

ADOPTION

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**EXECUTIVE SUMMARY:
HAITI: 'EXPEDITING' INTERCOUNTRY ADOPTIONS
IN THE AFTERMATH OF A NATURAL DISASTER ...**

International Social Service

*Information Document No 4 for the attention of the
Special Commission of June 2010 on the practical operation of the
Hague Convention of 29 May 1993 on Protection of Children and
Co-operation in Respect of Intercountry Adoption*

EXECUTIVE SUMMARY

Haiti: “Expediting” intercountry adoptions in the aftermath of a natural disaster ...”

There is broad consensus that, in the aftermath of a catastrophe, intercountry adoption is not a valid response, at least until conditions permit full family tracing efforts to be completed regarding the children potentially concerned. In countries such as Haiti, where many – in this case several hundred – adoption procedures had been at some point in “the pipeline” when disaster struck, a special problem is posed. Agreement has to be reached as to how to deal with cases at very different stages, ranging from those where an adoption order had been granted to those where matching had taken place and even those where the “adoptability” of the child had been only informally determined. All actors in the field bore the responsibility of establishing a policy in these respects that was consistent with international obligations and principles, national law, and the best interests and other rights of the children, as well as the rights of birth-parents.

As of 30 May 2010, at least 2,107 pipeline cases were processed following the earthquake on 12 January 2010, almost doubling the total number of Haitian children adopted in 2009. The USA alone accounted for approximately 1,200 cases whereas France, Canada, Netherlands and Germany arranged the transfer of around 850 children. About 50 children were sent to Switzerland, Belgium and Luxembourg. During this period Spain and Italy received the final authorisation for 9 children to leave Haiti, the last remaining cases from 2007, when they suspended adoptions.

	2003	2004	2005	2006	2007	2008	2009	2010 earthquake	Total
Canada	150	159	115	123	88	148	89	203	1,075
Belgium	7	6	4	1	0	3	1	14	36
France	542	507	475	571	403	731	651	489	4,369
Germany¹	NA	35	37	23	31	61	30	62	279
Italy	6	9	13	2	2	0	0	2 ²	34
Luxembourg	NA	NA	1	1	7	8	3	14	34
Netherlands	69	42	51	41	28	91	60	107	489
Spain	17	36	24	15	22	0	0	7 ³	121
Switzerland	9	7	8	10	12	4	NA	9	59
USA	250	356	231	309	190	301	380	1,200 ⁴	3,217
Total	1,050	1,157	959	1,096	783	1,347	1,214	2,107	9,727

Whilst in principle it is in the best interests of the child to expedite pipeline cases with an adoption judgement, fast tracking measures should nevertheless be carried out within a framework of international standards. Prioritising intercountry adoptions should not be at the expense of emergency relief efforts. Nor should they be undertaken in such a manner that children do not have sufficient time to recover in a familiar environment. Moreover, given the heightened risk of exploitation of children in the aftermath of a catastrophe, adequate identification and registration measures should be in place to avoid children being erroneously and illegally moved across borders.

For all other pipeline cases, that is those without an adoption judgment, hindsight would now teach us that the accumulation of heightened risks for children far outweighs the benefits of fast tracking activities. Such cases should only be expedited when there are ‘compelling’ health, medical or safety conditions’ necessitating their urgent evacuation.

¹ These figures are approximates provided by the Germany Federal Central Authority.

² Please see Section 5 for an explanation of the particular situation for Italy and Spain.

³ *Ibid.*

⁴ <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=6d5135f9b29d7210VgnVCM100000082ca60aRCD&vgnnextchannel=8a2f6d26d17df110VgnVCM1000004718190aRCD>.

Recalling that the intercountry adoption process in Haiti has long been renowned for its systemic abuses, corruption, lack of transparency and an inexistent monitoring system, in its earthquake-affected state, the system only further deteriorated. The flurry of “expediting” activities resulted in what one can only describe as chaos for all parties involved:

1. A competent body did not exist to ensure that internal procedures were complied with, so that for example, adoptive parents who had biological children were permitted to adopt children and children older than 16 were adopted in contravention of national laws. Over-approval of cases to be expedited is another example of this lacuna. A competent authority was not in place to monitor the large sums involved in adopting such a high number of children, given that on average in-country fees and charges can amount to at least 10,000 USD per child. The already fragile Haitian Central Adoption Authority (IBESR) was only further debilitated with the earthquake.
2. Neither Haiti nor the receiving countries were in a position to ensure that family reintegration measures and other domestic solutions were exhausted prior to implementing fast-tracking procedures, in other words, that the principle of subsidiarity was complied with. Genuine respect for this principle usually takes time and therefore it is concerning when babies as young as two months are adopted abroad. Such realities in Haiti are a clear warning that the principle has likely been breached.
3. Few efforts existed to confirm the adoptability of children, nor were children given an opportunity to be consulted or prepared before being transferred to other countries. Physically, children lacked appropriate clothing to confront the cold winter weather and on a psycho-social level, they were not prepared to meet their adoptive parents, many for the first time.
4. Prior to the movement of any child across borders, especially on a permanent basis, the consent of biological parents must be confirmed. This is all the more important in Haiti, where an estimated 80% of adoptable children have at least one biological parent. Moreover, while some biological parents had the fortunate opportunity to express their refusal to a proposed adoption, many others were deprived of giving or confirming their consent.
5. As States Parties to THC-93, all ‘receiving countries’ had obligations to ensure that this convention was applied in the emergency situation. Despite this responsibility, receiving countries failed to ensure that the adoptive parents were all eligible and suitable to adopt a child who had lived through a trauma, nor did they adequately prepare them.
6. In retrospect, to minimise the possible stress and trauma during the transfer period, it would have been judicious to delay any movement of children at least until the resumption of commercial flights – which were operational within weeks of the earthquake. This would have given adoptive parents the possibility to personally accompany children to their new homes and learn ‘first hand’ about the child’s country of origin.
7. Efforts of various countries to support Haiti during the emergency are commendable. However, given the need to ensure that development aid is well separated from intercountry adoptions, there may be cause for concern when aid is directed at rebuilding entire orphanages, which are also the ‘source’ of children, and financial support is provided to tribunals that process 90% of adoptions.
8. The lack of co-ordination among receiving countries in their approach to intercountry adoptions in Haiti is of concern. By continuing intercountry adoptions on a large scale, certain countries have sent an implicit message that they continue to accept the well-known failures of the Haitian system, rather than working together to address the systemic flaws.
9. Few Governments were adequately prepared to welcome the large groups of children at airports in terms of having professionals skilled in dealing not only with emergency situations but also with adoption issues. Reception conditions were deficient in that many families lacked privacy for their first meeting with professionals and children. The quality of post-adoption follow-up services being offered to families is also questionable.
10. The influx of legislative initiatives to expedite intercountry adoptions initiated by various ‘receiving countries’ in response to the earthquake is disturbing. As opposed to having legislative reform processes that are consultative and well developed, hasty emotional responses are likely to be detrimental to children’s rights. Many proposals have been based on misconceptions of which children are in need of adoption and reflect little understanding of the priority that must be given to domestic solutions.