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Reinventing Intercountry Adoption

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Introduction

The adoption community needs a fresh vision of intercountry adoption that will restore both reputation and momentum to the practice. This requires a fundamental reworking of our identity, our methodology as adoption service providers (ASPs), and our goals. Securing adoption for the future requires a broader vision than some have had in the past and a platform that unites adoption advocacy with permanency.

Permanency for orphaned children is our true mission. It is what distinguishes us from others in the child welfare community—permanency, not temporary care.

The Hague Intercountry Adoption Guide to Good Practice No. 1 states:

In achieving the best interests of the child in intercountry adoption, the 1993 Hague Convention recognises that:

- children should grow up in a family environment;
- permanency is preferable to temporary measures;
- intercountry adoption may offer the advantage of a permanent family



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to a child for whom a suitable family cannot be found in his or her State of origin.¹

The best interests of children are served through intercountry adoption when competent authorities in the child's country of origin conclude, through application of the subsidiarity principle and due consideration of in-country placement, that intercountry adoption is in the child's best interests.²

To achieve our goals—which we can define as promoting the right of children to have permanent families and ethically facilitating to that end—we need to capitalize on collaboration. Unfortunately, our history as a community is one of fragmentation, which has in part led us to the status quo. Only from a foundation of open dialogue and common purpose will we be able to rebuild momentum, address legitimate concerns in the intercountry adoption process, and restore our collective reputation as adoption service providers.

Historical Overview and Where We Are Today

Adoption visas for children entering the U.S. reached a high of 22,884 in 2004. When The Hague Convention on Intercountry Adoption went into force in 2008, intercountry adoptions were at 17,456. In fiscal year 2014, that number was down to 6,441. The French Institute for Demographic Studies reports adoption visas for children entering Europe have dropped by up to 80% in some countries, and in Canada by 36%.³

Why? Some countries closed or suspended intercountry adoption—Guatemala, Vietnam, Nepal, Kazakhstan, Kyrgyzstan, Russia—and others reduced the number of children referred for intercountry adoption (notably China). Some countries closed due to uncontrollable corruption or political instability; others due to national pride or politicization of adoption. Some sending countries promoted domestic adoption and disallowed intercountry adoption of young children. In addition, post-2008, The Hague Convention failed to “streamline” adoption as touted. Adoptions take longer now. ASPs face more administrative challenges.

Outside forces took a toll, as well. The global recession brought fewer adoptive families knocking on agency doors, though the number of families interested in adopting remains high. Sending countries, the French study claims, have fewer children in need of adoption placements due to greater

¹ Guide to Good Practice No. 1: Implementation and Operation of the 1993 Hague Intercountry Adoption Convention, 2.1 ¶43, ©Hague Conference on Private International Law, 2008, Bristol

² Preamble to the Hague Convention on Intercountry Adoption, Article 4b.

³ French Institute for Demographic Studies, Population and Societies, No 519, published Feb. 9, 2015; www.west-info.eu/international-adoptions-fall-by-two-thirds

prosperity, access to contraception, and increased social tolerance of single parents. The latter may be true, but given global statistics on double-parent orphans, this would not diminish the plight of many millions of children in need of family care.

The reality for many orphaned children is grim. The World Health Organization estimates 10 million children under the age of five die from violence, malnutrition, disease, or some combination every year.⁴ The number of young children and adolescents trafficked for sex and forced labor from all countries is growing. Many children are not being nurtured or protected in birth families, extended families, or institutions. Parents die, children are abandoned, children are sold, children become commodities, children are exploited and dehumanized.

According to a 2011 UNICEF estimation:

- 153 million children worldwide, ranging from infants to teenagers, have lost one or both parents
- HIV/AIDS has orphaned 17.9 million children, most of them in Sub-Saharan Africa and Southeast Asia
- 19,000 children under the age of five died *every day* in 2011

Let's be clear about our role and its importance. Adoption, international or domestic, is the only intervention for children living outside family care whereby the child is guaranteed, by law, to be the beneficiary. Foster care, substitute families, orphanages, group homes—any safe arrangement with a caring human caregiver is far better than death, disease, abandonment, enslavement, or institutionalization. But only adoption provides legal protections.

