

# **PROGRESSIVE IMPLEMENTATION PROPOSAL**

*Benefiting Panamanian Children Deprived of their Rights  
Through Law 61 and the 1993 Hague  
Intercountry Adoption Convention*

**Presentation, Analysis & Translation:  
Heart's Cry Children's Ministry**

# PROGRESSIVE IMPLEMENTATION PROPOSAL

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# **OVERVIEW: Progressive Implementation**

## OVERVIEW: Progressive Implementation

- Purpose of Proposal

This proposal outlines areas for further evaluation of Law 61 of the Republic of Panama in conjunction with the 1993 Hague Convention (“the Convention”), along with proposed methods to improve their functioning, so as to further the benefit to the children at risk in Panama. The purpose of the proposal is to highlight the current situation of Children Deprived of their Rights<sup>1</sup> in Panama and recommend areas of potential improvement, in order to support permanency amongst these children through either the reunification of children with their approved family members or through adoption, with primacy granted to national adoptions over intercountry adoptions.

It is of the utmost importance to uphold the children’s Fundamental Rights<sup>2</sup> and to apply the Best Interest of the Child standard<sup>3</sup> when making decisions associated with Children Deprived of their Rights. The Best Interest of the Child standard includes the following basic principles:

- \* children should grow up in a family environment;
- \* permanency is preferable to temporary measures;
- \* intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.

During this crucial time of change in the political structure of Panama, it is an excellent opportunity to evaluate the current situation in regards to Children Deprived of their Rights and thereafter make necessary improvements to the functioning of the governmental systems associated with these children. The information contained herein is meant to be an overview of the current situation of children at risk in Panama and the methodologies available for improvement. As a best practice standard, it is prudent to evaluate the current condition, implement improvements, and continue in measured intervals the evaluation and improvement process. Termed Progressive Implementation<sup>4</sup> by the Hague Guide to Good Practice, it essentially entails continuing the process of development and improvement to the current child welfare system over time and into the future.<sup>5</sup> Systems such as these are never “finished,” but are organisms able to be amended and improved.

Throughout this proposal, the guiding source of information referenced is the recently published Hague Guide to Good Practices (“the Guide”), which “draws on a number of sources to

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<sup>1</sup> “Children Deprived of their Rights” terminology is that used by Panama to describe both children that have been removed from their families for their own protection (including neglect, abuse or dependency issues) and those children that have been abandoned by their families.

<sup>2</sup> Hague Guide to Good Practice, §2.1 Ensuring adoptions take place in the best interests of the child and with regard for his or her fundamental rights, Paragraph 42: “A child’s fundamental right includes the following: \*to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;\* the child’s best interests shall be a primary consideration in all actions concerning children; \*non-discrimination of any kind, irrespective of the child’s or his parents’ or legal guardians race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status; and \*the right of a child who is capable of forming his or her own views to express these views freely and to have these views given due weight in accordance with the age and maturity of the child.” §2.1 further states: Paragraph 44. “In practice, Contracting States and Central Authorities should guard against the misuse or arbitrary interpretation of the best interests principle to override the child’s fundamental rights when applying this Convention.”

<sup>3</sup> Id at Paragraph 43.

<sup>4</sup> Id, §3.1 Progressive Implementation.

<sup>5</sup> Id at Paragraph 114.

advocate good practices in intercountry adoption.”<sup>6</sup> The Guide utilizes the Convention itself and its Explanatory Report as the primary sources of what must be considered as mandatory good practices, along with other approved documentation.<sup>7</sup> The Guide provides further guidance to Convention States<sup>8</sup>, so as to clarify minimum requirements that the States should be utilizing in order to be in compliance with the Convention.<sup>9</sup> The Guide is not in and of itself binding, nor does it modify the Convention; “however, all States are encouraged to review their own practices, and where appropriate and feasible, to modify them. For both established and developing Central Authorities, the implementation of the Convention should be seen as a continuing, progressive or incremental process of improvement.”<sup>10</sup>

Note that neither the purpose of this proposal nor the goal of our ministry is to facilitate intercountry adoptions. We have simply utilized the vast resources available through the Convention, as was drafted and based on international standards for orphan care and adoption. The resources and wealth of information available under Hague is tremendous due to the multitude of developed countries that are signatory to Hague, thus the best practice standards to be applied are based on this uniform set of standards assembled from the top international medical specialists and professionals associated with orphan care. Also, these standards can be applied to the area of Reunification and National Adoptions (see page 31) due to the high level of expertise and knowledge utilized in assembling this information.

Since approval of the Convention, the years have shown numerous challenges faced by Convention States as they attempt implementation of the Convention, thus evidencing a need for implementation guidance and assistance. This is particularly true for Countries of Origin.<sup>11</sup> Based on this knowledge, there have been numerous meetings to address this issue, the outcome of which was the formation and publication of the Guide. Contained within this Proposal are suggested ways that Heart’s Cry Children’s Ministry can assist in the Progressive Implementation Plan foreseen under the Convention and explained within the Guide. The information contained herein is not of personal opinion or bias. This information is strictly reiterating those minimum standards contained within the Convention and the Guide, along with current research in the area of orphan care and adoption, thereafter suggesting methods of implementation in key areas. These suggested areas for review include but are not limited to the following: compliance with Law 61, use of a uniform set of Guidelines in the orphan care and adoption field, cooperation between authorities, expeditious procedure implementation, national adoption awareness campaign, review of stance on direct adoptions and pipeline cases, appropriate resources and staffing of the Central Authority, efficient utilization of statistical data through electronic case management system and accurate census of the Children Deprived of their Rights, and use of external resources for progressive implementation in Panama.

- Current Reality in Panama

It is estimated that there are approximately 50,000 Children Deprived of their Rights in Panama.<sup>12</sup> The reality in Panama is that it usually takes many years to perform the family investigations for children placed in Temporary Care, even though the law prohibits this practice

<sup>6</sup> Hague Guide to Good Practice, §Introduction, Paragraph 7.

<sup>7</sup> Id.

<sup>8</sup> “Convention States” are those countries who are signatory to the Hague Convention.

<sup>9</sup> Id, §3.7 Minimum Standards.

<sup>10</sup> Id, §Introduction, Paragraph 11.

<sup>11</sup> Id, §1.2 Brief history of the Convention, Paragraph 24. Note that “Countries of Origin” refer to those countries that send children to other countries to be adopted pursuant to international standards.

<sup>12</sup> Statistics from investigation by SOS Children’s Villages in Panama.

and expressly states deadlines that observe the Best Interest of the Children principles. Law 61 states that after family members have unjustifiably not kept contact with the child over a period of 3 months, or have repeatedly eluded to perform their duties during a period of 6 months, the family rights are to be terminated.<sup>13</sup> However, in current practice the social workers continually visit family members over extended periods of time and grant them multiple chances to take the child into their homes. The work is also being performed in duplicate and often triplicate, as there is a lack of trust amongst the differing governmental bodies and refusal to accept each other's work product. The common result of this disconnect in the government is that the child waits in an orphanage for many years, then might or might not be returned to an extended family member the child has never met. In the majority of instances, an appropriate investigation is never made of these extended family members, who often times have unsafe living conditions or have bad intentions to subject the child to servitude or human trafficking. Often times the child is abandoned all over again because the extended family member never really wanted them in the first place. The tragedy is that these vital years of Panamanian children's lives are passing away in institutions (supposedly a Temporary Care remedy) instead of permanency being established during the most crucial years of their lives. These children could have been placed in approved family member's homes or in waiting adoptive families within the 6-month deadlines. The current government is also giving financial stipends to unsuitable, estranged family members to offer an incentive for them to take custody of the child. This occurs even when these family members have frequently shown no interest in the child for the first years of their life, despite repeated requests from social workers, and the children do not know them. These practices are especially alarming in light of the extremely high number of victims of sexual abuse amongst family members in Panama.<sup>14</sup>

While case investigations in Panama take place and statuses are determined over years, babies, children and adolescents are placed in orphanages, as Foster Care is not currently a viable option. Growing up within an institution deprives a child of their basic right to a family and to the individualized attention which every child is entitled. Clinical studies indicate that institutionalized children are deprived of an adequate environment to gain sufficient cognitive and emotional development, resulting in a deficiency in the physical growth, IQ, brain development, and emotional/behavioral development. Studies confirm that although children reared in an institution suffer from greatly diminished development, those who are placed in Foster Care experience significant improvement in all those areas. But the reality is that in Panama there is not currently a proper Foster Care system and in an attempt to have children de-institutionalized, a main part of Panama's philosophy is to place orphans in the homes of estranged family members instead of safe, approved families. Again these practices often lead to the increased likelihood of sexual abuse, child pornography, and human trafficking. Orphans worldwide are the most susceptible victims of the sex trade; therefore the placement of these children with a fit caretaker should be meticulously regulated. While Foster Care is not ever to be considered a permanent solution, it is a better alternative to institutionalization. The effects of institutionalization and benefits of foster care are addressed further below.

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<sup>13</sup> Law 61, Article 88. Amendment of Article 342 of the Family Code.

<sup>14</sup> This information is based on interviews conducted by HCCM at random, finding unusually high numbers of sexual abuse amongst family members, though there are currently no statistical information available in Panama despite repeated attempts to locate such data.

- HEART'S CRY CHILDREN'S MINISTRY

- Who We Are

Heart's Cry Children's Ministry (HCCM) is a non-profit organization under 501(c)3 of the United States Internal Revenue Code, and is currently in the process of registration in Panama (file submitted August 2008). HCCM was founded to create efficiencies amongst governments and Temporary Care facilities worldwide, for the benefit of orphans. We are working towards the following goals: provide consulting services to governments pertaining to compliance and progressive implementation of the Hague Convention and furthering of domestic adoptions, provide practical resources to governments and Temporary Care facilities as they work through the backlog of cases; organize programs to educate and train the staff of the Central Authority; obtain permanency for children and create greater efficiencies for orphan care. Our heart's cry is to see God lift orphans out of the pit of despair and give them a firm place to stand. (Psalm 40)

- Why We Care

HCCM was founded by Matt and Misty Hedspeth. After visiting Panama in early 2008 for purposes of their own adoption, they realized first-hand the effects that Hague implementation was having on international adoption world-wide. While Hague was excellent in theory, third world countries are experiencing great difficulties in maintaining the minimum requirements of the Convention. Misty had become familiarized with the Hague Convention during her pro bono aid of a U.S. adoption agency, as she assisted them to gain international accreditation under Hague at the highest level. During their multiple visits to Panama they observed many inefficiencies with the adoption process and orphan care systems in Panama, and the Lord began giving them the desire to dedicate their lives to helping the Children Deprived of their Rights in Panama. The past year was spent investigating the current processes amongst the Central Authority and private institutions in Panama. They were able to learn a great deal about Panama's Termination of Parental Rights process, national and intercountry adoption processes, and orphan care systems since arrival to Panama in 2008. After this investigative period, they are excited about the opportunity for HCCM to help implement many needed changes. Misty's experience and knowledge in the United States as a family law attorney working in international adoption law, as well as her experience with cases of abused and neglected children, are a useful tool to be used to assist the children of Panama. Matt's experience in developing large scale real estate projects and managing a large company with many employees is also useful in the area of practical implementation when dealing with budgetary constraints. The Lord has blessed them with an abundance of contacts in the field of orphan care that are anxious to work for the betterment of the system in Panama, so as to benefit the children at risk in Panama.

HCCM is in no way connected with adoption agencies, nor do they accept funding from adoption agencies. There is no incentive or motive for intercountry adoptions by HCCM. The theme of the ministry is to work with governments to improve their processes, so that children can be placed by these governments in loving, safe homes as quickly as possible.

