

Domestic adoption can offer children, especially young abandoned children who cannot be with their families, a permanent home which lasts into adulthood. For those in need of permanent care it is a preferable alternative to institutional care and can lead to better outcomes than fostering, especially if placement changes in foster care are frequent. In the long-term at least, adoption can save costs in some settings with already functioning child welfare systems as it can lead to reductions in children in the care of the state. However, adoption is not appropriate for all children. It is essential that other routes for permanency for children outside of parental care are also available. It is also important to ensure that any investments in domestic adoption are not made at the expense of providing support to parents or families of origin to care for children.

Inter-country adoption carries with it numerous additional challenges including corrupt and exploitative practices, which undermine the wider reform of care systems and in some cases increase the use of institutional care. In the long-term, it is an unsustainable response to the poverty, social exclusion and violence that pushes children away from their families. It is recognised in international guidance as a last resort, only to be used when options closer to home have been exhausted. However, if countries have ratified and follow the Hague Convention, particularly the subsidiarity principle, it may offer a family life to some children who would otherwise spend their childhood in residential care. This is especially likely to be the case for children with disabilities in some settings, at least in the short term while efforts are made to improve in-country care systems and support for such children.

When adoption is available, it must be used appropriately. This means ensuring that adoption is a permanent care option alongside many care options; that proper individual assessments are made to ensure that adoption is in a child's best interest; and that adopted children and their adopted families are fully supported. Adoption processes must be of high quality and ethical, starting from pre-adoption preparation and ending in post adoption or breakdown support. There must be clear policies and guidance in place; accredited agencies managed and overseen by one central adoption authority; and a suitably trained professional child welfare workforce. Importantly, the Hague Convention should be signed, ratified and adhered to by all countries participating in inter-country adoption.

Using community-based structures to assist with some elements of adoption, and efforts to make some forms of adoption more accessible and less bureaucratic, can reduce the expense associated with adoption and encourage its wider use in resource constrained settings. However, it must be recognised that effective

adoption will require investments, many of which will also benefit the development of broader child protection and foster care services. It must always be remembered that moving a child to a permanent new family is a life changing process and safeguards are essential for ensuring good outcomes.

**These conclusions point towards the following priority policy recommendations for policy makers and planners:**

1. Prioritise support to families to prevent unnecessary loss of family care and reduce the need for adoption or other forms of alternative care.

2. Develop clear policies and guidance on both domestic and inter-country adoption. Promote the ratification and implementation of the Hague Convention and the development of international guidance on domestic adoption for resource constrained settings.

3. Ensure that children in need of permanent care have adoption, including 'open adoption', as an option. For example, by investing in adoption services, making adoption more accessible and acceptable, and reducing the use of parental consent as a barrier to adoption.

4. Ensure that children in need of permanent care also have other forms of permanent or long-term alternative family-based care available as appropriate. Ensure that all children, including those with disabilities, living with HIV or from minority ethnic groups, have the same range of care choices.

5. Improve decision-making processes regarding adoption to balance the need to ensure that decisions are well considered and thorough, with the need to promote permanent care arrangements expeditiously. Promote child and family participation in decision-making and consider the use of guardians/statutory professionals to assess and represent children's best interest in adoption and other care proceedings.

6. Develop a child welfare workforce and legal system to both support families, and provide high quality alternative care options, including adoption.

**For individuals or agencies involved in decision-making about individual children's care, it is important to:**

1. Properly assess if children really are in need of, and ready for, permanent care outside of their own families. Ensure that all efforts to support care in their own kinship networks and communities have been exhausted before adoption is considered.

2. Consider if children in need of permanent care would benefit from being adopted or if other permanent or long-term forms of care are more suitable – for example because of a desire to keep in touch with families of origin.

3. If adoption is appropriate, select the most appropriate form of adoption, considering the possibility of 'open adoption', and using inter-country adoption only when the possibility of domestic adoption has been exhausted.

4. Make timely but careful decisions regarding adoption or other forms of permanent care to avoid children languishing in indeterminate unplanned care.

5. Support children, families of origin and adoptive families through transparent and participatory processes. These can include: efforts to prepare children and families for adoption; properly assessing appropriate prospective adoptive parents; matching children to parents who can meet their needs; carefully introducing children to their new families; and providing follow-up post adoption support.

6. Listen to children and consider their diverse needs, recognising that many children who are adopted have faced numerous challenges in their past, including long periods of harmful institutional care, violence, abuse and neglect.

It is hoped that by promoting the recommendations listed above, adoption can become a positive permanent care option for a wider range of children around the world.

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# Annex 2: Some details of the Hague Convention

Key elements of the process of inter-country adoption outlined by the Hague Convention (Hague Conference on Private International Law 1993) are listed below:

- It must be established that the child is adoptable (Art 4a). As far as inter-country adoption is concerned the Hague Convention does not define 'adoptable'. The accompanying guide (Hague Conference on Private International Law 2008) states that adoptability will be established by the national law of each Contracting State (para 60).

- The necessary consents must have been given and obtained.

- A report is prepared on the child.

- The validity, authenticity and accuracy of the report is then checked. The Hague Convention leaves it to the competent authorities in the receiving state to determine whether the prospective adoptive parent (PAP) is eligible and suited to adopt and has ensured that the PAP has been counselled.

- Matching of the child and family. The state of origin should have a list of children declared adoptable through inter-country adoption. These countries must have laws, systems in place and procedures that can determine if a child is adoptable. The Hague Convention places the responsibility for matching with the central authorities and their decision after receiving the necessary reports concerning the child and the adoptive parents that the placement is in the best interests of the child (Art.16d). The guide states that the initial matching of prospective adoptive parents with the child must be done in the state of origin, on the basis of the report on the child and a report on the selected prospective adoptive parents.

- Transmittal of report on child for the receiving family via the central authority.

- Acceptance of the match.

- Agreement that the adoption should proceed. Under Article 17 no child shall be entrusted to a PAP until the central authority in the state of origin has ensured that the PAP agree to the adoption and both states agree to the adoption. If it becomes apparent that the proposed adoption is not in the child's best interests or there is a defect in procedure the adoption should be stopped and central authorities should not give their consent.

- Authorisation is given for the child to enter the country and take up residence.

- Entrustment of the child to the parents. This decision is made by the courts in the state of origin.

- Transfer of the child to the receiving state.

- Issue of certificate of conformity (Art 23).

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