

17 July 2014

SUBMISSION on the Australian Citizenship Amendment (Intercountry Adoption) Bill 2014

1. UNICEF Australia

- 1.1 UNICEF is a multilateral organisation that works in over 190 countries to promote and protect the rights of children. UNICEF supports child health and nutrition, clean water and sanitation, quality basic education for all boys and girls, and the protection of children from violence, exploitation, and HIV.
- 1.2 UNICEF Global has the global reach to influence decision-makers, and the variety of partners at grassroots level to turn the most innovative ideas into reality. UNICEF is unique among world organisations and unique in our rights based and participatory approach to working with children and young people.
- 1.3 UNICEF Australia advocates for the rights of all children and works to improve community and government support for child rights and international development.

2. Introduction

- 2.1 UNICEF Australia welcomes the opportunity to provide input on the proposed *Australian Citizenship Amendment Bill 2014*.
- 2.2 UNICEF Australia recognises Australia's long-standing commitment to achieving best practice in relation to adoption placement and support.

3. UNICEF's global position on Intercountry Adoption (ICA)

- 3.1 *The Convention on the Rights of the Child (1989)(CRC)* requires that all decisions relating to children should be made with the best interests of the child as the *primary* consideration. The Convention requires that in relation to ICA, the best interests of the child must be considered *paramount*.

- 3.2 The *Hague Intercountry Adoption Convention* is an important development, for both adopting families and adopted children, because it promotes ethical and transparent processes, undertaken in the best interests of the child. UNICEF urges national authorities to ensure that, during the transition to full implementation of the *Hague Intercountry Adoption Convention*, the best interests of each individual child are protected.
- 3.3 The CRC clearly states that every child has the right to know and be cared for by his or her own parents, whenever possible. Recognising this, and the value and importance of families in children's lives, UNICEF's view is that families needing support to care for their children should receive it, and that alternative means of caring for a child should only be considered when, despite this assistance, a child's family is unavailable, unable or unwilling to care for him or her.
- 3.4 ICA is one of a range of care options for individual children who cannot be placed in permanent, family-based care in their country of origin.
- 3.5 In situations during or following emergencies or natural disasters, children should not be available for inter-country adoption until comprehensive family tracing has taken place. This position is shared by other agencies including the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and the Save the Children Alliance.¹

4. Guiding principles

This submission is guided by the following principles:

- the best interests of the child is *paramount* consideration in matters relating to ICA (rather than a *primary* consideration across all general matters relating to children) (Article 3 and 21 CRC and General Comment 14²)
- that the *Hague Intercountry Adoption Convention* provides the best possible assurance of safeguarding for children and a transparent adoptive process
- the right to family unity (Articles 9, 10 and 22 and Articles 17 and 23, ICCPR)
- ICA as a measure of last resort when children cannot be raised in a family environment in their own State (Article 21b CRC)
- ICA should never be an option in the first phase of an emergency³

¹ Save the Children 2012. Intercountry Adoption Policy brief. View at:

http://www.crin.org/docs/SC_Intercountry_Adoption_Policy_Brief_FINAL_-_June_2012%5B1%5D%5B1%5D.pdf

² 2013. UN CRC Committee. CRC /C/GC/14. *On the Right of the Child to have his or her best interest taken into consideration*. View at: http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf

³ International Social Service. 2012. *Guidelines on the Alternative Care of Children: United Nations Framework*. Viewed at: www.unicef.fr/underfiles/guidelines.pdf

- poverty is not a sufficient reason to declare a child adoptable
- ICA should be child-centred and not 'consumer' led

5. Recommendations

5.1 UNICEF Australia's unequivocal position is that ICAs should only occur between *Hague Intercountry Adoption Convention* countries. That is, that all intercountry adoptions should be governed by Hague Intercountry Adoption Convention regulations rather than ad hoc bilateral agreements. Circumventing existing standards established through the *Hague Intercountry Adoption Convention* contravenes international best practice in regard to intercountry adoption.

