

THE PRINCIPLE OF SUBSIDIARITY IN INTERCOUNTRY ADOPTION

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INTERNATIONAL RECOGNITION

- Article 21 UN Convention on the Rights of the Child
 - Intercountry adoption can only be considered “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”
- Article 4(b) Hague Convention on Intercountry Adoption
 - The authorities can permit an intercountry adoption where they “have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests”

UNICEF PRINCIPLES

- 1. Family based solutions are generally preferable to institutional placements;*
- 2. Permanent solutions are generally preferable to temporary ones; and*
- 3. Domestic solutions are generally preferable to those involving another country.*

MAINTAINING IDENTITY

- The principle of subsidiarity ensures the best possible chance for family reunification
- It also allows the child to maintain his or her cultural, linguistic, religious and ethnic identity wherever possible
- Some examples:
 - Estonia: take into account the need for maintaining the national, religious, cultural and linguistic origins of the child
 - Georgia: must take into consideration religious and ethnic conformity. Further in
 - Russia: any decision on alternative care must take into account the ethnic origin of the child, affiliation to a certain religion and culture, his or her native tongue, and the possibility of ensuring continuity in the child's upbringing and education.

DIFFICULTIES WITH FAMILY MATCHING

- There is often an overrepresentation of children from ethnic minorities in the care system
- For example: England has removed the obligation to give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background
 - Response to long waiting times for children of African descent to find families

THE IMPORTANCE OF IDENTITY FOR ALL CHILDREN

- Study on children adopted from Hong Kong by British parents:
 - 75% wished they had looked less Chinese growing up
 - 19% still wished they looked less Chinese
 - 54% felt uncomfortable when people commented on their different looks
 - 43% felt uncomfortable in certain situations because of their appearance

HOW LONG SHOULD WE SEARCH FOR A DOMESTIC PLACEMENT?

- Some states simply state that domestic placement should be preferred by authorities
- Some place time limits – from 3 months to a year
 - The appropriate length of time will differ, depending on the situation within the state
- The longer children are in inadequate care, the greater the harm to their long-term well-being
 - Children adopted before 12 months were more securely attached
 - Children who spent at least 8 months in an orphanage had significantly greater insecure patterns
 - Proportion of adoptees with normal functioning substantially less the older the child is at leaving institutional care

OBLIGATION TO DEVELOP THE DOMESTIC CHILD WELFARE SYSTEM

- Article 6 of the UN Convention on the Rights of the Child: guarantees to the maximum extent possible the survival and development
- Article 27: the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development
- Not the time limit that is important, but what the authorities are trying to achieve
 - Albania: during the six months waiting period, all opportunities for national adoption must have been exhausted
 - Bulgaria: at least three candidate adopters must have been nominated for the child, with none of them filing an application.

FACILITATING FAMILY REUNIFICATION

- States must take appropriate measures to re-intergrate the child into their family environment
 - Requires more than identifying the child's family (if a child has been abandoned)
 - Must also provide financial and social support to address the reasons a child might need alternative care

CONCLUSIONS

- The principle of subsidiarity requires more than preferring domestic solutions over intercountry adoption
- Requires all steps to be taken to ensure the child is provided with the greatest opportunity to stay with their family and to maintain their cultural, linguistic and ethnic identity
- Must move away from institutional care, to have a system of family based alternative care