# **EFFECTS OF INSTITUTIONALIZATION: Goal of Permanency**



## EFFECTS OF INSTITUTIONALIZATION: Goal of Permanency

- Developmental Significance of Institutionalization

**§6.1.1 Child's entry into care: identification of children and families in need:** 256. *The first paragraph of the Convention Preamble contains the principle that: "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."*

257. *This principle underlines the importance of the family in the nurturing and development of the child. This is in recognition of the right of the child to a family, where his or her personality is formed and developed.*<sup>15</sup>

The Convention and Guide underscore throughout their entirety the need for Permanent Parental Care in a child's life. The recurring theme is due to decades of research on the topic of institutionalization and the extreme negative effects it has on children. There are literally thousands of articles and numerous experts on this topic. While methods of treating institutionalization may vary amongst these professionals, they all agree that the sooner a child is placed in Permanent Parental Care the better off the child will be. It is standard scientific knowledge that institutionalization is linked to developmental problems amongst children. Permanent Parental Care can be achieved through: reunification with family (that are adequately reviewed and approved), national adoption and intercountry adoption. The professionals further agree that institutionalization is only to be used as an absolute last resort. A more detailed description of the effects of institutionalization is found in this section below; however, in general, the effects of institutionalization is as follows:

- Social and Behavioral Abnormalities (aggressive behavioral problems, inattention/hyperactivity, delays in social/emotional development, syndromes mimicing autism);
- Poor Growth (children outside of family care lose 1 month of growth for every 3 months while living in an institution);
- Deficit IQ (children entering family care before 24 months of age display significant improvement in IQ, while those entering family care after 24 months only display slight improvement in IQ);
- Diminished Brain Activity (children living outside of family care have lower levels of brain activity across all regions of the brain, while those who are subsequently placed into family care demonstrate an increase in IQ and brain development); and
- Emotional Reactivity (children living outside of family care demonstrate a significant deficiency in sensory perception including responses to and understanding facial emotion).<sup>16</sup>

According to Dr. Dana Johnson, MD, PhD, a physician specializing in institutionalized children:

**An orphanage is a terrible place to raise an infant or young child.** Lack of stimulation and consistent caregivers, suboptimal nutrition and physical/sexual abuse all conspire to delay and sometimes preclude normal development. All institutionalized children fall behind in large and fine motor development, speech acquisition and attainment of necessary social

<sup>15</sup> Hague Guide to Good Practices, §6.1.1 Child's entry into care: identification of children and families in need, Paragraphs 256-257.

<sup>16</sup> Joint Council Summary Report on the Bucharest Early Intervention Study, 2009.

skills. Many never find a specific individual with whom to complete a cycle of attachment. Physical growth is impaired. Children lose one month of linear growth for every three months in the orphanage. Weight gain and head growth are also depressed. Finally, congregate living conditions foster the spread of multiple infectious agents. Intestinal parasites, tuberculosis, hepatitis B, measles, chickenpox, middle ear infections, etc., are all found more commonly in institutional care settings... Many children, especially those who spent considerable time within institutional care settings, continue to show delays in language and social skills, behavioral problems, and abnormalities in attachment behavior even after several years in their adoptive home. In most situations, areas of delay respond to appropriate treatment, but resolution of the problem may take time and expert guidance. In some situations, therapy will improve but cannot correct the fundamental problem; e.g., fetal alcohol exposure. In these situations, the challenges will be life-long.<sup>17</sup>

Thus, the care that children receive in the early years of their childhood is an essential factor in their development. Children who have been neglected early in life experience effects that are long lasting, if not irreversible.<sup>18</sup> For these reasons, it is important that all agencies and workers involved with Children Deprived of their Rights, including the staff of the Central Authority, social workers and psychologists dealing with these children, orphanage caregivers, and judges, be trained in the special needs of institutionalized children. Once empowered with the information on the long-lasting effects of institutionalization, they can better understand the importance of finding Permanent Parental Care in a timely manner in order to achieve the Best Interest of the Children.

- Physical Effects of Institutionalization

There are many physical and medical problems linked to the length of institutionalization prior to placement in a permanent family. As mentioned above, the effects of institutionalization are measurable and many scientific studies have been performed on this subject. One such study performed by The English and Romanian Adoptees (ERA) Study Team compared children adopted from Romania before the age of 2, children adopted from Romania before 6 months of age, and U.K. children adopted at comparison ages.<sup>19</sup> The researchers found “severe developmental impairments (below the third percentile in height, head circumference and cognitive abilities) in about half of their sample of Romanian children placed into permanent families before the age of 2. However, those children who were adopted before 6 months of age nearly caught up with a comparison U.K. sample when physical growth and cognitive level were measured. Those adopted after 6 months of age but prior to 2 years also made gains but were significantly delayed as compared to U.K. adoptees.”<sup>20</sup> Follow-up results several years later continued to reflect these findings. It is imperative to note the 6-month dividing line found in this study, especially in light of the current situation in Panama and the 6-month deadline contained within Law 61. The rapid removal from Temporary Care and placement into beneficial Permanent Parental Care is crucial, with the goal being placement prior to the 6-month mark.

Further studies indicate similar findings, including direct correlations between the amount of time spent in orphanages with shorter height, smaller stature, lighter weight, delays in motor, personal-social and language development, and increased medical problems.<sup>21</sup> In fact, findings

<sup>17</sup> “Adopting an Institutionalized Child: What are the Risks?” (in part), Dana Johnson, MD, PhD, <http://www.adoption-research.org/risks.htm>.

<sup>18</sup> Id.

<sup>19</sup> <http://www.adoption-research.org/awards.html>, English and Romanian Adoptees Study Team section.

<sup>20</sup> Id.

<sup>21</sup> Id., Canadian-Romanian Adoption Study.

indicate that it was the orphanage experience, rather than prenatal or perinatal experience, that was responsible for these developmental problems.<sup>22</sup> Further, visual problems have been directly linked to sensory-deprived settings found in orphanages, along with audio and language development deficits.<sup>23</sup> In total, there are varied ways that institutionalization affects children physically. Every method possible must be utilized to avoid institutionalization, especially in the early formative years of a child's life.

- Physical Effects: Brain development

Institutionalization actually affects the physical formation and development of a child's brain. Groundbreaking research by Dr. Harry Chugani utilized brain imaging on institutionalized orphans to detect sensitive regions in the brain that were literally reduced in size as well as activity.<sup>24</sup> Diana Bales, PhD, describes the formation and effect as follows:

"The early years are critical for later life. For years, scientists have known that what happens--or doesn't happen--during the first few years makes a big difference in a child's later life. Babies who do not get enough love and attention in infancy are less likely to be well-adjusted adults. Scientists recently have learned even more about how important the early years can be. Thanks to new technologies, we now have a much clearer idea of how the brain functions at birth. And we've found out that the brain goes through some dramatic changes even after birth.

A baby is born with more than 100 billion brain cells. Some of these cells are already connected to other cells at birth. These connections regulate the heartbeat and breathing, control reflexes, and regulate other functions needed to survive. But much of the brain's wiring does not happen until after birth. In the first months and years of life, brain cells form connections in many parts of the brain. These connections are the complex circuits that shape our thinking, feelings, and behaviors.

During these early years, the brain cells make many more connections than the baby will use. The developing brain is a little like a fertile garden. When we plant a garden, we want the crops that we planted to grow and thrive. But when weeds start to grow, there is less room for the plants we want to grow. By weeding out the plants we don't want, we allow more room for the crops to grow. The brain has a similar "weeding" process. By about age 3, the brain cells have made many more connections than the child will ever need. But the brain is also efficient at weeding out the connections. It keeps track of the connections that the baby uses most. In time, the brain gets rid of the connections that it does not use regularly. The least-used connections are weeded out so that the most-used ones have more room to grow.

The Importance of Experience: **From the moment a baby is born, every experience taken in by the five senses helps build the connections that guide development. No two brains are alike! Each child develops individual pathways to deal with his or her experiences.**<sup>25</sup>

The above description is excellent in describing the natural "pruning" or "weeding" that takes place in our early brain development, so as to prune brain pathways and prevent overwhelming clutter and thus further development of those necessary pathways. This allows for proper brain functioning, in normal growth instances. However, "if a trait or

<sup>22</sup> Id.

<sup>23</sup> <http://www.adoption-research.org/the-post.html>

<sup>24</sup> "Creating Safe Places for our Children," Karyn Purvis, Ph.D., & David Cross, Ph.D., April 2005, [www.tcu.edu](http://www.tcu.edu).

<sup>25</sup> "Building the Baby's Brain: Much of the Brain's Wiring does not happen until after birth", Diana Bales, PhD, <http://www.fcs.uga.edu/pubs/current/FACS01-1.html>.

process is not mirrored by the parent during infant-parent interactions, it may be pruned away. Remorse, for example, often used as a true mark of sincerity, is a complex brain-based socio-emotional capability that may be pruned away if not activated by loving empathic responses by parents. Children that have not been cared for properly may have lost this ability.”<sup>26</sup> Institutionalization thus has a profound effect on brain development of orphans. Limited sensory input, frequent changes of caretakers and lack of the “mirror” process mentioned above, all work to cause deficiencies in brain development.

- Brain Development and Behavioral Effects

The most troublesome problems reported by parents post-adoption are behavioral, emotional, or social problems.<sup>27</sup> There are many different forms that these problems can take, but first it is important to understand the nature of how brain development affects a child biochemically and thus guides current and future behaviors. As stated by Karyn Purvis, Ph.D., and David Cross, Ph.D., of the Institute of Child Development of Texas Christian University in a compilation of their articles and research,

“Children who don’t receive touch (hugging, rocking, holding) during their early months of life may have alterations in their neurochemistry which induce decreased levels of serotonin in addition to elevated levels of cortisol. A casualty of the runaway stress response is the overproduction of adrenaline, the stress hormone produced by adrenals. We find in our research that young children, under the age of ten, who have been harmed or neglected have excessive production of adrenaline. In addition, we have found that as these children from hard places become about ten or eleven years of age the adrenals “burn out” because they have pumped so hard, for so long... Sadly, children who come from emotional war zones may ultimately develop neurochemistry akin to that of Viet Nam war veterans (Posttraumatic Stress Disorder or “PTSD”)... The overproduction of adrenaline, for example, is associated with withdrawn behaviors, depressed behaviors, and anxious/afraid behaviors (“acting-in” behaviors). And those same children, by the age of 9 or 10, are vulnerable for adrenal depletion that is associated with aggression, delinquency and other externalizing behaviors (“acting-out” behaviors)... Inability to trust, lack of attachment to safe caregivers, over production of excitatory brain chemicals, and underproduction of serotonin and other calming brain chemicals – these are the mechanisms that actually drive mental illness in many children.”<sup>28</sup>

- Posttraumatic Stress Disorder (PTSD)

Institutionalized children tend to suffer from a variety of disorders associated with diminished brain development and resulting behavior problems. An example is Posttraumatic Stress Disorder, which the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*<sup>29</sup> describes as a constellation of symptoms that stem from exposure to threatening or frightening experiences. A person suffering from PTSD persistently reexperiences the traumatic events, develops impairments in functioning, avoids and numbs to cope, and experiences persistent arousal, including irritability, insomnia, and/or hypervigilance.<sup>30</sup> Described further, “PTSD, previously referred to as “shell shock” or “battle fatigue, was developed out of literature on the effects of war. Exposure to prolonged trauma

<sup>26</sup> *The Whole Life Adoption Book*, Schooler & Atwood (2008), 140.

<sup>27</sup> <http://www.adoption-research.org/awards.html>, Canadian-Romanian Adoption Study.

<sup>28</sup> “Creating Safe Places for our Children,” April 2005, and “Caught Between the Amygdala and a Hard Place,” Nov/Dec 2006, (combination of two articles), Dr. Purvis and Dr. Cross provide an excellent detailed explanation of the effects on brain functioning in these two articles, [www.child.tcu.edu](http://www.child.tcu.edu).

<sup>29</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. Text revision (Washington, D.C.: American Psychiatric Association, 2000), 463-468.

<sup>30</sup> *Id.*

over time or early in life, however, can have an even more pervasive effect on development [than the literature] on PTSD describes. According to Bessel van der Kolk and Christine Courtois, PTSD as a diagnosis is not broad enough to capture the experiences of many victims of prolonged trauma, including profound changes in feelings of safety, trust and self-worth.”<sup>31</sup> PTSD symptoms are common amongst institutionalized children and create long lasting if not permanent effects.

