

INTERNATIONAL ADOPTION POLICY STATEMENT Supporting Report

Background¹

International adoption has grown dramatically over the decades since World War II, and developed important recognition as a method of serving the needs of unparented children worldwide. Adoption research has demonstrated that adoption, whether domestic or international, generally serves children's interests far better than foster care or institutionalization. Indeed, when children are placed in adoptive homes at an early age they do roughly as well as children raised by non-troubled birth families. While concerns have been raised about whether placement across racial and national lines poses risks for children, the research has failed to demonstrate evidence of such risks. At the same time social science research has demonstrated the severe harm to children done by time spent in the kinds of institutions in which unparented children worldwide are generally held. And the developing science of early brain development has provided dramatic new evidence of the fact that infants' and young children's brains do not develop in the ways they need to in order to enable normal intellectual and emotional growth when the children are deprived of nurturing parenting relationships, as they are when they live in institutions. The Hague Convention on Intercountry Adoption provides new legal legitimization of international adoption, providing for the first time in any international law document that such adoption should be preferred to any in-country placement except for in-country adoption.²

However, international adoption has been under attack in recent years, and is at a crisis moment now, with the numbers of such adoptions into the U.S. down these last three years in dramatic contrast to the steady growth over the previous six decades. Powerful political forces have aligned against international adoption, and have had an impact on the laws and policies of both sending and receiving countries. As new countries open up to international adoption and begin to release their unparented children to adoption abroad, they tend to close down again either partially or totally as the result of newly restrictive regulation. Romania was forced to close

¹ Documentation for various claims made in this Report is contained in, e.g.: Elizabeth Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 BUFF. HUM. RIGHTS L. REV. 151 (2007); Elizabeth Bartholet, *International Adoption: The Child's Story*, 24 GEORGIA ST. UNIV. L. REV. 333 (2008); Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, 21 B.U. INT'L. L.J. 179 (2003). Competing views on the policy and legal issues are contained in, e.g.: Andrew Bainham, *International Adoption from Romania – Why the Moratorium Should Not Be Ended*, 15 CHILD & FAM. L.Q. 223 (2003); Twila L. Perry, *Transracial Adoption and Gentrification: An Essay on Race, Power, Family and Community*, 26 B.C. THIRD WORLD L.J. 25 (2006); David M. Smolin, *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children*, 52 WAYNE L. REV. 113 (2006); David M. Smolin, *Intercountry Adoption as Child Trafficking*, 39 VAL. U. L. REV. 281 (2004).

² “[T]he child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding;” “[I]ntercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.” Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *Preamble*. This is in contrast to Article 21 of the Convention on the Rights of the Child (CRC), which favors both in-country foster care and adoption over out-of-country adoption. For the CRC and Hague Convention provisions specific to international adoption, and views as to their appropriate interpretation, see Bartholet, *supra* n. 1, 13 BUFF. HUMAN RIGHTS L. REV. at 170-73; Dillon, *supra* n. 1; see also n. 3 *infra*. The U.S. is a party to the Hague Convention but not the CRC.

down international adoption as a condition for gaining entry to the European Union. Guatemala has just been closed down, pending development of a new regulatory regime which may transform the country which had been known for releasing unusually large numbers of children at early ages, in healthy shape, with good prospects for normal development, into a country which releases at best only a small handful of children, after having kept them for two to three years or more in damaging institutions. China has recently passed restrictions which limit significantly the parents considered eligible for adopting. Yet the needs of unparented children in these countries and worldwide for the nurturing homes that international adoption provides have not diminished. Indeed it seems clear, given among other developments the terrifying numbers of newly orphaned children produced by the AIDS disaster, the needs have escalated.

This is a key moment in history for international adoption, with the potential for movement either in the direction of expanding the potential of international adoption to serve the needs of unparented children, or of closing it down. There are increasing numbers of prospective parents interested in such adoption, and the potential exists for expanding by a significant factor the number of homes for unparented children. There is an impressive body of evidence documenting the benefits for children of placing them in adoptive homes rather than leaving them in institutional care. There are many people, both in sending and receiving countries who care about children and believe based on their own common sense and life experience that what children most need is the kind of early nurturing parenting that adoption provides. But there are very few organizations with expertise in the world of law and policy committed to promoting international adoption as part of a general strategy to serve the needs of unparented children.