To reverse the downward trend in adoption, ASPs must collectively take responsibility for the role we played and take preventative measures for the future. Corruption does not happen where transparency rules. There are historical factors that ASPs *do* have the power to change.

This is good news—without the power to change, we would have no power to help children. We should not shy away from needed changes; instead, let's say to ourselves and Central Authorities all over the world, “This happened and we will not let it happen again.”

Consider these very real issues and how they affected intercountry adoption:

- **Fragmented adoption community/culture:** The intention of “best practice” was diluted by a lack of universal standards, particularly among foreign representatives.

⁴ Congressional Coalition on Adoption Institute, Washington DC, www.ccaainstitute.org/index.php?option=com_content&view=category&layout=blog&id=25&Itemid=43

- **Multiple incidents** of harm involving children adopted by U.S. families led to tragedies.
- **Inadequate contingency planning** for oversight of adoptive families who fell off the radar—who failed to provide post adoption reports or notify the ASP or home study provider of problems—and the ASPs then lost contact with them.
- **Presumption of entitlement:** A perception that ASPs or client families are “saving” children and have a moral imperative to do so, which may be a keenly felt motivation for adoption for some, but may cause still-festering cross-cultural and political rifts.⁵
- **Competition for referrals** and pressure to satisfy client families cultivated a “dark side” to the in-country adoption process, including failures to supervise foreign representatives and failures to internally investigate questionable conduct.
- **Negative perceptions of intercountry adoption** fueled by media focused on failed adoptions without emphasizing the many positive outcomes for children.

Intercountry adoption clearly needs greater transparency and hands-on oversight. The Hague Convention could have helped accomplish this, but the transition has been far from smooth; frustration and confusion among ASPs is often matched by frustrations within Central Authorities. Cooperation can be hard-won because no one wants to admit their own needs. Adoption spokespersons may speak knowingly in the spotlight, but privately express fear and dissatisfaction.

While over time a common understanding of the principles and standards that underpin Convention adoptions and safeguard children has been established, what remains to be achieved, within the adoption community, is a new and cohesive mentality that will prevent repeating the mistakes of the past. We’ve grappled with the Convention, a task that is ongoing. But the present and pressing task is for the adoption community to redefine itself.

Historically, agencies operated independently. Most were founded by courageous far-sighted individuals seeking to alleviate child suffering. However, the individuality of the entrepreneur era of intercountry adoption now stands to do more harm than good.

Over a decade ago, the number of adoptive families surpassed the number of legally free orphans. Adoption became more driven by waiting families than by waiting children. Thousands of children were in need of parents, with

⁵ General Principles and Guide to Good Practice No. 2: Accreditation and Adoption Accredited Bodies, Introduction, ¶8, ©Hague Conference on Private International Law, 2012, Bristol.

States acting in loco parentis indefinitely and no termination of parental rights in sight. Establishing orphan status presents a conundrum; it is the obligation of a sending country to determine the legal status of a child, but foreign governments often remain unwilling or unable to do so. Capacity may be lacking, distrust of intercountry adoption may influence motivation, cultural understanding of adoption may differ, and opportunities to forge relationships for the common purpose of offering permanency for children are limited.

The traditional strategy employed by agencies to build relationships is by offering humanitarian aid. Underdeveloped countries with limited resources welcomed this approach. But, in the long run, humanitarian aid from agencies created a host of other problems: adoption agencies became a marketplace for aid, and misappropriation and exploitation of aid undermined their mission and created dependency. In addition, agencies exercised insufficient supervision of foreign facilitators anxious for income. Competition among foreign facilitators without the imposition of agency safeguards fostered corruption and sparked allegations of child trafficking. While largely dismissed, some were justified. Gross errors of judgment were made by individual agencies. Adverse consequences affected the entire community.