▪ Bonding and attachment disorders

The New York Attachment Center explains attachment disorders as follows<sup>32</sup>:

The theory of attachment was developed by John Bowlby and Mary Ainsworth from the 1940's through the 1980's. Attachment is the reciprocal bond between child and caregiver that is established early in life. This relationship has profound and lasting effects on all aspects of development including neurological, physical, emotional, cognitive, behavioral and social. The early attachment relationship:

- Lays the foundation for our basic ability to trust
- Acts as a model for future emotional relationships
- Develops our ability to regulate arousal, stress and trauma
- Informs our sense of identity, self-worth and competency
- Lays the foundation for pro-social morals such as compassion, empathy and conscience

Attachment is primarily established in the first three years of life as the caregiver fulfills a child's basic needs and provides touch, eye contact, smiles and positive affective engagement. Through an active and constant cycle of bonding, repeated thousands, if not millions of times in the first few years of life, a child develops a positive internal working model (I am loveable, worthwhile, my needs are met, I am safe), establishes a sense of trust and security and learns how to organize their reality. Furthermore, it is during this cycle and stage in life that the child's brain (specifically the orbital frontal cortex and limbic systems, which regulate emotion, arousal, social skills and ultimately effect communication skills) develops.

*What causes attachment disorder?* **Attachment Disorder manifests in children who have suffered some sort of chronic neglect and/or abuse in the first three years of life.** While the disorder is most often associated with physical and/or sexual abuse, pervasive neglect (such as infants neglected in orphanages), maternal prenatal drug or alcohol abuse, persistent changes in caregivers or the traumatic loss of a primary care giver.<sup>33</sup>

*What does attachment disorder look like?* Attachment issues exist on a broad continuum between mild to severe. The child of an irresponsible birth mother, for example, who had limited needs met but exhibits emotional or behavior problems may have mild to moderate attachment issues. On the other hand, a child who has suffered chronic abuse or neglect and demonstrates irrational emotional, social or physical behavior, particularly towards their primary caretaker, may be diagnosed with Reactive Attachment Disorder (RAD). Not only do these children believe on a core level that they must avoid intimacy and stay in control as a matter of life or death (literally!), they also develop a chronic inability to regulate emotions, impulses and behavior. As a result they are often diagnosed with AD/HD, Conduct Disorder and/or Oppositional Defiant Disorder.

<sup>31</sup> *The Whole Life Adoption Book*, Schooler & Atwood (2008), 145.

<sup>32</sup> <http://www.newyorkattachmentcenter.com>.

<sup>33</sup> Id.

*What are the most common symptoms of attachment disorder?* While researchers continue to identify and discern various subtypes of the disorder--all of which come with their own particular set of symptoms--the most common are excessive tantrums, poor self-regulation, manipulation, control, persistent defiance, poor cause-and-effect thinking, depression and an inability to experience intimate bonds.<sup>34</sup>

- Other effects of institutionalization

Institutionalized children also are reported to have one or all of the following problems:

**Eating problems:** Institutionalized children often exhibit eating problems associated with refusing to eat solid foods. This is attributable to orphanage life, due to lack of environmental opportunity, and often improves over time when placed into an adoptive home.<sup>35</sup> Of more concern is the issue of excessive eating and hoarding tendencies associated with food. These continue years, if not decades, post-adoption. The children in institutions learn to eat according to their institutional meal schedule, not according to when they are experiencing feelings of hunger. As a result, these children must “learn when to stop eating.”<sup>36</sup> The pervasiveness of this issue is difficult to describe. These excessive eating tendencies are “wired” in these children and can create numerous and varied physical problems in later years.

**Sleeping Problems:** Also commonly reported by adoptive parents of institutionalized children are sleeping problems. These children tend to lie quietly in their beds without signaling wakeup. Again, this seems to be a behavior directly attributable to orphanage life, where lying quietly in bed was the most common activity for young children, and where no one would have come to the children if they had cried or called upon awaking.

There are hosts of other physical, mental and emotional problems associated with institutionalization. For example, Sensory Processing Disorder is an enormous problem amongst institutionalized children. Also noteworthy are the visible effects on institutionalized children, such as the flat spots on the back of their heads and crossed eyes associated with lack of holding babies during infancy. However, the above items are meant to serve as an introduction to the wide and varied negative effects that are directly linked to institutionalization of children. The majority of these negative effects have been witnessed by staff members of HCCM during the investigational process of institutionalized children in Panama, or reported to staff members by adoptive parents in Panama.

- Importance of Permanency

In the Joint Council on International Children’s Services Summary Report, titled “The Hague Convention’s Guide to Good Practice – Permanent Family Care vs. Temporary Care”, international standards regarding the priority of permanency was reiterated:

Best interest principles (Best Interest of the Child) as articulated in the United Nations Conventions on the Rights of the Child (UNCRC) and the Hague Convention on Intercountry Adoption (The Convention) gives preference to the placement of a child into a permanent family (Permanent Parental Care) vs. placement into a Temporary Care setting such as Foster Care, community care and institutional care. The Convention also **urges States to**

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<sup>34</sup> Id.

<sup>35</sup> <http://www.adoption-research.org/chapter3.htm>

<sup>36</sup> Id.

**ensure that children are moved into permanent family placements as quickly as a proper consideration of the child's best interests allow.**

Through mislabeled "permanency planning", children are often placed in unsupervised foster care homes, unregulated community centers or placed with member of the extended family members without appropriate assessments as to the safety of such placements. **In countries with inadequate child protection systems, few if any laws or regulations sufficiently protect children from servitude, abuse or neglect by foster families or extended family members.**<sup>37</sup>

Studies show that once troubled children from institutionalized backgrounds were placed in a permanent home they were able to make great advancements in attachment rich, sensory rich environments, evidencing dramatic positive behavioral and attachment gain.<sup>38</sup> Studies performed by the English and Romanian Adoptees Study Team proved that once children were placed in permanent homes they started to quickly catch up with their cognitive and physical development, and that the recovery was deeply connected to how early in life they were placed into permanency.<sup>39</sup> Thus, not only is it in the Best Interest of the Child with relation to their physical, cognitive and socio- emotional development to be placed in Permanent Parental Care at the shortest time possible, it is also imperative to comply with the Convention standards as stated above. "Permanent family care is the preferred alternative for children living outside of parental care. Permanent family placement, including intercountry adoption, should not be delayed while attempting to enact long-term reform of a childcare protection system. States should monitor the length of time children remain in temporary care".<sup>40</sup>

- Application to children in Panama

In order to comply with the established Best Interest of the Children principles, Law 61 of the Republic of Panama clearly states that family investigations should be completed and a status declared within 6 months. Nonetheless, the reality is that Panama is not adhering to various aspects of this law or the Convention principles, of which Panama became a signatory in 2005. As a result, children are being institutionalized for years beyond belief. The result is a generation of "institutionalized children" in Panama, close to 50,000 and counting. It is not only in the best interest of these children to act promptly, but also in the best interest of the Republic of Panama. Without intervention, the future crime statistics will evidence the inaction for Children Deprived of their Rights. Institutionalization has direct links to delinquency which, if not appropriately addressed, turns into the inevitable future crime statistics for a country once the children age out of Temporary Care settings. If not addressed by this government, there will be long-term effects in Panama. Further, decreasing institutionalization is a short-term cost savings advantage to the Republic of Panama, in that the payments to institutions can be greatly reduced by way of national and intercountry adoptions. Foster Care is also a more cost effective alternative than institutionalization. The negative effects of inaction are profound, yet the positive results of addressing the failing system now are encouraging. The sooner the problem is addressed, the greater the benefit to the children and the Republic of Panama.

<sup>37</sup> Joint Council Summary Report: "The Hague Convention's Guide to Good to Good Practice – Permanent Family Care vs. Temporary Care," 2009.

<sup>38</sup> "The Hope Connection: A Place of Hope for Children From the "Hard Places," Purvis & Cross, Summer 2005.

<sup>39</sup> <http://www.adoption-research.org/chapter3.htm>.

<sup>40</sup> Joint Council Summary Report: "The Hague Convention's Guide to Good to Good Practice – Permanent Family Care vs. Temporary Care," 2009.

“Given that the Convention and accompanying Guide call for permanent family care as the preferred option, States [i.e., the Republic of Panama] and NGO’s should shift its resources away from temporary placements and into permanent family care through domestic and intercountry adoptions. The allocation of resources should be directed at developing professional social service providers, child protection laws, public relations campaigns and oversight capacity for both domestic and intercountry adoption.”<sup>41</sup> Methods of implementing necessary reform in these areas are addressed in the following sections.

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<sup>41</sup> Id, page 2.



## **TEMPORARY CARE MEASURES: Foster Care**

## TEMPORARY CARE MEASURES: Foster Care

- Value of Foster Care as a Temporary Care Measure

### **§6.3.1 Reasons for temporary care**

285. Children may be placed in temporary care for a number of reasons and for different periods of time. For example:

- during a family crisis, when the parents are unable to care for the child;
- to protect the child from a violent or abusive family situation;
- while the family receives counselling pending reunification;
- if the child is abandoned, and attempts are made to locate the family;
- as an interim measure while permanency planning is undertaken;
- as an interim measure before a declaration of adoptability is made;
- if the parents are deceased, or have been found unfit to care for the child.

286. The temporary care may be in an institution or in foster care. **States should monitor the length of time children remain in temporary care.** In some countries, children are left in institutions by their families while they are unable to care for them. The intention may be to leave the children only temporarily, and the parents are expected to return to reclaim their child. Unfortunately this may not happen. The child is left in limbo. The institution, expecting the parents to return, takes no action to find permanent family care for the child who may then remain in the institution for years. Where children will not be reunited with their families, **permanency planning should be undertaken as quickly as possible. In the majority of cases, long-term institutionalisation is not in the best interests of children.**<sup>42</sup>

The utmost importance is to place a child in a permanent loving home at the earliest date possible. This is a foundational principle in international orphan care, as well as a fundamental Hague principle<sup>43</sup>. The reality is that Children Deprived of their Rights are often removed from their homes for their own protection or are relinquished to the care of the government under abandonment scenarios. Foster Care is a temporary living arrangement for abused, neglected, and dependent children who are in need of a safe place to live when their parents or another relative cannot or will not take care of them. Often their families face issues such as illness, alcohol or drug addiction, or homelessness. Foster families are individuals that are recruited, trained, and licensed to care for these children temporarily. During this temporary period, biological families are often times working with social work professionals to resolve their family issues with the goal of reunification, or the social work professionals are working on the family investigations to determine adoptability. Relatives may also be licensed as foster parents during these temporary type situations. Foster Care is an essential transitory care setting for children who are waiting to be placed into Permanent Parental Care. It provides a family setting for abandoned children allowing them to form necessary bonds with a caretaker for the stimulation of early childhood development, as discussed in detail above (See Page 9).

There are over 50 years of comparison studies that compare children in Foster Care to those in institutions, all which find children in Foster Care developing more favorably.<sup>44</sup> The Bucharest Study, which began in 2000 with results posted in 2008<sup>45</sup>, was the first randomized trial of

<sup>42</sup> Hague Guide to Good Practice, §6.3.1, Reasons for temporary care, Paragraphs 285-286.

<sup>43</sup> Id, §6.1.1, Child's Entry into care: identification of children and families in need.

<sup>44</sup> <http://www.crin.org/docs/PPT%20BEIP%20Group.pdf>.

<sup>45</sup> <http://clinicaltrials.gov/ct2/show/NCT00747396>.

Foster Care as an intervention to the deprivation children face as a result of institutionalization.<sup>46</sup> The Bucharest Study examined the negative effects that institutionalization has on the cognitive and behavioral development of young children. The study was to assess whether Foster Care can be the proper alternative to institutionalization and also whether Foster Care can remediate the effects of institutionalization. According to the Joint Council Summary Report on the Bucharest Early Intervention Study,

The Bucharest Study indicates that institutionalized children were developmentally delayed in every measured domain, but it also indicates that placing these children in foster care will allow for great improvements. **The main findings of the study confirmed that children reared in institutions suffer from greatly diminished development, and those who are in foster care experience significant improvement in cognitive, emotional, and behavioral development. One of the main findings of the study concluded that, “as a group, children randomly assigned to foster care experience a significant gain in cognitive function.” In conclusion, “the younger the child is when placed in foster care, the better the outcome.”**<sup>47</sup>

It is very important to reiterate that Foster Care is designed to be only a temporary setting for children until the goal of reunification or adoption is achieved. Foster Care is strictly a better alternative for Children Deprived of their Rights than the Temporary Care measure of institutionalization, but it is never a permanent solution.