Recommendations

1. Address the Needs of Unparented Children by Prioritizing Adoption, Whether Domestic or International, Over Placement Options Like Foster Care and Institutionalization

Many millions of children are now growing up in institutions or on the streets in the sending countries of the world; a very small proportion of the children surrendered by or removed from birth parents in these countries are in foster care. The Hague Convention indicates that international adoption should be seen as preferable to all in-country alternatives except for adoption. However some, including UNICEF, argue for a preference for in-country foster care over international adoption. Some argue for mandated holding periods during which children must be kept in-country before they can be placed internationally, and several countries have established such holding periods.

This Policy Statement makes adoption the priority over other placement options, and emphasizes the importance of prompt adoptive placement. It urges that procedures be created to identify and free up children in need of adoptive homes, and it rejects holding periods that would require delay in adoptive placement.³

³ Hague Convention Article 4(b) provides that international adoption can take place only after “due consideration” to the possibility of domestic placement. U.S. post-Hague regulations require “reasonable efforts” to find placements for U.S. children within the U.S. before placing them abroad, and a two-month holding period subject to certain exceptions. See Bartholet, *supra* n. 1, 24 GEORGIA ST. UNIV. LAW. REV. at 361-62, nn. 53-54. This Policy Statement says that any preference for in-country

The case for this Policy Statement rests on the biological science, the social science, and the child development expertise that demonstrates how harmful it is to children to grow up on the streets or in institutions,⁴ and how well children do when placed in international adoptive homes.⁵ Children placed early in life in international adoptive homes are likely to do essentially as well in their families and in life as any children raised by their biological parents in those receiving countries. Children subjected to terrible experiences prior to adoptive placement, as many international adoptees have been, often show remarkable success in overcoming some of the damage done by these early experiences. By contrast, research on orphanages shows how devastatingly harmful institutional life is for children. Interestingly even the better institutions have proven incapable of providing the personal care that human children need to thrive physically and emotionally. Research on children who started their early life in institutions demonstrates vividly the damage such institutions do even when the children are lucky enough to escape the institutions at relatively early ages. Age at adoptive placement regularly shows up in adoption studies as the prime predictor of likelihood of successful life adjustment.⁶

Opponents of international adoption argue that children are best served by remaining in their community of origin, where they can enjoy their racial, ethnic and national heritage. But the opponents' claims are based on extreme romanticism, without any grounding in the available evidence and without support in common sense. Children doomed to grow up in orphanages or on the streets cannot expect to enjoy their cultural heritage in any meaningful way. And the real choice today for most existing homeless children in most of the countries of the world that are or

adoption should be implemented through a concurrent planning strategy, preferring domestic adoption only if it will involve no delay in placement.

⁴ See, e.g., Charles H. Zeanah et al., *Designing Research to Study the Effects of Institutionalization on Brain and Behavioral Development: The Bucharest Early Intervention Project*, 15 DEV. & PSYCHOPATHOLOGY 885, 886-88 (2003) (summing up previous research on deleterious effects of institutional rearing, including recent research on the many problems of children adopted out of institutions in Eastern Europe, Russia, and other countries, as well as ameliorating effects of early intervention); Peter J. Marshall & Nathan A. Fox and the BEIP Core Group, *A Comparison of the Electroencephalogram between Institutionalized and Community Children in Romania*, 16 J. COGNITIVE NEUROSCIENCE 1327 (2004); Susan W. Parker and Charles A. Nelson, *The Impact of Early Institutional Rearing on the Ability to Discriminate Facial Expressions of Emotion: An Event-Related Potential Study*, 76 CHILD DEV. 54 (2005). For other recent research see the St. Petersburg-USA Orphanage Research Team, *Characteristics of Children, Caregivers, and Orphanages For Young Children in St. Petersburg, Russian Federation*, 26 J. OF APP. DEV. PSYCHOL. 477 (2005) (giving comprehensive, empirical description of orphanage environments, describing most salient deficiencies such as social-emotional environment, and describing harmful impact on children, all consistent with reports on other countries' orphanages). See also Elizabeth Bartholet & Joan Heifetz Hollinger, *International Adoption: Overview*, in ADOPTION LAW AND PRACTICE (Joan Heifetz Hollinger, ed., 2006) [hereafter *Overview*], §10.03[1][c], at 10-15-10-21 and notes 27-41; Bartholet, FAMILY BONDS: ADOPTION, INFERTILITY, AND THE NEW WORLD OF CHILD PRODUCTION (Beacon Press 1999) (1993) [hereafter *FAMILY BONDS*] at 150-51, 156-57.