These events compel us to work together. We don't have the luxury of being heedless of the outcomes of competition any longer and, more importantly, nor do orphaned children. Being a stakeholder and promoting collaboration is essential for adoption to remain a possibility for children. Competition and its cousin, corruption, is exactly what the adoption community needs to protect against in the future. Prevention is the only cure, because lack of it closes programs altogether.

We are in a transformative moment. Our message needs to change, our self-image needs to change, and our methods need to change from *adoption to permanency*, *agency to stakeholder*, and *competition to collaboration*.

Permanency

To secure intercountry adoption as an option for children, we need to think in new terms. First, forget adoption. Is that contradictory? No, because adoption was never the goal; it was the vehicle. The goal is PERMANENCY for children.

While we remain adoption advocates (because that is the *vehicle*), in spirit, our role has become something else: a voice for children. The International Academy of Adoption Attorneys defines their role as "Promoting the Rights of the Child under the Hague Convention." As ASPs, that is our role, too.

We are in a transformative moment. Our message needs to change, our self-image needs to change, and our methods need to change from adoption to permanency, agency to stakeholder, and competition to collaboration.

We are more than adoption advocates. We are a voice for invisible, forgotten, orphaned children. We are guardians of the Rights of the Child. We are masters of The Hague Convention on Intercountry Adoption—because the Convention does *not* restrain us, it empowers us when properly implemented.

Putting these concepts into practice is a radical departure from the historical relationship between agencies and foreign governments. The old-school identity might have introduced itself as “We are glad to provide humanitarian aid projects... We are grateful for the opportunity to work in your country.” This is a supplicant mentality; the agency is asking for a “favor”—to provide adoption services. When presented in this manner, the ASP does not leverage the importance of permanency into a proposition for the *common* good.

The value of permanency is aligned with the language of the Convention. It’s not a question; it’s a right—the right of a child to have a family. The Convention takes us beyond the debate of whether children should or should not be placed internationally. Children are better served by growing up in permanent families, as opposed to an institution or other temporary care, and the best interests of the child are paramount.

The conversation is not “if we will help you, or if you help us.” It is “we can do this *together*. We can serve the best interests of children under the Convention *together*.” The Convention is the higher authority in this conversation and balances the value of permanency against logistics concerning capacity. Member states are pledged to consider intercountry adoption as an alternative for orphaned children. This is thoroughly discussed in the Guides to Good Practice; principally in Guide to Good Practice No. 2.

A corollary benefit is that the presence of intercountry adoption inspires in-country domestic adoption. It is important to draw attention to this, as it serves the goal of permanency and opens the conversation to the value of legal adoption. When intercountry adoption and domestic adoption function well together, it is a win-win outcome for orphans.

Stakeholder Mentality

Accredited ASPs are stakeholders in the welfare of children around the world. We have a specific role to play in serving their needs. We hold the highest designation an adoption agency can achieve.

We are held to high and complex standards. We are subject to ongoing regulatory oversight at both the state and federal level. We come to the table as stakeholders. We have a shared obligation and commitment to providing permanency for children along with every Central Authority.

An ASP's relationship with a foreign Central Authority and with every other stakeholder is as a team member and is shaped by collaboration.

Re-imagining our message is part of a larger transformation. Our message changes, language changes, and our position at the table changes. The narrative we need is this: "We are an accredited body under the Convention who can *collaborate* with you for the benefit of orphaned children, so that we can meet our *shared* responsibility to provide permanency. We have highly skilled staff and abide by all the principles of The Hague Convention to ensure ethical practices and transparency. We provide well-qualified and prepared families for your Central Authority to consider as candidates for permanent homes for children."

Note that the message is about collaboration, ethical practices, well-prepared families, and a *shared responsibility* to provide permanency. This defines the ASP as a stakeholder.

Humanitarian Aid

In all likelihood a foreign government will inquire as to what an ASP's humanitarian aid projects will be. The Guide to Good Practice No. 2, Chapter 9 speaks to this and reviews the risks of allowing contributions. In 2010, the Special Commission "emphasized the need to establish, in all cases, a clear separation of intercountry adoption from contributions, donations and development aid." Donations and aid projects are suspect because they can be used to incentivize adoption, induce birth parents to relinquish children, or create dependency on outside bodies to support child welfare programs.