#### **§2.1.1 Subsidiarity**

*51. \* Finding a home for a child in the country of origin is a positive step, but a temporary home in the country of origin in most cases is not preferable to a permanent home elsewhere.*

*\* Institutionalisation as an option for permanent care, while appropriate in special circumstances, is not as a general rule in the best interests of the child.*

*53. It is sometimes said that the correct interpretation of “subsidiarity” is that intercountry adoption should be seen as “a last resort”. This is not the aim of the Convention. National solutions for children such as remaining permanently in an institution, or having many temporary foster homes, cannot, in the majority of cases, be considered as preferred solutions ahead of intercountry adoption. In this context, institutionalisation is considered as “a last resort.”*<sup>48</sup>

It is absolutely imperative to note that Foster Care is in no way a permanent care alternative for these Children Deprived of their Rights. This is simply a lesser of two evils, in comparison to the institutionalization of children. However, in the event of a required removal of a child from their family and awaiting Permanent Parental Care, Foster Care is proven to be the better alternative to institutionalization. Foster Care is proven to reduce the effects of institutionalization, including but not limited to: social and behavioral abnormalities, poor growth, deficit IQ, diminished brain activity, and emotional reactivity. (See page 9)<sup>49</sup> The research shows that children living outside of family care should be placed into family care at the earliest age possible. Early placement into family care results in the best outcome for the child.

<sup>46</sup> The participants of the study were an institutionalized group and a non-institutionalized group. The trial consisted of 136 institutionalized children, with no pre-existing medical conditions, between 6 and 31 months, with the average age of 22 months. Of those 136 children, 68 were randomly assigned to remain in the institution, and 68 were assigned to foster care. The non-institutionalized group was used as a control group, and consisted of 72 children who were never institutionalized. The trial consisted of an assessment of physical development, language, social functioning/social-emotional development, environment, cognition, temperament, attachment, brain function, and mental health problems. (Joint Council Summary Report on the Bucharest Early Intervention Study, 2009)

<sup>47</sup> Id., 2009 (bold and underline added for emphasis).

<sup>48</sup> Hague Guide to Good Practice, §2.1.1 Subsidiarity, Paragraphs 51, 53.

<sup>49</sup> Joint Council Summary Report on the Bucharest Early Intervention Study, 2009

Thus, the recommended Hierarchy<sup>50</sup> for the placement of children currently living outside of Permanent Parental Care, based on the core principal Best Interest of the Child, the UNCRC, the Hague Convention, the Hague Guide to Good Practice, and Law 61, is as follows:

1. Family Reunification
2. Permanent Guardianship by Extended Family Members
3. Domestic Adoption
4. International Adoption
5. Foster Care or Group Home
6. Other Types of State/Private Care (with absolute last resort of institutionalization)

- Amendment to Law 61

Currently, Article 94 of Law 61, which is the Amendment of Article 496 of the Family Code, allows for the Judiciary to place Children Deprived of their Rights with a family or in a foster home for an interim period of six months.<sup>51</sup> Article 94 also implies that Foster Care or Substitute Family Care should only be utilized in “special difficult circumstances.”<sup>52</sup> Based on the above mentioned evidence, as well as generally accepted principles of orphan care, this law should be amended to remove the six month time frame and to be placed in order of priority over institutionalization as the preferred method of Temporary Care, thus eliminating any restrictions on the type of child or circumstances around placement into Foster Care.

It is also in the Best Interest of the Child to have the minimum number of placements as possible within the Temporary Care system. There is actually a direct correlation between multiple placements, i.e., changes in the Temporary Care of Children Deprived of their Rights, and delinquency of these children, as well as mental and emotional instability.<sup>53</sup> In order to serve the developmental needs of the child, the less changes in Temporary Care (foster homes or moves within institutions), the better the outcome for the child. Article 94 should be amended to reflect this reality.

- Guideline Procedures for Privatized Foster Care

**§6.3.2 Facilities for temporary care**

*287. Some States allow only public authorities to operate temporary care facilities. These are generally funded by the State itself, although contributions by other organisations may be accepted to assist in operating those facilities. In many States, arrangements with private orphanages and privately run foster care systems have developed because of the absence of government-funded alternatives. In other States, non-governmental organisations may be granted licenses to operate adoption programmes in exchange for sponsorship of particular orphanages or programmes.*

*288. Whether child care and protection systems and services are implemented by government bodies or through the use of private bodies, States should be careful to ensure the integrity of the child care and protection system. In reviewing the funding and operation of child care facilities, both public and private,*

<sup>50</sup> Based on Hierarchy recommended Id, page 2.

<sup>51</sup> Law 61, Article 94, states: “Amendment of article 496 of the Family Code. The article 496 of the Family Code will be as follows: Article 496. In the cases of minors in special difficult circumstances, the judge presiding over Children and Adolescents may place them with a family or in a foster home for an interim period of six months.”

<sup>52</sup> Id.

<sup>53</sup> Child Welfare Gateway, [www.childwelfare.gov/outofhome/placement/consequences.cfm](http://www.childwelfare.gov/outofhome/placement/consequences.cfm).

*and foster care, it is important to establish who owns the facility, who pays basic operating costs, and whether the entities funding these services have any conflicting interests.*

*289. National laws and procedures should provide for adequate funding of temporary care facilities and services, at the same time ensuring that adequate protections are in place to protect against exploitation of children.<sup>54</sup>*

There is a need for a set of Guidelines to lay a foundation for best practice requirements and Convention Minimum Standards so that private institutions will be able to perform Privatized Foster Care (PFC) services as a part of their accreditation. These Guidelines, termed the Technical Guidelines for Adoptions and Orphan Care under Law 61 herein (“the Guidelines”), will be based on the statistical research and comparisons of the current situation in Panama versus similarly situated countries, to be reviewed and approved by the Committee on Progressive Implementation. Currently, Panama is not in the position to provide state run Foster Care, nor are any private institutions. It is the recommendation of HCCM that the Central Authority, based on evidence that the private entity seeking accreditation has met the minimum standards outlined in the Guidelines, permit Privatized Foster Care only after the private institution accreditation and approval. It is not currently advisable for Panama to institute state run Foster Care, so as to dedicate trained staff and resources to the improvement of the Central Authority, including trained staff assigned as oversight of PFC.

The implementation of Privatized Foster Care (PFC) is imperative to the Best Interest of the Children in Panama. PFC is based on international models wherein the accredited private institutions provide necessary funding, training, and monitoring of carefully selected caregivers as foster families. For example, in Colombia a representative of their Central Authority, Instituto Colombiano De Bienestar Familia (I.C.B.F.), assists in the oversight of PFC. This model works very well because it allows for the private entity that intimately knows all physical and mental needs of the child to be the private entity that is selecting the foster home, training the caregivers, providing funding, and monitoring the care. Thus these private institutions are better equipped to adequately select, train and oversee the caregivers of these Children Deprived of their Rights. In Colombia, for example, there are only a select number of institutions that have obtained the license from the government to provide PFC. These institutions must demonstrate sufficient funding as well as properly trained staff, including psychologists and social workers that can effectively and carefully oversee Foster Care.

Approval of the Guidelines is the first step in instituting PFC. The Guidelines will be multi-faceted, but include various items regulating this method of Temporary Care. For example, funding is given to foster parents to aid with essential needs (healthcare, education, and the like) for children entering Foster Care. The minimum amount given to foster parents per child should be determined by a study examining the average household income for the targeted socio-economic class of foster parents in Panama, and evaluating the cost of essential needs of children in different age categories. The Guidelines must also state maximum number of children permitted per foster family. HCCM will assist Panama in the design and implementation of such comparison studies, with the results submitted to the Committee for approval. After approval of the Guidelines, PFC will be ready for the implementation phase.

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<sup>54</sup> Hague Guide to Good Practice, §6.3.2 Facilities for temporary care, Paragraphs 287-289.

- Preparation for Privatized Foster Care

There are many challenges that face foster parents. Below the American Academy of Child & Adolescence Psychiatry<sup>55</sup> explains some of these challenges.

*Being removed from their home and placed in foster care is a difficult and stressful experience for any child. Many of these children have suffered some form of serious abuse or neglect. About 30% of children in foster care have severe emotional, behavioral, or developmental problems. Physical health problems are also common. Most children, however, show remarkable resiliency and determination to go on with their lives. Children in foster care often struggle with the following issues:*

- \* blaming themselves and feeling guilty about removal from their birth parents*
- \* wishing to return to birth parents even if they were abused by them*
- \* feeling unwanted if awaiting adoption for a long time*
- \* feeling helpless about multiple changes in foster parents over time*
- \* having mixed emotions about attaching to foster parents*
- \* feeling insecure and uncertain about their future*
- \* reluctantly acknowledging positive feelings for foster parents*

*Foster parents open their homes and hearts to children in need of temporary care, a task both rewarding and difficult. Important challenges for foster parents include:*

- \* recognizing the limits of their emotional attachment to the child*
- \* understanding mixed feelings toward the child's birth parents*
- \* recognizing their difficulties in letting the child return to birth parents*
- \* dealing with the complex needs (emotional, physical, etc.) of children in their care*
- \* working with sponsoring social agencies*
- \* finding needed support services in the community*
- \* dealing with the child's emotions and behavior following visits with birth parents*

Thus, it is imperative for the institutions accredited to perform PFC services to be adequately staffed and trained, so as to prepare their foster families for the challenges of fostering. It is not a simple task, yet appropriate Foster Care is absolutely imperative for the Best Interest of the Children during their required times of Temporary Care. Foster Care is a much better alternative over institutionalization for the growth and development of these Children Deprived of their Rights. HCCM will assist the Central Authority with designing a program that will equip foster parents with pertinent information to perform their duties in a loving way.

- Pilot Program

It has been recommended that HCCM begin with a Pilot Foster Care Program in order to begin assessing the feasibility of PFC in Panama. The Pilot Foster Care Program will be regulated pursuant to the Guidelines on PFC, including such standards for: dictating procedure and oversight; minimum standards for an institution; qualified children; requirements such as age, income, health, and marital status; requirements for evaluating, training and monitoring foster parents, government and private institution staff, and the like. These children placed in the program, pursuant to the approval and oversight of the Central Authority, will be closely monitored for progress. Thereafter, depending on the findings and outcomes of this program, a model will be presented to all orphan care providers and training will be coordinated to ensure proper implementation of PFC amongst the accredited private institutions in Panama.

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<sup>55</sup> [http://www.aacap.org/cs/root/facts\\_for\\_families/foster\\_care](http://www.aacap.org/cs/root/facts_for_families/foster_care).

- Foster to Adopt Program and Concurrent Planning: Law 61 Application

*Foster care is intended to be a temporary living situation for children and adolescents. The goal of foster care is to provide support and care for the young person to facilitate either reunification with parent(s) or other family members or another suitable permanent living arrangement. This may include an adoptive home, guardianship, or placement with a relative. At times, the bond that develops during foster care will lead to the foster parents adopting the child. In some instances, children may be placed in a long-term foster placement. Foster placements are monitored until the birth family can provide appropriate care or the rights of the birth parents are terminated and the child is adopted. A third option, guardianship, is sometimes utilized in certain cases where a child cannot be reunified with their birth family and adoption is not right for them.<sup>56</sup>*

Even though the goal of foster care is either reunification or adoption into Permanent Parental Care, adoption by the foster parent(s) is a very favorable option of permanency for the child, especially in those instances of older children or children with special needs. Foster Parent Adoption would fall under the Domestic Adoption category of the Placement Hierarchy mentioned above (see page 20). This further supports the Subsidiarity principle, which is foundational to Hague.<sup>57</sup>

The information below is from Child Welfare Information Gateway<sup>58</sup>, and explains the benefits of foster parent adoption:

#### **Trends in Foster Parent Adoption**

**Foster parents are the most important source of adoptive families for children in the child welfare system.** Statistics from the U.S. Department of Health and Human Services (HHS) from 1998 on show that **foster parents consistently adopt close to 60 percent or more of the children who are adopted from foster care** (U.S. HHS, n.d.).<sup>59</sup>

#### **Benefits of Foster Parent Adoption:**

While the research on foster parent adoption is limited, studies do indicate that adoption by foster parents can benefit children and parents in a number of ways. Unlike most other types of adoption, children and foster parents involved in foster parent adoption have already spent time living as a family before the adoption is initiated and have had the opportunity to make some initial adjustments. In addition, research indicates that children placed for adoption with their foster parents are less likely to experience disruption of their placement than children placed in nonrelative, non-foster-parent adoptions (Berry & Barth, 1990; McRoy, 1999; Smith & Howard, 1991).

