



EDITORIAL

Intercountry adoption in humanitarian situations: a form of forced migration?

This Editorial by Nigel Cantwell¹, argues that undertaking intercountry adoptions in certain contexts can constitute 'forced migration'², and can lead to illegal adoptions.

Intercountry adoption: A humanitarian act in humanitarian situations?

The first initiatives to place children in adoptive homes abroad – at the start, mainly from Europe to the USA – were taken by private individuals and nascent organisations in the wake of the Second World War. Such intercountry adoptions, carried out in a legal and procedural vacuum, were resolutely seen and justified as being 'humanitarian' in nature.

There have been many subsequent initiatives to secure the adoption of children abroad in emergency situations, on similar 'humanitarian' grounds. Probably the most notable of these was the hastily-organised Vietnam baby-lift of at least 2,500 to the USA, Canada and a number of European countries in April 1975. The circumstances of these children's removal – including their often unverified status and lack of documentation – provoked major debate over the appropriateness of 'urgent' mass operations of this kind.

Despite that debate, attempts continue to be made – sometimes successfully – to carry out large-scale intercountry adoption programmes in 'emergency' situations. Although intercountry adoption is now subject to clear international standards, and is officially characterised as a 'public child protection measure' rather than a 'humanitarian act', the legacy of its humanitarian *ad hoc* beginnings has clearly not been put to rest.

In addition to the overall procedures and safeguards set in place by the 1993 Hague Convention, a special section of the 2009 UN Guidelines for the Alternative Care of Children is devoted to appropriate care measures for

children in emergency situations, *inter alia* warning against recourse to adoption in the immediate aftermath and requiring that any cross-border displacement comply with stringent conditions³.

To date, three main arguments have been brought to bear in favour of this approach. First, many children, who may appear to be 'orphans' have simply become separated from family members, so no care decisions should be made that are essentially permanent in their consequences before family tracing efforts have been exhausted. Second, and particularly relevant to intercountry adoption, children, who have experienced an emergency situation, need time to recover in familiar surroundings, and not to have to face the further trauma of a move. Third, essential documents may have been lost or destroyed, and competent authorities may not be in a position to act.

However, in addition to these key arguments, there are two other aspects that seem to be less commonly recognised but deserve consideration.

Forced migration: Intercountry adoption in disaster situations

The 2012 World Disasters Report⁴ focused on forced migration and I was invited to contribute a short paper looking at intercountry adoptions in post-disaster situations as a form of forced migration⁵. I had never previously thought of the phenomenon specifically from that perspective, but clearly a good example was the then-recent situation in Haiti following the 2010 earthquake – and ironically just weeks after the UN General Assembly had approved the above-mentioned Guidelines:

- at the time of the disaster, well over a thousand children were at some point in the intercountry adoption process, but they were in no special danger at that point in time;
- the adoption process in Haiti had already been widely recognised as deeply flawed, with many receiving countries having halted adoptions from there as a result⁶;
- there was consequently a high risk that many of these children had been wrongfully drawn into the intercountry adoption channel, yet receiving countries pressured the Haitian Authorities into allowing their urgent removal, with no systematic verification of their true status;
- in so doing, they set in motion a mass evacuation without applying recognised safeguards regarding either adoption or evacuations – it was quite simply tantamount to forced migration.

Forced migration: Intercountry adoption in 'silent emergencies'

The other aspect to be highlighted concerns so-called 'silent emergencies', the concept that the late James P Grant, then head of UNICEF, developed in the 1980s. In contrast to 'loud emergencies', these are not high-profile one-off events but continue over many years or decades in given countries where long-term humanitarian assistance is required alongside development cooperation. These countries too are vulnerable to pressures to make available children for adoption abroad.

A good example is the Democratic Republic of the Congo (DRC), where on-going armed conflict has created a major humanitarian challenge due

in particular to the displacement of millions. At the start of this century, very few children were being adopted abroad from the DRC each year, but suddenly it became a go-to country of origin: from just 26 children adopted from the DRC by foreigners in 2003, the figure shot up to 587 in 2013⁷. The Authorities were understandably overwhelmed by this exponential increase in demand, which made it impossible to verify the real situation of each of the children involved. They therefore set in place a ban on issuing exit visas for these children as of September 2013, but such was the pressure exerted by receiving countries that gradually more and more children were permitted to leave. This on-going 'silent emergency' had thus also led to a form of forced migration in a humanitarian context.

Remaining vigilant in the future

There have been some causes for cautious optimism in recent years concerning the willingness to respect international standards and principles in emergency situations. Following the 2004 Tsunami, for example, all countries concerned announced that no children would be allowed to leave. However, very clearly, compliance with these norms is anything but assured. In emergencies of all kinds, we must be fully aware that the large-scale removal of children for adoption abroad is not only an undesirable protection measure but also potentially a form of forced migration.

Nigel Cantwell

April 2018

