

## Double principle of subsidiarity: keeping the individual needs of child at the centre of decisions

*Implementation of international standards of children's rights in adoption has always been a delicate balance of competing interests - the principle of double subsidiarity is no exception.*

The International Reference Centre for the rights of children deprived of their family (IRC) is a division of the General Secretariat of the International Social Service (ISS), which is based in Geneva. Since 1997, the ISS/IRC has been actively developing and implementing international standards relating to the alternative care of children deprived of their family or at risk of being so and adoption. As regards to intercountry adoption its position is elaborated in its [Manifesto for Ethical Intercountry Adoption](#) (hereafter Manifesto) published in 2015.

Concerning the *“respect of the double principle of subsidiarity”* the Manifesto notes that *“the first level of the principle of subsidiarity requires that priority be given to keeping the child in his or her environment of origin. In practice, this involves the implementation of a system based on the development of domestic family-type solutions for children separated from the family, making it possible to decrease the need for intercountry adoption. Specifically, such a system should set out family support programs so that they can raise their children, family reintegration programs for situations involving temporary separation, and alternative family placement in cases of permanent separation.”*<sup>1</sup> *The second level of the principle of subsidiarity focuses on the subsidiarity of intercountry adoption with regard to family-type domestic protection measures. Consequently, intercountry adoption should only take place after a long term family solution has been actively sought in the child's country of origin, particularly with domestic prospective adoptive parents”*.

This position is grounded in article 21(b) of the *Convention on the Rights of the Child* which recognises *“that intercountry adoption may be considered as an alternative means of child's care, 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”*. Likewise this position is based on article 4b of the *1993 Hague Convention* which states that an intercountry adoption shall only take place *“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.”*

Over time ISS/IRC has continually noted the importance of not interpreting the principle of subsidiarity embedded in these international standards, as universally meaning that intercountry adoption is a measure of last resort. Effectively implementing the principle of subsidiarity is not solely about ensuring on paper that all national laws and policies are respected prior to intercountry adoption being considered. Rigid approaches steer away from challenging realities, for example, what real efforts were made to search for the family of origin in cases of abandonment, what support was provided to the parents to enable them to care for the child, systemic failures in a child protection system etc. Such an approach more importantly discourages an individualised approach for each child and identifying the measure of best resort for him or her.

Intercountry adoption may be considered when there is evidence that a child cannot be cared for *“suitably”* in his or her country origin. Intercountry adoption may be one child protection measure among many to be offered to the child. Determining suitability in principle starts from examining

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<sup>1</sup> United Nations *Guidelines for the Alternative Care of Children*, 2009, §49.

care with the family of origin to options that are family based and should continue if necessary, until the most adequate solution is found for the child. This examination process will require a very thorough comparison of benefits and disadvantages in particular where the only two realistic options are offered only in large residential care facilities<sup>2</sup> and intercountry adoption. Such an examination must include for instance, a detailed evaluation of the prospective adoptive parents' capacity to care for the child's unique needs, including evidence of their adequate preparation and support. Moreover, intercountry country adoption may be considered and given priority over national solutions, as may be the case in intra-familial adoptions and/or when the child has an urgent medical need, when deemed in the best interests of the child.

It is therefore important, when giving the principle of subsidiarity due regard in practice that ISS/IRC believes that this will depend on each child's individualised needs, with his or her best interests being the paramount consideration. Discussions should move away from last resort towards finding the solution that is in the best interests for each individual child.

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<sup>2</sup> United Nations *Guidelines for the Alternative Care of Children*, 2009, §23