**For children,** some of the other benefits include:

- A continuing and legally secure relationship with parents they know and trust.

<sup>56</sup> [http://en.wikipedia.org/wiki/Foster\\_care](http://en.wikipedia.org/wiki/Foster_care).

<sup>57</sup> Hague Guide to Good Practice, §2.1.1, Subsidiarity.

<sup>58</sup> Child Welfare Information Gateway, [http://www.childwelfare.gov/pubs/f\\_fospro/f\\_fosproa.cfm](http://www.childwelfare.gov/pubs/f_fospro/f_fosproa.cfm) (Bold for emphasis)

<sup>59</sup> Id. Child Welfare Information Gateway further states, "In current practice, foster parents are recognized as valuable resources for waiting children. Many States now require that foster parents be considered as an adoption resource and receive preference under certain circumstances when a child becomes free for adoption. Foster parent adoption is also the basis for two well-recognized practices in adoption. In "legal risk placements," children whose situations indicate that parental rights will likely be terminated are placed with foster parents who are willing to adopt if the child becomes free. In concurrent planning, a practice supported by the Adoption and Safe Families Act (ASFA) of 1997, the permanency goal of reunification is supplemented by an alternative goal (often, adoption) to ensure that if reunification is not possible, the child has a clearly identified permanency option that can quickly be put in place. Initial placements are made with foster parents who would consider adoption should reunification become impossible, thus minimizing the number of placements for children. For this model to work, these foster parents must be able to support both the reunification plan, as well as the plan for adoption."

- An end to the uncertainty of foster care and, for many children, a positive psychological shift in their -sense of identity, connection, and belonging (Triseliotis, 2003).
- Experienced parents to manage their needs (often including emotional and behavioral challenges due to complicated life histories).
- The chance to remain in a familiar community, school, and neighborhood.
- Tendency for shorter time to permanency than in other types of adoption (Howard & Smith, 2003).
- Greater likelihood of maintaining an ongoing connection with the birth family than in other types of adoption (Howard & Smith, 2003).

**For the adopting family**, the advantages of adopting a child in their care include:

- Permanent protection of the relationship with the child.
- The opportunity to raise the child without the oversight of the agency and to become the sole decision-maker regarding school, religious practice, medical treatment, travel, discipline, and much more.
- Often, both familiarity and a relationship with the child's birth family and greater knowledge of their child's background than in non-foster-parent adoption.
- For the birth family, foster parent adoption means the birth parents typically know those who will be the permanent caregivers for their children.

**For larger society**, there are also benefits from foster parent adoption. These include:

- Reduced costs to government agencies when a child moves from foster care to adoption, since the administrative costs of recruiting, training, and approving an adoptive family are reduced.
- As with all adoptions from foster care, a decrease in the number of children aging out of foster care with no family and at risk for a host of problems, including homelessness, incarceration, and poverty.

Currently, Panama has outlawed the ability for foster parents to adopt. Based on in depth research to be submitted to the Committee, it is recommended that Panama reevaluate Article 92 of Law 61 (Amendment of Article 369 of the Family Code)<sup>60</sup> and Article 94 of Law 61 (Amendment of Article 496 of the Family Code)<sup>61</sup> in light of empirical data to the contrary. As mentioned above, this is an important step towards prevention of societal problems such as the future incarceration and even mental illness of Children Deprived of their Rights that are currently in institutions. As these children age out, it is imperative to work towards a model of future family support and thus Permanent Parental Care is again the objective. Foster Parent Adoption supports many Hague principles, including Subsidiarity, Best Interest of the Child, and Permanency<sup>62</sup>.

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<sup>60</sup> Law 61, Article 92 states: "Amendment of Article 369 of the Family Cod. Article 369 of the Family Code will be as follows: Article 369. The family placement or foster home for the child cannot be taken as future adoption. The family placement or foster home may only take place in national territory."

<sup>61</sup> Id.

<sup>62</sup> Id.



# **PROGRESSIVE IMPLEMENTATION: Legal Application**

## PROGRESSIVE IMPLEMENTATION: Legal Application

- Progressive Implementation of Law 61

Law 61 was passed on August 12, 2008 as a measure to formalize adoptions within the Republic of Panama and to bring the former adoption laws into compliance with the Hague Convention (the Convention). This law was an excellent attempt to bring about a uniform change to the field of work dealing with Children Deprived of their Rights, including permanency planning through reunification, national adoptions and international adoptions. Based on the enactment of Law 61, it is currently advisable as part of the Progressive Implementation Plan for a Committee to be established to reevaluate the effectiveness of the law as currently written, as well as rate effectiveness of the implementation of Law 61. For example, Law 61 places a deadline on parents and family members of the child in which they must comply in order to maintain legal guardianship rights to the child. These deadlines are not generally being followed. The Committee on Progressive Implementation (“the Committee”) must evaluate the reasons behind the apparent lack of adherence to the law and recommend methods of change to bring the system into compliance with Law 61. A detailed analysis must be made in order to determine precisely in which location(s) of the government the breakdown is occurring. Further, recommendations may be required as to amendments or modification to Law 61 in order to observe the children’s Fundamental Rights as well as the Best Interest of the Children principles of good practice. (See Page 4) Several items in particular are mentioned within this proposal as requiring reevaluation, including the current viewpoint on Direct National Adoptions (See Page 31) and Foster Parent Adoptions (see Page 23). The Committee on Progressive Implementation can further evaluate to see whether adoptions currently being facilitated within the Republic of Panama are in compliance with the foundational principles of the Convention.

A detailed, uniform approach to reunification, national and international adoptions is currently needed. In the event the Committee for Progressive Implementation deems modifications are required to Law 61, it is recommended those necessary changes be made in the form of Amendments to Law 61<sup>63</sup>. This will permit necessary improvement to be implemented in the shortest amount of time possible, thus facilitating necessary reform quickly for the benefit of the children of Panama. In total, Law 61 is an excellent attempt to bring about uniform change to the area of adoptions within Panama. However, there are several items that must be reviewed, amended and implemented, in light of the Fundamental Rights of Children and the Best Interest Principle.

There is a call for a detailed set of guidelines in Panama to explain the practical application of Law 61 for those individuals working in the reunification and adoption context, both nationally and internationally. There is also a need for guidelines in the orphan care context, so as to maintain minimum standards for private institutions involved. These Technical Guidelines for Adoptions and Orphan Care under Law 61 (“the Guidelines”) would be an excellent method of implementing the modifications necessary to bring about reform for the benefit of the children of Panama. This would allow for a uniform set of procedures and processes in the area of Children Deprived of their Rights. It is imperative for authorities in this field of work to have a

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<sup>63</sup> Guide to Good Practice §3.1, Paragraph 114 states (in part), “Contracting States which have already implemented the Convention may wish to evaluate the operation of the Convention within their country or consider ways to improve the functioning of the Convention, if appropriate, through modification or amendment of existing implementation measures.”

solid foundation in order to know the appropriate manner of managing these cases. The Guidelines would be drafted based on the recommendation and approval of the Committee, after a period of research and review. HCCM will provide international data and statistics from other Convention States to the Committee, as well as further information necessary for the Committee to make an informed set of Guidelines. For example, Colombia utilizes the same Guideline model in order to detail how their Family Code is to be applied to the areas of adoption and orphan care. HCCM will provide comparisons of such guidelines as those found in Colombia and present the same to the Committee. The approval of the Guidelines is a necessary step to facilitate reform within the Republic of Panama, with the Best Interest of the Children always as the objective.

- Guidelines by the Central Authority

**§4.2 Role of a Central Authority**

*173. Central Authorities will often be given a central role in developing, or advising on the development of policy, procedures, standards and guidelines for the adoption process.<sup>64</sup>*

The Central Authority is expressly granted the power to establish the Guidelines, pursuant to §4.2 of the Guide. This allows for policies, procedures and standards to be written as a guidebook for all those in the field of Children Deprived of their Rights. A detailed analysis will be made of these necessary policies, procedures and standards for the Central Authority and bodies accredited to work in the field, a comparison study based on national and international standards will be performed, and a review of the Convention minimum requirements will be presented to the Committee on Progressive Implementation by HCCM. Such items including, but not limited to, the following must be addressed by the Guidelines:

- Application of Best Interest of the Child standards;<sup>65</sup>
- Reunification standards and procedures through subsidiarity principle;<sup>66</sup>
- Integrated child protection and care system;<sup>67</sup>
- Permanent Parental Care planning;<sup>68</sup>
- National adoptions (see page 31);
- Intercountry adoptions under the Convention standards;
- Role of Central Authority in decision making process for adoptions;<sup>69</sup>

<sup>64</sup> Guide to Good Practice, §4.2 Role of a Central Authority, Paragraph 173.

<sup>65</sup> See Proposal page 1 for Best Interest of Child definition.

<sup>66</sup> Id. See the following standards from the Guide in the area of Reunification, with preference given to Permanency: Paragraphs 48, 261, and Section 6.2.4.

<sup>67</sup> Id, §2.1.1 Subsidiarity, Paragraph 49, *“This Guide encourages incorporating intercountry adoption within a comprehensive child and family welfare policy.”*

<sup>68</sup> Id. See the following standards from the Guide in the area of Permanency Planning: §2.1.1 Subsidiarity, Paragraphs 50, 51; §6.2.4 Family Reunification; §6.4.1 Permanency Planning; §6.4.2 Delaying permanency planning not in the child’s best interest.

<sup>69</sup> Id, §2.4.2 Central Authorities, Paragraph 108. *“Central Authorities play a vital role in decision making during the adoption process. The critical step of deciding whether or not an adoption may proceed to finalisation (Art.17) is taken by the Central Authority. It is therefore apparent that Contracting States must ensure that their implementing measures provide for adequate and appropriate powers and resources to authorise the Central Authority to fulfil its obligations and perform its functions.”*

- Role of other governmental authorities and bodies in the process (addressed below);
- Temporary Care guidelines;<sup>70</sup>
- Institutionalization standards;
- Implementation of protocols for staffing and resources for the benefit of the Central Authority with appropriate resources to adequately fulfill its functions (See page 35);<sup>71</sup>
- Funding of the Central Authority;<sup>72</sup>
- Funding of Accredited Bodies;<sup>73</sup>
- Support from Convention States (See page 43);<sup>74</sup>
- Accreditation, control and Review of Accredited agencies or bodies;<sup>75</sup>
  - Including standards based on feasibility study related to authorizing competent authorities to perform adoption functions (see Appendix A, description of Colombia approving Accredited Private Institutions to perform adoptions with approval and oversight of Central Authority).<sup>76</sup>
- Handling of Pipeline cases (see page 32);
- Special Needs cases.<sup>77</sup>

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<sup>70</sup> Id. §2.1.1 Subsidiarity, Paragraph 53, *“It is sometimes said that the correct interpretation of “subsidiarity” is that intercountry adoption should be seen as “a last resort”. This is not the aim of the Convention. National solutions for children such as remaining permanently in an institution, or having many temporary foster homes, cannot, in the majority of cases, be considered as preferred solutions ahead of intercountry adoption. In this context, institutionalisation is considered as “a last resort.”*

<sup>71</sup> Id. §4.1.6 Personnel.