⁵ See, e.g., Zeanah, *supra* n. 4 (describing earlier research). A meta-analysis of research on international adoptees recently published in the Journal of the American Medical Association showed the adoptees generally well-adjusted with those living with their adoptive families for more than 12 years the best adjusted, and with preadoption adversity increasing the risk of problems. Femmie Juffer and Marinus H. van IJzendoorn, *Behavior Problems and Mental Health Referrals of International Adoptees*, 293 J.A.M.A. 2501 (2005). See also Bartholet, *FAMILY BONDS*, *supra* n. 4 at 150-60; *Overview*, *supra* n. 4, at 10-15 - 10-21.

⁶ Early results of the Bucharest Early Intervention Project, *supra* n. 4, show that placement of the institutionalized Romanian children in specially designed, model foster care had ameliorating effects on their intellectual, emotional, psychiatric and brain development, with the length of time previously in the institution and the age at which removed to foster care factors in their functioning. U. Md. Press Release, *Institutionalized Children Benefit from Early Intervention* (Feb. 14, 2006).

might become sending countries, is between life – and often death – in orphanages or on the streets in their home country and, for a lucky few, life in an adoptive home abroad. Possibilities for adoption at home in the birth country are drastically limited by the poverty of the population and by attitudes toward adoption in most Asian and many other countries that are more blood-biased and otherwise discriminatory toward adoption than is the U.S.

Opponents argue that children might be placed in in-country foster care, and in that way benefit from remaining in their country and culture, as well as possibly still linked in some way with their birth family. But foster care does not exist to a significant degree in the sending countries and the poor countries of the world – overwhelmingly the homeless children of the world are living and dying in orphanages and on the streets. The U.S. is the country which has had the greatest experience with foster care – for many decades now the vast majority of the children committed to state care here have been living in foster care because it has been seen as so superior to institutional care. Even with the resources that the U.S. has to support foster care, it does not work especially well for children. Social science demonstrates clearly that while foster care works better for children than living in birth families characterized by child abuse and neglect, it does not work nearly as well as adoption.⁷ It is extraordinarily unlikely that foster care will work better in countries that are desperately poor than it has in the U.S. Moreover the bottom line for children who might find adoptive homes abroad now is that foster care, whether good or bad, rarely exists as an option.

This Policy Statement is consistent with action taken in recent decades by the Congress in enacting the Multiethnic Placement Act (MEPA) as amended in 1996, and in enacting the Adoption and Safe Families Act of 1997 (ASFA). MEPA constitutes a powerful rejection of the philosophy at the heart of efforts to restrict international adoption – the idea that children must at all costs be kept within their community of origin, and the related idea that racial and ethnic communities are necessarily benefited by keeping “their” children within the group. ASFA similarly rejects ideas at the core of opposition to international adoption about the absolute priority of birth heritage as compared to other interests, and related ideas about the last resort status of adoption. ASFA also rejects the idea of holding in limbo children who have only technical ties to their birth parents, rather than moving promptly to terminate such ties so the children can be placed in adoptive homes.

2. Promote International Adoption as part of a Comprehensive Strategy to Address the Needs of Unparented Children that Includes Social Welfare Support for Birth Families and the Improvement of Conditions for Unparented Children Who Cannot Be Placed in Adoption

International adoption now serves some 40,000 children per year, out of the many millions worldwide in need of homes. We need to develop better foster care and institutional solutions for children in-country than now exist, to serve the needs of the many millions who will never be adopted even in a world in which the numbers of adoptions were significantly increased. We

⁷ See BARTHOLET, *NOBODY’S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE* 81-97 (Beacon Press 1999).

also need to do more to improve social welfare services designed to enable birth parents to raise their children themselves.

This Policy Statement argues that international adoption should be an integral part of a comprehensive strategy to address the problems of unparented children, and to increase social welfare support for birth parents. It argues further that there is no inconsistency between international adoption and other initiatives designed to help unparented children and their birth parents.