5.2 UNICEF Australia does not support parallel agreements and processes as proposed by this legislation. However, if the Australian Government proceeds on the basis of introducing bilateral agreements, UNICEF Australia urges the following:

- the effective application of *Hague Intercountry Adoption Convention* procedures and safeguards as far as practicable in any non-Convention adoptions.
- that the Australian Government require in each of its intercountry adoption bilateral agreements that the source State comply with the *Hague Intercountry Adoption Convention* requirements for adoption eligibility.
- that the Australian Government develop *Hague Intercountry Adoption Convention* compliant criteria for assessing the feasibility of any prospective bilateral arrangement, which considers the strength of the source country's existing child protection system.
- that the Australian Government develop a comprehensive and child-centred monitoring framework for the implementation of bilateral arrangement regulations.
- that the Australian Government under section Subdivision 2 AA of Division 2 of Part 2 consider (I) wherever legally possible and (II) where in accordance with the best interests of the child, each child included under the provisions of this legislation, automatically retain dual nationality.⁴

5.3 That all Australian prospective adoptive parents who adopt under a bilateral agreement are provided with comprehensive and up-to-date information about how to identify adoption fraud and how to report it.

⁴ UNICEF Australia's view is that in most cases retention of the child's original nationality will be in their best interest because it will allow them to reconnect and reintegrate to their birth country if they ever nominate to.

6. Parameters of UNICEF Australia's submission

6.1 UNICEF Australia notes our previous submission to the Interdepartmental Committee Review in February 2014. This submission will focus on:

- the key child protection risks in relation to intercountry adoption (ICA) arrangements with non-Hague Convention countries
- adequate safeguarding and monitoring of bilateral arrangements

7. Chief risks with non-Convention Associated Adoptions

7.1 In developing country contexts, children may be placed for ICA's because, even though their families are willing to care for them, they are materially unable to provide for their children. States in these contexts, frequently operate with very scarce resources, a weak child protection system and a limited welfare safety net. Poverty can easily become a driver in children being sourced/placed for adoption and this process is not in line with the principle of free and informed consent for parents (Article 21a, CRC).

7.2 Any ICA process must be solely focused on the best interests of the child, as recognised in the Interdepartmental Committee on Intercountry Adoption report⁵ The risk of an intercountry adoption model becoming either parent and/or consumer driven with an overarching objective to place children with parents who seek families and a family life is a significant risk when operating outside the Hague Intercountry Adoption Convention arrangements. The CRC, clearly states that the best interests of the child are *paramount*. Global experience demonstrates that consumer or parent led approaches, put children (including those who are not legally available for adoption), at risk of abuse and harmful practices such as abduction and trafficking. Such an approach also increases the likelihood that parents or guardians will experience coercion to surrender their children for adoption⁶

7.3 Faster adoption isn't necessarily better, nor does it guarantee positive outcomes for children. In accordance with Article 21 (a, c and d), a competent authority should ensure all of the safeguards that are currently set out in the Hague Intercountry Adoption Convention adoptive process are met. Adequate safeguarding is the best assurance for children, their birth families and adopters that the adoption is ethical and consistent with the child's best interests.

⁵ Interdepartmental report into Intercountry adoption, 2014. Prime Minister and Cabinet
http://www.dpmc.gov.au/publications/docs/idc_report_intercountry_adoption.pdf

⁶ Peterson, S. 2014. *The decline of intercountry adoption in Australia: will privatizing make a difference?* Australian Journal of Adoption V18(1) p 1-24. View at: <http://www.nla.gov.au/openpublish/index.php/aja/article/view/3366/3938>

- 7.4 Greater risks regarding transparency gaps across all aspects of the adoption process including the history and situation of the child, adoption costs and financial gains.

8. Regular review of bilateral agreements and programs

- 8.1 UNICEF Australia's view is that the best possible assurance of adequate safeguarding is when ICA occurs between two parties to the *Hague Intercountry Adoption Convention*. While recognising the risks to children of ICA bilateral agreements, the Australian Government should conduct a regular and independent review of those agreements and programs, in order to ensure appropriate safeguarding, as embedded in the *Hague Intercountry Adoption Convention*, is maintained. The review should include all phases of the adoptive process and key child protection indicators in agreement with the source country.