<sup>72</sup> Id. See §5.2 through 5.4 for a detailed description of acceptable practices for implementing Operational Funding Structures for the Central Authority. A comparison analysis will also be made for varying Convention States and their handling of fee structures for national and intercountry adoptions.

<sup>73</sup> Id. Chapter 5 Regulating the Costs of Intercountry Adoption, Paragraph 222. See also Chapter 4.2.1 Suppression of Improper Financial Gain.

<sup>74</sup> Id. §4.2.1 Suppression of Improper Financial Gain, Paragraph 178, *“It is advisable for receiving States to provide active support to States of origin for the effective implementation of these good practice recommendations in recognition of the principle of their joint responsibility, and in recognition also of the fact that some States of origin are not in a position, by themselves, to exercise the appropriate controls.”*

<sup>75</sup> Id. See §4.2 Role of a Central Authority, Paragraphs 174 and 177; §4.3 Accredited Bodies.

<sup>76</sup> Id. See §2.4 Ensuring authorization of competent authorities; §4.3 Accredited Bodies.

<sup>77</sup> Id. See §7.3.1 The Special Needs Child.

- Key Operating Principles for Implementation

The Guide outlines Key Operating Principles for an effectively functioning Central Authority:<sup>78</sup>

1. Progressive Implementation
2. Resources and powers
3. Co-operation
4. Communication
5. Expeditious procedures
6. Transparency
7. Minimum standards

Each of these Key Operating Principles is imperative for the Best Interest of the Children to be served, whether through reunification, national or intercountry adoptions. These principles apply not only to the Central Authority, but to all authorities, bodies and persons involved with intercountry adoptions under the Convention.<sup>79</sup> A further explanation of Cooperation and Expeditious procedures is contained below, as the remaining Key Operating Principles are addressed elsewhere within this proposal.

- Cooperation between authorities

**§3.3.1 Improving Co-operation internally**

*122. There are numerous authorities and bodies involved in the adoption process such as Central Authorities, courts, accredited bodies, non-accredited persons, institutions or child care agencies and police. Each plays an important role under the Convention and effective communication and co-operation among all parties is crucial.<sup>80</sup>*

**§4.1 Establishing and Consolidating the Central Authority**

*161. The Central Authority should have strong links to the justice system and the care and protection system of the Contracting State. The need for co-operation between the Central Authority, the courts, the child protection network, child care institutions, relevant non- governmental organisations and social welfare professionals and the legal profession, make these links essential for the effective operation of the Convention.<sup>81</sup>*

The importance of cooperation between governmental authorities is true for reunification with approved family members, national adoptions and international adoptions. Cooperation is key. There is an apparent disconnect that is currently underway in Panama between the different authorities handling Children Deprived of their Rights. It is imperative to centralize the information and processing of these children's files, so as to create one set of processes and procedures that will be followed. Of course, these policies, standards, processes and procedures should be of the highest caliber and only containing those items that meet best practice standards.

The more precise the directions and requirements placed on entities involved with Children Deprived of their Rights, the more certain we can be that the appropriate steps were followed in each child's case and thus we can ensure that the Best Interest of the Child principle is

<sup>78</sup> Id. Chapter 3 Key Operating Principles.

<sup>79</sup> Id, Chapter 3 Key Operating Principles, Paragraph 112.

<sup>80</sup> Id, §3.3.1 Improving Co-operation internally, including requirement of training bodies associated with adoption (included in part).

<sup>81</sup> Id, §4.1.5 Choosing a Central Authority, Paragraph 161.

followed. The Guideline implementation will further facilitate the building of trust between the different entities within the Republic of Panama that deal with Children Deprived of their Rights. Currently, there is an apparent breakdown in cooperation between the entities due to a lack of trust in the differing qualities and styles of work produced. It is imperative for one set of forms and processes, as recommended by the Committee and subsequently approved by the Judicial branch and the Central Authority, to be established under the Guidelines. This will permit the Central Authority to be able to work through the backlog of children's cases in a timely manner, utilizing the same data and information that the Judicial branch finds pertinent to their investigation, producing resultant data to be trusted by the Judiciary.

An end must be made to the duplicate or triplicate work that is occurring in regard to the children's files and family investigations. Based on an investigation by HCCM, it was determined that many times the family investigation work was being performed on children's case files three times. The family investigation was performed by social workers on staff in the private institutions, if the institution employed social workers. The private institutions did this work as a way to speed up the process, for the benefit of the children in their care, after long periods of time lapsed with inaction on the part of the government. Thereafter, the work was submitted to MIDES. Upon receipt, MIDES would perform a follow-up investigation of the family. Once determined that the family was not suitable, the work was submitted to the Judicial branch in order for adoptability status to be designated. Upon receipt of the work product by the Judicial branch, the judges would send out their social workers to perform a third family investigation as they did not trust any prior work produced. Often times this triplicate process would drag on for years at best, if not for the entire minority of the child at issue. Children are literally aging out of orphanages because their files are not being processed properly and efficiently. Or, even worse, the government has offered financial incentives to wayward family members and thus pays them to come for the children. This is being done in an effort to empty the institutions and reduce the 50,000 statistic of Children Deprived of their Rights in Panama. To be clear, while institutionalization is a last resort, keeping children in unsafe home environments is even worse and should never be an option.

In order to cease this redundant work, the Guidelines will spell out in detail every step of the process that must be performed under family investigations and the related matters. Further, training of staff within the Central Authority, Judicial branch, and private institutions is imperative.<sup>82</sup> Training is discussed below in detail. (See page 35) We must work to streamline the process for Children Deprived of their Rights and limit the number of days, not years, that these children are in Temporary Care. Permanent Parental Care is the goal, for the reasons mentioned above, as this is in the Best Interest of the Children.

- Expeditious procedures

### **§3.5 Expeditious procedures**

*132. Expeditious action is essential at all stages of the adoption process. Expeditious procedures, those which are both fast and efficient, are essential to the successful implementation and operation of the Convention. States should use procedures which seek to fulfil the purposes of the Convention but which do not cause unnecessary delay that could affect the health and well-being of children. The*

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<sup>82</sup> Id, §7.2.1 Establishing a child is adoptable, Paragraph 333, "The importance of the declaration of adoptability, and the difficulties which may arise, when Convention requirements are improperly or inconsistently applied, underscore the importance of training in Hague Convention processes for judges and others involved in the legal or administrative system. It has already been noted that local judges in countries of origin are often unaware of the Hague Convention and may process an intercountry adoption as a national adoption. Equally, judges in receiving countries need to receive training in intercountry adoptions and Hague Convention procedures to avoid abuses of the Convention, intentional or otherwise."

*benefits of becoming a party to the Hague Convention of 5 October 1961 Abolishing the Requirements of Legalisation for Foreign Public Documents should be considered.*

*133. The Convention itself does not set any specific time limits for particular actions. The phrase “act expeditiously” in Article 35 is understood to mean “to act as quickly as a proper consideration of the issues will allow.” It is important to distinguish between any necessary delay, such as the time taken to find the best family for a particular child, and an **unnecessary delay, such as that created by cumbersome procedures or inadequate resources**. A necessary delay may also include diligence in the adoption preparations, for both the child and the prospective adoptive parents. The appropriate speed or expedition will vary from case to case. For example, it may take longer to ascertain if an abandoned child is adoptable compared to an orphaned child (see also Chapter 7.1.2: “Avoiding undue delay”).<sup>83</sup>*

The recommended Guidelines will entail a streamlined series of processes and procedures, determined to cut through the bureaucratic red tape associated with finding permanency for Children Deprived of their Rights. The current amount of bureaucracy is damaging the children beyond description.

- National Adoptions

- **§6.4.4 Promoting National Adoptions**

*299. In developing a national adoption system, it is important for States to know what factors, if any, are inhibiting national adoption in the State, and to consider how families can be encouraged to adopt children.*

*301. The State must have procedures or criteria in place to assess the eligibility and suitability of national families to adopt a child. National adoptive families may be evaluated and prepared according to standards that are equivalent to those applied in intercountry adoption. Systems employed by other States can provide helpful models in this regard.<sup>84</sup>*

There are currently nationals that desire to adopt the abandoned children and those available for adoption, yet are discouraged by the extreme bureaucracy and thus afraid to begin the process. Nationals are actually going abroad to adopt as a result. After progressive implementation procedures have been implemented, a campaign for public awareness is necessary, to explain to the general public the importance of adopting and reassuring them that the adoption process is working again.

- Direct Adoptions

Currently, direct adoptions are outlawed in Panama, pursuant to Article 14 of Law 61. This is another aspect of Law 61 that should be reevaluated in light of the Best Interest of the Child principle. Section 4.2.6 of the Guide explains how independent adoptions are inconsistent with the Convention as relates to intercountry adoption. Paragraph 191 specifically states that Central Authorities should not participate in this form of intercountry adoption.<sup>85</sup> Yet Panama applied this to national adoptions as well. It is true that direct or “independent” adoptions should be forbidden in cases of intercountry adoptions, so as to comply with the fundamental principles

<sup>83</sup> Id, §3.5 Expeditious procedures.

<sup>84</sup> Id, §6.4.4 Promoting national adoptions.

<sup>85</sup> Id, §4.2.6 Central Authority role in independent adoptions, Paragraph 191 states in part, “*The practice of allowing independent adoptions is inconsistent with the system of safeguards established under the Convention and Central Authorities should not participate in this form of intercountry adoption.*”

of Hague and thus prevent child-buying scenarios. However, national adoptions are not addressed in this Convention principle. Instead, direct national adoptions actually support the Subsidiarity principle of the Hague Convention. There are multiple examples of families that have been born, when a national begins helping at an orphanage and then subsequently falls in love with an adoptable child. This is an excellent scenario and is in the best interest of the child. In this way, nationals are adopting first and also the transition into family life is much smoother, thus serving the Best Interest of the Children. While direct adoptions should continue to be outlawed for individuals that are not nationals, they should be permitted in cases of approved national families desiring to adopt. Safeguards can still remain in place under the Guidelines in order to deal with national adoptions, so as to prevent child-buying scenarios amongst Panamanians. With appropriate standards and processes in place, there can be adequate assurances that nationals are abiding by the law and that the Best Interest of the Children is being served.

- Pipeline cases

The question has arisen as to what is the appropriate manner for Panama to deal with Pipeline cases, i.e., those intercountry adoption cases that were pending from another Convention State at the time the Convention entered into force in said Convention State. The Guide directly addresses this issue in Section 8.3.4, Paragraphs 473 through 477.<sup>86</sup> If a bilateral arrangement was already pending with said country, the Pipeline cases can continue to be processed in accordance with the previous arrangements. These cases, however, would not have their adoptions certified under Article 23. In the cases where States desire the Hague certification, new agreements can be reached between the two countries. The Guide expressly permits prospective adoptive parents to resubmit their applications without unnecessary duplication and entitles them to have their cases fast-tracked to take into account any preparatory work already undertaken. An analysis will be made by HCCM as to the best practice standards for dealing with these Pipeline cases. Persons in diplomatic positions will be contacted, and thereafter varying options will be presented to the Committee. It is imperative to note that these cases can and should be dealt with in a manner that does not duplicate the process for prospective adoptive parents and that permits their cases to be fast-tracked upon resubmission. This manner would allow for a reduction in the number of cases being processed as non-Convention adoptions and thus minimize variances in procedures for the Central Authority.

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<sup>86</sup> Id, §8.3.4 How does the Convention apply to intercountry adoptions which are already pending at the time of ratification, acceptance, approval or accession to the Convention?