There are many views on this matter. What is most important to note is that the debate over humanitarian aid exists because aid and donations *have* compromised the integrity of intercountry adoption. Money or non-monetary aid that leads to an increase to child placements without strict compliance with the subsidiarity principle is de facto child trafficking.⁶

We suggest that the response of a stakeholder should be, "The negative effects of aid projects mixed with adoption are described in the Guide to Good Practice No. 2. We do not provide humanitarian aid. However, we will work on co-operation projects with you as stakeholders that will improve your capacity to provide services to children, such as training and education." Education and collaboration is not like money or donations; *rather than create dependency, education empowers independence.*

⁶ General Principles and Guide to Good Practice No. 2: Accreditation and Adoption Accredited Bodies, Chapter 9; reference to the Special Commission ¶422, © Hague Conference on Private International Law, 2012, Bristol

We urge all ASPs to avoid the pitfall of humanitarian aid that may be seen as “pay to play.” No matter how upright the intentions, this practice has undermined several programs, giving the impression of impropriety. While it is impossible to discount the need for food and shelter for homeless children, it is essential to maintain a strict separation of adoption and aid programs.

ASPs may establish a separation of adoption and aid activities by a variety of mechanisms discussed in Chapter 9. Given that intercountry adoption is just beginning to emerge from a decade of negative media, it seems prudent to make every possible effort to avoid actions that unintentionally cultivate dependency or corruption.

Orphan Economics

Informing a Central Authority that the ASP lacks enthusiasm for aid projects may disappoint. The history of intercountry adoption is full of hand-outs and aid projects that have benefited officials and often failed to serve the presumed constituents: children.

The expectation of aid is not unusual. Your job, at this juncture, is to introduce a new perspective, using the Convention to illustrate the trouble aid programs have caused and how permanency benefits children and society in ways that may have gone unremarked. Economics are central to this discussion.

It is important to revisit the mutual mission—we are collaborating to provide permanency for children—and outline how this collaboration serves the greater good. Bringing economic factors into the discussion at the outset, factually and assertively, serves to shift the paradigm from ASPs providing stopgap or “band-aid” solutions to addressing long-term collaborative strategies.

Obviously orphaned children benefit from having families. Children without families, in institutions or on the street, become victims and perpetrators of crime, prostitution and, in some countries, afflicted with AIDS. Orphaned young adults are targets for drug and human traffickers and terrorist organizations. Poverty and criminality are devastating to a country, in terms of loss of human potential and also loss of opportunity for the country itself. Investment and economic growth rely on a safe and stable society. Homeless young people present risks to the security of a country and deter investment.

Linking the benefits of permanency to the greater social good can be an eye-opening part of the conversation. Children growing up without families adversely affect the security and economic development of any country,

It is essential to maintain a strict separation of adoption and aid programs.

including the United States. Permanency—as an option for orphans and as a concept that can be cultivated in the country of origin—is a win-win solution for both orphans and society.

Collaboration

Actively embracing collaboration within the community and implementing it throughout the adoption landscape is the cornerstone of successfully starting and maintaining an intercountry adoption program. Without it, efforts may fail or be vulnerable to corruption.

Let's identify the stakeholders:

- The children in need of permanency—we advocate for them
- ASPs and the staff championing the program
- USCIS
- U.S. Department of State—particularly the desk officer for the country
- The U.S. Embassy or Consulate serving the country
- The foreign Central Authority or Competent Authority
- Foreign courts
- Foreign legal representatives (should be attorneys)
- Every other ASP working in the country

The person chosen to direct the intercountry adoption program needs to be an assertive leader and know the Convention chapter and verse. Communication is key to creating engagement. A shortage of communication can cause distrust; it is essential to open lines of communication with all stakeholders.

