

Inter-country adoption and alternative care for children deprived of the family environment :legal, policy and administrative framework



The law should set a mandatory requirement to secure consent of the child (the child's age notwithstanding if he/she can express himself/herself) to adoption arrangement in addition to the consent given by both parents.

The eligibility criteria for prospective adopters ought to be exhaustively outlined. These criteria may include an upper age limit, specific health condition, marital status, age difference with the child, the status of unmarried foreign adopters etc. The law should expressly provide for the primacy given to family like arrangements in both domestic and inter-country adoption arrangements.

In cases of adoption at conception, the law should set out the duration the child has to stay with his/her biological mother before the adoption is effective.

The law should define the consequence of a negative consent to adoption by a parent who is not adequately exercising the role of a guardian.

The law should provide for a legal restriction on the rights of orphanages to place a child under their custody for adoption.

The law should require personal appearance of the adoptive parent and outlaw conclusion of adoption agreement by proxy.

The law reform process must clarify current contradictions on the rules on institutionalization of children as a last resort and the requirement to put children in institutions as an eligibility criterion for adoption

With regard to the regulation of inter-country adoption from Ethiopia the law must specifically deal with and clarify in detail the following points:

Stipulate what factors constitute capacity (or otherwise indicated as 'access' under RFC Art. 194 (3) (d)???) to raise a child in Ethiopia.?This in particular should deal with the various options

(domestic care mechanism) the court must exhaust and consider before deciding in favour of inter-country adoption

the special circumstances to be fulfilled to approve an adoption agreement when the parents/other family members of the child are alive?

The power of the court to order (including whom to order) for family support.

The particulars of family support that the court may order to ensure that the child grows in Ethiopia, including the requisite due diligence to support the child in the country by looking into sources from the community, government or non-government entities.

With regard to roles and responsibilities of MoWCYA, there is a need to revisit;

The legitimacy of delegating important roles and responsibilities (please see section ‘d’ no 4, p. 39 of the MoWCYA guidelines on the roles and responsibilities of the adoption service providers) of MoWCYA to entities such as adoption agencies. The law ought to define the role of the Ministry beyond setting standards as a public service organization. The law can call for the establishment of a central government agency in charge of following up the welfare of children deprived of the family environment

The legal status of adoption agencies and their functions in the adoption process has to be redefined. There is need for a definition of the financial engagements and activities that adoption agencies may undertake in the adoption process, and to regulate their relationship with orphanages, and transition homes (apart from the provisions of the MoWCYA alternative care Guideline and under a full-fledged law and regulatory mechanism)

On the role of the court

The law should set out specific standards that may be applied by the court to evaluate the opinion of the MoWCYA

In order to ensure the child is treated properly by the adoptive parents, the law ought to put up mechanisms such as trial placement of the child for a certain period of time with the adopter before approval of the adoption agreement

On other measures of alternative care options

The law ought to strictly define the responsibility of courts, MoWCYA and other government and non-government organs in seeking special care for children deprived of the family environment

Foster care shall be recognised as a formal child care mechanism under the family law. The law should also look into the merits of assigning the administration of foster care to a governmental organ and establish one such organ at various levels of all the regional states

The law should recognize various modalities of foster care including traditional mechanisms of care and state the basic requirements that shall be fulfilled to ensure the best interest of children.

The law should also define the family support due to foster families and by whom that support has to be given

In the administration of institutional care and the role of orphanages in adoption procedure the law ought to specify:

The responsible organ for making sure that all efforts to unify the child with his/her family are exhausted before the child is given up for adoption. The responsibility of orphanages to facilitate reunification of children with their families and their placement in domestic child care mechanisms.

The responsibility to make sure all alternative care options are exhausted before children are placed in child care institutions (orphanages).

The duration a child has to stay (other than abandoned children that are required to stay for two

months) in institutions before being considered for inter-country adoption. The sufficiency of the two months time for abandoned children needs to be seriously considered.

legitimate source of income of the childcare institutions has to be outlined.

The legitimate relationship between childcare institutions and adoption agencies and illicit practices that shall be controlled.

In terms of expanding the alternative care options the law may consider the following:

Formalizing foster care mechanism

Regulating traditional/cultural/religious alternative care systems in the country such as Kafalah

Identifying, recognising and formalising various childcare mechanisms embedded in different cultures and communities

Illicit practices in the adoption process

The law shall put in place mechanisms to control illicit practices committed against children under the guise of inter-country adoption. In particular the following illicit activities need to be addressed by law:

Placement of children in institutions to facilitate inter-country adoption while there are other available alternatives.

the identity of children and the adopter to prove eligibility for adoption

The law should stipulate the consequences of an illicit procedure for adoption even when the child lives a decent life with the adoptive parent.

The civil and criminal consequence of uninformed or induced consent by parents on the adoption agreement, and the procedure to nullify the same.

Define the gravity of the offence of trafficking in a context of inter-country adoption

To sum up, gaps in the legal and policy framework outlined above need to be addressed in order

to maintain a strong legal framework for the protection of children deprived of a family environment. The legal reform process also needs to give substantial consideration to the harmonisation of international law provisions that are part of the law of the land at various levels. A strong legal and policy framework is therefore crucial:

To expand the domestic alternative care options for children deprived of the family environment

To deal with the proliferating inter-country adoption that puts Ethiopia in the global fore as a source country

To address the gaps outlined above on the regulation and administration of inter-country adoption

prevent illicit practices including trafficking under the guise of inter-country adoption

To ensure strict regulation and administration of alternative care.

To recognise and formalise traditional mechanisms of alternative care.

To require establishment and capacity building of institutions which are involved in provision of alternative child care

To enhance public participation on the provision of alternative care.

To promote child care mechanisms that best protects the well being of children.

To keep record of and ensure sustainable mechanisms of care that addresses the problem of children left without any parental care or guardianship

The research found out that there are very good initiatives of community based child care systems in Ethiopia. Some communities, despite financial constraints, have been mobilising idirs/Jemias to support OVSs for quite some time now. This has ensured that children grow up in their own vicinity.

The following issues however need careful consideration.

Coordination with community based child care options should be established by actors in inter-country adoption procedure, notably orphanages, so as to exhaust every available option to care for children locally.

Government and other relevant actors working towards the protection of children's rights should strive to strengthen the role of such community initiatives for alternative child care and that relationship between community-based child care service providers and orphanages should be forged and maintained.

Associations of different kinds (youth league, women's league, professional associations, development associations, social mahibers, and mahibere kidusan of the Orthodox church etc...) should join in the work of "finding local solutions to the problem of local children".

MoWCYA/Bureaus should use their structures, in collaboration with other partners, to reach the community at grass roots levels and educate different groupings on the need and importance of supporting vulnerable and orphaned children.

Coordination between MoWCYA/Bureaus and community based child care options should be established and strengthened to help the latter create effective arrangements within them, drawing upon good practices from across the country, to support children in their surroundings.

Inter-country adoption is unlikely to end since the number of children in need of a family far exceeds what the local alternative child care arrangements could accommodate. Therefore, the inter-country adoption process needs to be rectified as necessary in order to restore the integrity of the system and guarantee the protection of children's rights and welfare in this context. Efforts are also necessary to ensure that indigenous and community based mechanisms are promoted and supported above inter-country adoption. Indeed, the fact that inter-country adoption has characterised alternative child care in the country over the past few years, is a manifestation of

the weak efforts made to improve and increase indigenous care alternatives