## **THE CENTRAL AUTHORITY: Resources and Staffing**

## THE CENTRAL AUTHORITY: Resources and Staffing

- Necessity for adequate funding of the Central Authority

### **§3.2 Resources and powers**

*118. Implementing measures and legislation should ensure that all authorities or personnel involved in the operation of the Convention are provided with sufficient powers and resources to support the effective functioning of the Convention.*

*119. The Central Authority should be properly established and provided with the resources and powers to enable it to fulfil its obligations under the Convention. In a number of States, the implementing measures describe in detail the powers and functions of Central Authorities which are explicit in the Convention, as well as other powers and functions which are seen as implicit or serving an auxiliary function. States intending to ratify or accede to the Convention may benefit from consulting with other experienced Contracting States on questions of Central Authority structure, location and resources.*

*120. The Convention allows for the use of accredited bodies and, in a more limited manner, approved (non-accredited) persons, to fulfil many of the functions of the Central Authority. Further explanation is given at Chapters 4.3 (Accredited bodies) and 4.4 (Approved (non-accredited) persons). Careful consideration of the use of public or private entities to perform functions is essential. Many States have constructed systems that make effective use of both types of providers.*

*121. It is equally essential that States carefully plan for adequate financial resources to implement and operate the Convention. Such planning should include the costs of providing childcare and protection services, family preservation services and adoption services.<sup>87</sup>*

It is imperative to the proper functioning of the Central Authority for adequate financial resources to be designated at their disposal. Without adequate resources, the Central Authority cannot perform their functions so as to perform National Adoptions and also to be in compliance with the Convention Minimum Standards. This resource allocation would entail the recruitment of additional social workers and psychologists so as to combat the high volume of cases to be processed, thereby ensuring that all the cases are worked through in a timely manner.

Further, this funding of the Central Authority requires resources including, but not limited to, vehicles for social workers to transit the country and perform their investigations, a software system to maintain accurate data (see page 38), computers to process the paperwork, and continued training for staff as detailed below.

The Committee on Progressive Implementation should perform a needs-based assessment in this area after July 1, 2009. This will include the preparation from HCCM of statistical information for such items as the standard number of social workers in central authorities per volume of Children Deprived of their Rights, as well as other such statistical data imperative for the determination of appropriate staffing levels for the Central Authority of Panama.

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<sup>87</sup> Hague Guide to Good Practice, §3.2 Resources and powers, Paragraphs 118-121.

- Necessity for adequate training of staff members in the Central Authority

**§4.1.6 Personnel**

163. *Central Authority personnel should possess appropriate qualifications and training to understand the requirements of the Convention. Personnel should have sufficient understanding of how the Convention operates within their domestic legal and administrative framework.*

164. *They should possess professional qualifications relevant to intercountry adoption, such as social work, psychology, child protection and related disciplines.*

165. *Competency in relevant foreign language skills improves communication with other Central Authorities and builds co-operative and productive relationships. A minimum standard for Central Authority good practice is that there should be personnel who are competent in French and / or English as the working languages of the Convention.*

166. *It is important that the Central Authority achieves stability and continuity with personnel, in order to function effectively, develop expertise, maintain standards, gain additional experience in the field and foster good relations with national and international agencies and authorities.*

167. *The need for adequate resources and appropriately trained staff in Central Authorities was accepted, as well as the importance of ensuring a reasonable level of continuity in their operations.*

168. *It is an aim of the 1993 Hague Convention to combat the abduction, the sale of, and traffic in children for the purposes of adoption by establishing safeguards in the intercountry adoption procedure. To achieve this aim, and to suppress improper financial gain and promote the best interests of the child, it is critical that Central Authority staff possess the highest ethical standards.<sup>88</sup>*

In order to comply with best standards practices, the Technical Guidelines for Adoptions and Orphan Care under Law 61 should specifically state minimum standards to be imposed on the staff of the Central Authority. The Committee will perform a further needs-based assessment on this topic, as addressed above under Legal Application. (See page 26) The Guidelines will include such imperative items to the proper functioning of the Central Authority as the minimum educational requirements for employment of government social workers and psychologists.<sup>89</sup> The goal of establishing these requirements is to increase the performance standards of all government employees. As to those social workers with experience in the field, it is imperative to have standardized aptitude tests, proof of experience, including mock cases and other such real-world situational examples, before assuming ability to continue performing social work and psychological expertise under the new Guidelines. It is important to establish licensing requirements to maintain a higher level of expertise. The goal is to increase the minimum standards required of individuals employed by the Central Authority, for the purpose of maintaining higher quality of work for the benefit of the children. Also, a conscious effort must be made to hire and retain only those staff employees that have the “heart” for these children at risk. No longer acceptable are those individuals whose motivation is to collect a paycheck.

The Guidelines would further assess best practice standards for maximum caseloads to be assigned per social worker for both government and private institution workers. Recommendations will be made based on international standards in relation to such details as the minimum number of social workers and psychologists required per number of children in said institutions. The purpose of these standards is to ensure that all the cases are worked through in compliance to deadlines, keeping in mind realistic expectations to be placed on

<sup>88</sup> Hague Guide to Good Practice, §4.1.6 Personnel, Paragraphs 163-168.

<sup>89</sup> For examples of such recommendations, See United States Department of Labor's Occupational Outlook Handbook, 2008-09 Edition, Section Training, Other Qualifications, and Advancement, <http://www.bls.gov/>.

workers. See Footnote 90 below for the example of recommended caseload standards, as excerpted from the Child Welfare League of America Standards of Excellence for Child Welfare Services.<sup>90</sup>

It is imperative that training for current staff and new hires be implemented as soon as possible to ensure that all individuals are complying with the Guidelines and new procedures, thus in compliance with the Convention and furthering implementation of Law 61. HCCM would coordinate and facilitate said training, with the approval and certification of the Central Authority. The recommended initial training should be held in one session over a span of several days, including but not limited to the following types of information:

1. Current Institutionalization Research and Importance of Permanency
2. Explanatory Session of New Procedures under the Guidelines
3. Best Practices involved with Processing Family Investigations

- Implementation of Continuing Education Requirements

“Continuing education (CE) means education that continuously fosters the enhancement of general or specialized social work practice, values, skills or knowledge. Nearly every country that issues social work licenses requires continuing education courses for renewal.”<sup>91</sup> The Guidelines must include specific continuing education requirements that demand licensed social workers understand the importance of and comply with CE requirements, and keep up-to-date on any changes in the field of social work. Maintaining a social work license would require more than just filing paperwork every two years. Social workers at all levels of practice can benefit from continuing coursework in familiar subjects, or from an exploration of new topics, so as to maintain currency in the research and development of social work practice.

HCCM will assist the Central Authority with the aforementioned process by designing a program to identify and recognize high-quality Continuing Education providers that can deliver quality programs in many topics, through both in-person and distance learning settings. Approval and certification by the Central Authority would be requested and approved prior to any planned program.

<sup>90</sup> Chart located at: <http://www.cwla.org/>:

<b>Service/Caseload Type</b>	<b>CWLA Recommended Caseload/ Workload</b>
Initial Assessment/ Investigation	12 active cases per month, per 1 social worker
Ongoing Cases	17 active families per 1 social worker and no more than 1 new case assigned for every six open cases
Combined Assessment/ Investigation and Ongoing Cases	10 active on-going cases and 4 active investigations per 1 social worker
Supervision	1 supervisor per 5 social workers

<sup>91</sup> Association of Social Work Boards ASWB, Continuing Education Requirements, [www.aswb.org](http://www.aswb.org).

## **TECHNICAL DATA: Efficient Utilization of Required Information**

## TECHNICAL DATA: Efficient Utilization of Required Information

- Electronic Case Management System

**§7.1.2: Avoiding undue delay, states in part:**

*“The Special Commission reminds States Parties to the Convention of their obligations under Article 35 to act expeditiously in the process of adoption, and notes in particular the need to avoid unnecessary delay in finding a permanent family for the child.*

*The Special Commission recommends the use of flexible and efficient systems of communication, taking into account, where available, advances in technology.”<sup>92</sup> See also Section 3.5 (page 30 above).*

**§4.1.7 Material resources**

*170. The minimum level of essential resources for all Central Authorities includes:*

- *a system for the collection and reporting of statistics;*

*171. A well resourced Central Authority will have, in addition to the essential items listed above:*

- *office procedures manual for Convention files;*
- *electronic case management system;*
- *its own website with all essential and important information about its adoption laws and procedures.<sup>93</sup>*

It is imperative to the proper functioning of a Central Authority to have access to necessary resources, in order to fulfill its obligations and duties under the Convention as well as local law. One of the main resources necessary is an electronic case management system. A detailed review of differing case management systems internationally will be performed by HCCM and presented to the Committee on Progressive Implementation.<sup>94</sup> Upon approval of a database system, said system will need to be promptly introduced to staff of the Central Authority, so as to immediately utilize this system for the benefit of the children. This step is essential to the efficient operation of the government entity over child welfare, so as to alleviate bureaucratic slow-downs that force children to remain in Temporary Care for indefinite periods of time.

- Statistical Data

**§4.2.4 Collection and maintenance of statistics**

*185. Central Authorities should collect and maintain accurate statistics relating to the Convention. The Permanent Bureau has developed recommended statistics forms for this purpose. Statistical information can help Central Authorities understand the needs of children in their State and provide national and international data on intercountry adoptions.*

*186. As a minimum standard, it is important to collect statistics on:*

- *the total number of children entering institutions, care facilities or foster care;*
- *the number of national adoptions;*

<sup>92</sup> Id, §7.1.2 Avoiding undue delay, Paragraph 321.

<sup>93</sup> Id, §4.1.7 Material Resources, Paragraphs 170-171.

<sup>94</sup> HCCM has made contact with several different providers in this regard and looks forward to continuing the search for the most efficient and cost-effective system available, which will be presented to the Committee upon finalization.

- the number of intercountry adoptions and the countries concerned; and
- age and gender.

187. Where resources permit, it is also desirable to collect statistics on the number of children placed permanently in foster care, institutions, or any other type of care facility. Additional statistics regarding the number of children in care who were reintegrated into their family and the number of children and families receiving services from the State to maintain family unity will provide a comprehensive picture of the state of national child care and protection, and may help quantify child care and protection issues for decision makers responsible for policy and budgetary matters.

188. The Convention requires States to take all appropriate measures to provide other States with general evaluation reports about experiences with intercountry adoption, and to keep statistics. The 2005 Special Commission encouraged sharing statistics with the Permanent Bureau and “welcomes the development of the draft forms for the gathering of general statistical information (Annex 5 of Prel. Doc. No 2) and underlines the importance for States Parties to submit general statistics to the Permanent Bureau using these forms on an annual basis.”

189. Providing annual statistical reports to the Permanent Bureau enhances the Bureau’s ability to co-ordinate the efforts of the States Parties to advance the purposes of the Convention. Collecting and sending reliable statistics is an additional demand on the resources of Central Authorities. For this reason, Central Authorities may want to seek assistance from other Central Authorities to develop accurate statistical recording methods and processes. The collection and analysis of statistics can play an important role in measuring the effective implementation of the Convention.<sup>95</sup>

Minimum standards of the Convention require the collection and maintenance of the aforementioned statistical data, but are also a basic necessity for any governmental agency. In order to track progress and success of the governmental agency, collection and maintenance of statistical data is imperative. This minimum information is not currently available in Panama. HCCM will research software availabilities, utilizing information from other Central Authorities, so as to present a cost-effective way of handling the lack of statistical information currently available in Panama.

- Census and Maintenance of Data

Upon the integration of the aforementioned Electronic Case Management System, it is imperative for Panama to undertake a national Census for Children Deprived of their Rights. This new input of data is required, as it is necessary for the previous data to be statistically reliable. HCCM proposes providing training to personnel assigned to the Statistician role within the Central Authority. Further, HCCM will assist with transportation needs so as to physically visit all orphanages within Panama, as well as other institutions housing the Children Deprived of their Rights, so as to have access to accurate and up-to-date information in this area. These visits will also entail the identification of key individuals within each orphanage or institution, who will be required under the Guidelines to maintain this information and provide it to the Central Authority on a monthly basis or upon demand.