An ASP's program depends greatly on the ethics, knowledge, and people-skills of the in-country legal representative. Like the U.S. program director, he or she needs to know the Convention chapter and verse. We recommend that this person be viewed and treated as someone who does provide one of the six adoption services, and not as a liaison only. This elevates the ASP's responsibility to thoroughly vet the person under consideration for the job.

Training the representative can only be accomplished if the U.S. program director travels frequently to bring the agency mission and value-set to life. In countries where corruption is prevalent, the ASP must provide the language and strategy for the representative to withstand and deflect any such overtures.

- *The Hague Convention sets adoption services on a pedestal of ethics and transparency.*
- *As stakeholders, we promise and expect to work together honestly and openly.*

- *Intercountry adoption must be ethical and transparent.*
- *Corruption and self-serving actions have a corrosive effect on relationships.*
- *We will work together to ensure children have the right to permanency.*

Countries that are member states of the Convention are committed to prevent corruption in adoption. This does not mean that every person involved with an adoption process took the pledge. It's essential that issues with corruption that have plagued adoption in the past are not tolerated. Provide tools for your legal representative to uphold transparency. In addition to being a voice for children and advocates for permanency, we must also protect and defend the adoption community from those who would undermine its integrity.

I have recommended in presentations at NCFCA conferences⁷ that an ASP's initial meeting with the director of the Central Authority and other officials should include a male and a female presence. It's also essential that at least one person have consummate skills in engaging and guiding conversation. The first few meetings with Central Authority directors set the tone for the relationship. This is the moment to define your role, identify your agency and the foreign officials as stakeholders in a mutual endeavor—to promote permanency for children and find families for the orphans under their care. You are members of the same team. That's the truth, and it needs to be the narrative.

It's not uncommon for government authorities to be busy. Being politely persistent may be necessary. There may be long waits. Keep going back. Dress professionally as a diplomat. This shows respect for the people you are meeting with and bolsters your credentials.

Many of us come into the adoption world through social work. We tend to be skilled listeners. This is an asset, but we must be good talkers, too. There are simple but powerful methods of gaining the interest and confidence of the person you are speaking with to establish relationship. It would be unimaginable for for-profit corporations to send key personnel to foreign countries without comprehensive training, including learning the history, culture and customs of the country, and practicing role playing, to ensure the company's investment has the best opportunity for success. Rise to that level. Inasmuch as most ASPs operate on fees-for-service, we have the same obligations to management and clientele as do all companies. Compassion may drive us but in no way does it excuse nor should it compromise professional standards.

Many agencies attempt to start programs in foreign countries and are foiled at the start. This can be viewed from several perspectives. One

⁷ National Council for Adoption Conferences 2013 "New Frontiers: Redefining Program Development in Emerging Hague Convention Countries" J. Semar, R. Gallego, B. Walker & T. Ragels, and 2014 "Collaboration is the New Currency: Creating a Global Path to Permanency" J. Semar & T. Ragels

would be to conclude that the agency and country are not a good fit for each other. Another would be to wonder if the persons representing the agency were insufficiently equipped for the task. Perhaps they lacked the necessary initiative, persistence and diplomacy. Perhaps the in-country legal representative lacked the ability to negotiate introductions and put the agency's best face forward. Perhaps the in-country representative, if not an attorney, lacked skills and knowledge of the Convention to successfully make a request for government officials' time.

Once in the door, it is essential to marry expectations with timeframes. Agreement to timeframes sets the stage for accountability. If either party promises something, but no date is set for fulfillment, then it is likely that nothing will occur because there is no sense of urgency or deadline.

Similarly, there is no metric for evaluating outcomes without a timeframe and an opportunity to test it. Without timeframes, it is difficult to observe where needs exist or uncover gaps in the adoption process, because how can anything take *too much time* if no specific allotment of time is set? Setting timeframes may be a delicate dance, but it is exactly the dance our Secretary of State is doing daily with foreign powers: identifying mutual goals and agreeing upon timeframes. Once you establish permanency as a mutual enterprise to serve the best interests of children, delineating timeframes is the next agenda item.