International adoption brings significant new funds into poor sending countries, funds that can be used for and often are specifically directed to the improvement of institutional conditions and the creation of foster care alternatives. It also relieves sending countries of the cost of supporting the children adopted. It helps develop new consciousness about adoption as a positive parenting option in sending countries which may make it easier to encourage adults in those countries to consider adoption. It helps develop new consciousness among those in privileged nations about the needs of poor children in sending countries and seems likely to foster attitudes supportive of a wide range of governmental and private initiatives to do more to address those needs.

3. Address Adoption Abuses by Enforcing Existing Laws and Policies Prohibiting Such Abuses as Baby Selling and Kidnapping and Penalizing Those Committing Abuses, Rather than by Restricting Legitimate International Adoption and Penalizing Unparented Children by Denying Them Adoptive Homes

Layers of overlapping laws and regulations forbid adoption abuses involving any kind of exploitation of birth parents or of children that could take place in connection with the transfer of children to adoptive parents in another country. Nonetheless we know that some number of abuses take place. Payments sometime get made to birth parents in connection with their decision to surrender children, in violation of the laws prohibiting baby selling. Occasionally there is evidence that birth parents have been induced to surrender by some form of fraudulent misrepresentation, and even that children have been kidnapped to be placed in adoption.

A common response to allegations of adoption abuses is to first “temporarily” shut down international adoption in the country at issue, and then to call for regulation of an additionally restrictive kind, with the new restrictions often eliminating the private agencies and intermediaries that tend to function as the lifeblood of international adoption. Half of the top sending countries in the last couple of decades have officially or effectively shut down international adoption as the result of claimed adoption abuses. Many countries in South America have eliminated private intermediaries in recent years in response to claims regarding adoption abuses, and the numbers of children placed in adoption have plummeted as a result. Guatemala has recently been shut down at least temporarily in response to claims regarding baby selling, and many powerful forces have called for eliminating private intermediaries in any future international adoption system that Guatemala might institute.

This Policy Statement asserts that the appropriate response to adoption abuses is to enforce the laws prohibiting such practices, and where needed to develop new laws and policies to discourage such practices, without unduly restricting the placement of unparented children in

international adoption, and without unduly limiting the private agencies and other adoption intermediaries that facilitate such adoption.

All laws are at risk of being violated on occasion, and typically we respond to violation problems by gearing up enforcement efforts. We should do the same in this area. Temporary or permanent shut downs of international adoption simply penalize the children waiting for adoptive homes, locking them into damaging institutions, when we should be penalizing those breaking the laws. Calling for new restrictions that would eliminate private intermediaries sounds reasonable to many, but the fact is that in many parts of the world a government monopoly over all aspects of international adoption means that such adoption will either be closed down altogether or so stringently limited that only a relatively few children will ever be placed, and those few will likely be placed only after spending unnecessary years in damaging institutions. It is for these reasons that the U.S. State Department fought to ensure that the Hague Convention would permit the continuation of private adoption, as it does.

Conclusion

International adoption has been shown to work well for children, providing the nurturing homes they need to thrive in their present and future lives. The children who might be placed in international adoptive homes generally have no other good options. Typically they will live or die on the streets or in institutions, and institutions are no place for children. Dr. Dana Johnson, a widely respected specialist in international adoption pediatrics, has appropriately condemned the practice of relegating children to institutions as follows:

[P]utting a child in a long-term institution is an act of abuse. Children in institutional care have deteriorations in many things that we want to see children improve in during the earliest years of their life. . . . Their cognitive abilities are lower, their growth is terrible and their brain development is abnormal as well. . . . *A few days in an institution should be as long as children are asked to endure.*⁸

The world is now insisting that many many children spend many months and years of their lives in institutions, despite the fact that millions of prospective parents are ready and eager to step forward to adopt them. Powerful forces are aligned to make the laws and policies governing international adoption ever more restrictive, eliminating international adoption altogether or limiting it to very last resort status. Relying on the best that science and social science has to offer, we hope to mobilize the many unorganized people who believe, along with the experts, that what children most need is a nurturing home as early in life as possible, and to take action to promote laws and policies which will better serve children's interests.

⁸ MENTAL DISABILITY RIGHTS INTERNATIONAL, HIDDEN SUFFERING: ROMANIA'S SEGREGATIONS AND ABUSE OF INFANTS AND CHILDREN WITH DISABILITIES at 21 (2006), <http://www.mdri.org/projects/romania/romania-May%209%20final.pdf>.