Because there is much discretion in population and child profile information, it is essential to have an accurate accounting for the benefit of the children. This will alleviate the instances that are currently occurring within Panama, where children are being housed within institutions

<sup>95</sup> Hague Guide to Good Practice, §4.2.4 Collection and maintenance of statistics, Paragraphs 185-189.

indefinitely, due to their case file being lost or misplaced. Once current information is placed within the database system, a tracking mechanism will be in place to flag cases that are approaching important dates in the life of a case. HCCM will assist in providing transportation to institutions with representatives from the Central Authority and implementation of new data processing software in the Central Authority, along with private institutions. The gathering of this data is equally important as the consistent updating of these children's file information. Therefore we propose the use of an efficient and user-friendly, real-time database software that is Internet based and can be implemented in all institutions caring for Children Deprived of their Rights. This would also entail a campaign to install Internet at all licensed orphanages. Establishing this real-time data processing software will allow Panama to consistently maintain updated information about their Children Deprived of their Rights for the purpose of achieving Permanent Parental Care in the most efficient method possible.<sup>96</sup>

- Confidentiality and Data Preservation

- **§9.1.3 Data protection**

- *578. States should ensure that their implementing measures contain safeguards to preserve the confidentiality of information about the adoptive parents and the child.*<sup>97</sup>

- **§2.1.3.2 Preserving information**

- *61. The best interests of the child who is the subject of an intercountry adoption, will be best protected if every effort is made to collect and preserve as much information as possible about the child's origins, background, family and medical history. Both the long-term and short-term interests of the child will be affected by this obligation in Articles 9 a) and 30 of the Convention (see also Chapter 6.1.2 in relation to abandoned children and the loss of their personal information).*

- *62. The child's general history provides a link to his or her past and is important for knowledge and understanding of origins, identity and culture, and to establish or maintain personal connections if at any time he or she returns to the country of origin. The knowledge may contribute to the psychological well-being of the child in later life.*

- *63. The child's medical history may provide important information on the child's current state of health and for diagnosing any medical problems the child could have, either during childhood or later in life.*<sup>98</sup>

Hague Compliance requires the confidentiality of information gathered during the process of the family investigations, as well as upon the permanent placement of the child. Also required is

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<sup>96</sup> See also Hague Guide to Good Practice, §7.2.3 Preparation of report on the child, Paragraph 337, "The report on the child is to include "information about his or her identity, background, social environment, family history, medical history including that of the child's family, and any special needs of the child." This requirement should be read in conjunction with Article 30 which provides that information on the child's origin, particularly his or her parents' identity and medical history, shall be preserved. In addition, the child should have access to such information, under appropriate guidance, where this is permitted by the law of the State where the information is preserved. Obstacles to obtaining this information, particularly about abandoned children, may be severe. For this reason, **investigation into the child's history by appropriate authorities should begin at the moment he or she comes into the care and protection system.**"

Paragraph 340, "The potential importance of the report for the child is emphasised. Adoption is a lifelong process. When a child grows up and seeks information about his or her origins, the report will be an important resource. If items such as photographs of the biological family and their home or community are included in the report, they will be treasured by an adopted person who is searching for his or her origins. The question of information about origins for adult adoptees is discussed further in Chapter 9 of this Guide."

Paragraph 341, "There should not be unnecessary delays in the preparation of the report on the child and the subsequent procedures. However, a certain delay is necessary to ensure diligence in the collection of important information and in the adoption preparations themselves, as well as to make a decision in the best interests of the child."

<sup>97</sup> Id at §9.1.3 Data Protection.

<sup>98</sup> Id at §2.1.3.2 Preserving information.



the preservation of non-confidential information post-adoption, for the necessary availability of information to adoptees upon reaching the age of majority. The case management system must contain safeguards in both areas, and will be included as a crucial aspect of the choice associated with purchase of a new system. This system is further vital so as to place adequate safeguards in place to prevent and detect instances of abduction, sale and human trafficking in children. Also of importance is the psychological well-being of adopted children later in life, thus the necessity of adequate data preservation mechanisms so as to allow these individuals in the future to locate information on their history and background.

**EXTERNAL RESOURCES:  
Other Contracting States and  
Non-Governmental Organizations**

## EXTERNAL RESOURCES: Other Contracting States and Non-Governmental Organizations

- Other Contracting States

### **§2.3 Establishing co-operation between States**

94. *Co-operation between States is the third central principle of the Convention. The system of co-operation envisioned under the Convention is one in which all Contracting States work together to ensure the protection of children. In order to achieve this goal, it is important that States:*

- *create systems that complement and strengthen the protections implemented by other Contracting States*<sup>99</sup>

### **§3.1 Progressive implementation**

114. *All Contracting States are encouraged to view implementation of the Convention as a continuing process of development and improvement. Contracting States which have already implemented the Convention may wish to evaluate the operation of the Convention within their country or consider ways to improve the functioning of the Convention, if appropriate, through modification or amendment of existing implementation measures.*

116. *Any Contracting State may seek advice or assistance from other Contracting States to achieve its targets for progressive implementation. The Permanent Bureau may also be able to provide general advice or assistance, or a more specific programme of assistance under the Intercountry Adoption Technical Assistance Programme (ICATAP).*<sup>100</sup>

Throughout the process of Progressive Implementation in the areas mentioned within this Proposal, it is prudent to investigate other Contracting States to the Hague and utilize the best practices identified. HCCM will strive to provide a broad range of international data for the Committee on Progressive Implementation, so that the Committee can make the most informed decision possible as to the best practices to be implemented in Panama.

- Colombia

### **§3.3.3 Improving co-operation through meetings and exchange of information**

126. *Co-operation is also improved through meetings and the exchange of information, including the Special Commission meetings to review the operation of the Convention (convened periodically by the Secretary General of the Hague Conference), other regional meetings of Central Authorities, international seminars and conferences. These international meetings help to facilitate the exchange of ideas, resolve international difficulties and provide examples of good practice. They assist in the development of mutual understanding and confidence between Central Authorities, and others, which is necessary to support the effective functioning of the Convention.*

127. *Central Authorities are encouraged, to the extent possible according to their resources, to provide statistical and other information concerning the operation*

<sup>99</sup> Hague Guide to Good Practice, §2.3 Establishing co-operation between States, Paragraph 94 (in part).

<sup>100</sup> Id., §3.1 Progressive Implementation, Paragraphs 114, 116.

*of the Convention requested by the Permanent Bureau.*<sup>101</sup>

Hague encourages countries to utilize the experience and resources of other contracting states, in order to implement best practice scenarios within your own country. For example, Latvia utilizes trips of exchange of experience, so as to determine best practices for their own country.<sup>102</sup> This same good practice principle is recommended for Panama, by utilizing the resource of its neighbor. Colombia is world-renowned for the reformation of the adoption and orphan care processes within their country. HCCM visited Bogota, Colombia in February 2009 for the purpose of establishing relationships with key officials in their Central Authority, the I.C.B.F., and investigating their orphan care systems and adoption process. We met with the ICBF as well as the directors of two of Colombia's fully-licensed orphanages, Los Pisingos and CRAN. We learned a great deal from the orphanage directors about how the entire process works within that country, from the abandonment or removal of a child to permanency.

HCCM had a successful meeting with the director over adoptions for the I.C.B.F. After reviewing their Family Code and Guidelines, she gave us basic information about the entire parental right termination process and documentation detailing their processes utilized to benefit their Children Deprived of their Rights. The Director of ICBF allowed us the opportunity to return at a later date for a more thorough investigation. We feel it is pertinent to make this return trip with a delegation of key persons from the Central Authority of Panama to more adequately acquire all relevant documentation and information. This trip will be a very important step in the Progressive Implementation of Hague, as well as the reformation of current orphan-care processes under Law 61 and the Family Code. See Appendix A, attached, which provides a summary of information gained from the February 2009 informational trip to Colombia. HCCM will forward all pertinent documentation to the ICBF, so as to fulfill the initial requirements to receive assistance from Colombia. HCCM will coordinate with the ICBF and key licensed orphanages in Bogota, thus creating the schedule of meetings and informational sessions that will maximize the informational benefit to Panama.

- Non-governmental Organizations (NGO's)

**§3.2 Resources and powers**

*120. The Convention allows for the use of accredited bodies and, in a more limited manner, approved (non-accredited) persons, to fulfil many of the functions of the Central Authority. Further explanation is given at Chapters 4.3 (Accredited bodies) and 4.4 (Approved (non-accredited) persons). Careful consideration of the use of public or private entities to perform functions is essential. Many States have constructed systems that make effective use of both types of providers.*<sup>103</sup>

Hague examples of good practice also involve utilization of resources outside of the Central Authorities for Progressive Implementation purposes. See Hague Guide to Good Practice for examples of Swedish, Dutch, Norwegian and other NGO's that assist Central Authorities in their functioning, with the approval and applause of Hague.<sup>104</sup>

HCCM will assist in coordinating with international NGO's so as to bring the most efficient resources to benefit Panama. We have numerous international contacts that are eager to assist Panama in these endeavors. The NGO's that will be recommended to the Committee are

<sup>101</sup> Id, §3.3.3 Improving co-operation through meetings and exchange of information, Paragraphs 126, 127.

<sup>102</sup> Hague Guide to Good Practice, Footnote 79.

<sup>103</sup> Id, §3.2 Resources and powers (in part), Paragraph 120.

<sup>104</sup> Id, §5.2 Operational funding for intercountry adoptions, Paragraphs 229-232.

specifically non-adoption agency NGO's, so as to eliminate any impropriety and to be above reproach, unless otherwise instructed. These NGO's are ready, willing and able to provide pertinent expertise to Panama, upon the approval and invitation of the Committee.

# **APPENDIX A**

## **Investigational Trip to Colombia**

## APPENDIX A

### Investigational Trip to Colombia

- Trip to Colombia occurred on February 24<sup>th</sup> through March 1, 2009, in order to gather information regarding the world-renown Colombian adoption process and orphan care system.
- A few of the most pertinent pieces of information gathered during this investigational trip are listed below:
  - Private orphanage institutions in Colombia can have one or all of three licenses:
    - License to care for orphans, including ability to privately find and fund approved foster homes.
    - License to be a birth mother center.
    - License to process adoptions.
  - Only 8 (eight) institutions have all three licenses, and information gathered on three of those eight:
    - CRAN
    - Los Pisingos
    - FANA
    - Note that Colombia does not currently have a state run orphanage.
  - Colombia has spent a decade transforming their adoption process, and it began functioning effectively approximately two years ago.
  - International adoption agencies register with their Central Authority, ICBF, by submitting similar information to what Panama requires, but they are also required to submit a proposal for donating funds for various projects to benefit the orphans. Once ICBF approves their proposal and all requirements are met, international adoption agencies are able to coordinate adoptions with ICBF directly or through the licensed private institutions. The agencies then coordinate with the private institutions to facilitate the implementation of these projects.
  - Colombia processed approximately 3,000 adoptions last year.
    - Of this figure, 1,800 were international and 1,200 were domestic.
    - Only 400 were placed in adoption through private institutions and remaining 2,600 through ICBF.
    - Special Needs children are now being placed for adoption into families equipped to care for their needs.
  - A Public Defender is appointed to work with each private institution and monitor the cases. Only at the last minute, once every detail has been finalized by the Public Defender and private institution, the judicial organ is involved to sign off on the judicial decree for adoption.
    - It took years for the 3 branches (ICBF, Judicial Organ and Private Institutions) to work together and trust the work of each other. This has been a long process but is now working, thus allowing minor children to be returned to their functioning families of origin or placed for adoption, in a much faster manner than they have ever experienced previously.
    - This process is working beautifully, all to benefit the best interest of the children of Colombia. This is a wonderful model, yet the implementation of the model is the best part.

- HCCM is in the process of presenting a proposal to ICBF in Colombia to investigate the differences between Panama and Colombia, and the possibility of implementing a similar model in Panama. HCCM has the intent of coordinating a trip to take a delegation from Panama to Colombia once our investigation has been handed in and approved by ICBF. We believe taking key persons involved in the adoption process to visit ICBF and Colombian orphanages will be a very valuable learning experience and a step forward in order to make necessary changes to the adoption process.
- Visit the following website to locate the pertinent ICBF laws and codes available there, including their Guidelines associated with their adoption law and orphan care system, as well as other helpful information:  
[http://www.icbf.gov.co/Ley\\_infancia/codigo\\_infancia.html](http://www.icbf.gov.co/Ley_infancia/codigo_infancia.html)