Transparency

Transparency is the lifeblood of any adoption program. If transparency bleeds out, the program is gone. Speaking in a forthright manner with Central Authority officials about the value of transparency is needed; make it a specific point in your discussion. The definition of transparency is: *having the property of transmitting light without appreciable scattering so that bodies lying beyond are seen clearly.* To my mind it means that all who are touched by an adoption process, all who participate, contribute, depend upon or benefit in any manner, must be clearly seen. Their roles and work must be visible. Transparent. Obviously this means policies and procedures to protect against child trafficking, bribes or other forms of corruption. It also means the less obvious—no looking the other way, no feigned ignorance, no failure to insist on accountability.

Transparency can be uncomfortable. It may call for raising questions, and trying to do so diplomatically in case your suspicions are in error. It may call for replacing foreign staff. It always calls for due diligence; relentless attention to detail is the best preventative.

Transparency always calls for due diligence; relentless attention to detail is the best preventative.

Long-distance oversight is a challenge for any endeavor. Regular semi-annual (or better yet, quarterly) travel and capacity-building seminars or meetings for foreign and U.S. stakeholders to open discussions about improving adoption processing is essential. So too is ongoing learning and deeper understanding of the principles of the Convention and why they exist, about the lives of children without families and about families without children, about the history and motivations behind intercountry adoption. Cross-cultural discussion of these matters enhances trust and teamwork.

Transparency also means taking your representative out of his or her culture and bringing him or her to meet with other representatives and program directors and agency personnel at gatherings of adoption professionals like NCFCA conferences, for the invaluable experience of meeting the adoption community. This sort of event is a powerful teaching moment for most foreign representatives, giving strength and inspiration to carry the banner for transparency into adoption at every level of practice in their homelands.

As a corollary, because the NCFCA conference spans U.S. domestic adoption, it also provides exposure to what adoption—as a legal process—should really mean *inside* a country. Too often children are called “adopted” when simply living with relatives or neighbors as a last resort, without binding obligations or legal protection. Yet in best practice, adoption is always a legal process, and only in that manner does it confer true permanency.

Permanency is only achieved through adoption; not through foster care or institutionalization. Transparency needs to ensure that foster care, when sponsored, does not render children invisible, and the opportunity for permanent families through adoption is not compromised. As foster care gains more proponents, we need to amplify the message that families are good but only qualified and committed permanent families serve the best interests of children. Foster care should, like orphanage care, be a stepping stone to permanency, not an alternative.

Conclusion

Reinventing intercountry adoption involves taking risks; we have to sacrifice how we have done things in the past and try new ways to collaborate. The future of intercountry adoption is not solely in our hands, but we have significant influence and responsibility. The Convention, despite its flaws, gives us a legal platform to promote the best interests of children and the right of children to have families and permanency.

Intercountry adoption touches the lives of thousands of children. It transforms societal norms in sending countries and kindles the secondary benefit of domestic adoption. This ripple effect is achieved through

demonstration and modeling—families adopting unrelated children—in ways that would never be achieved through talk, diplomacy or aid programs.

Intercountry adoption is on the precipice of profound change. We have been collectively pushed to that precipice by both events of the past and The Hague Convention. The Convention and the Universal Accreditation Act were intended to force change and thereby elevate intercountry adoption to a pristine environment—a challenging goal. What we have at our disposal is the Convention. Bringing the value of permanency into the foreground, insisting that children are not rendered invisible by foster care, continually turning the focus to adoption as the sole path to permanency—this is our work.

We also have the thousands of families who have taken the walk with us able to speak to importance of permanency. We have resources that can change the narrative, open new conversations, promote permanency, and make the case that we should refuse to settle for second-best—institutional and temporary care is always second-best when compared with adoption and permanency.

The Convention is our tool and collaboration our whetstone. Collaboration will succeed where competition will not. Redefine the identity and role your ASP can play in the future, let the light shine on your efforts. Assert and share your vision and strategies. Be a stakeholder. Forge partnerships. Together we can shape the future of intercountry adoption.

ABOUT THE AUTHOR

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