



**Summary advisory report 'Reflection on Intercountry Adoption' of the Council for the Administration of Criminal Justice and Protection of Juveniles
(2 November 2016)**

The Minister of Security and Justice requested the Council for the Administration of Criminal Justice and Youth Protection (the Council) to render advice on a number of proposed future scenarios for the system of intercountry adoption. Andersson Elffers Felix (AEF) was commissioned to develop these scenarios. These scenarios all proceed from the current system of intercountry adoption and relate to its management and control.

The Minister submitted the following question to the Council:
Which of the future intercountry adoption scenarios outlined by AEF is preferable?

To provide the Minister with proper advice on the management of the adoption system (the various scenarios), the Council believes it first needs to answer a more fundamental question:

How can we provide the highest level of protection to children of the intercountry adoption target group (children unable to grow up with their own families)?

Asking this fundamental question is in line with the Council's advisory function. The Council is charged with rendering independent advice on the subject of youth protection to the government.

The Council's advice is comprised of two parts and consists of an advice on the fundamental question on intercountry adoption and an advice on the choice of the future scenarios provided.

Advice on the fundamental question on intercountry adoption

Developments with respect to intercountry adoption

There has been a sharp decline in the number of children adopted into the Netherlands from abroad in the past ten years. The profile of these children, too, has changed: they tend to be older when first arriving in the Netherlands and to belong to the subset of 'special need' children, children requiring special care in addition to what is provided to other adopted children.

Positive aspects and bottlenecks

Scientific studies, publications and interviews with experts show that the current adoption system has its positive aspects and also its negative aspects.

Positive aspects

It has become evident that children who grow up in institutions will lag behind in their physical, cognitive and social emotional development. Adoption offers a child the opportunity to grow up within a family instead of in an institution, keeping the child from suffering more and permanent developmental delays. Research has shown that adoption usually is an effective intervention, as it may result in a recovery of the developmental process of the child (especially in the case of children adopted at an early age). Intercountry adoption into the Netherlands also allows the adopted child to grow up in a prosperous country and allows adoptive parents with a desire to have children to have their wish granted.

Bottlenecks

- The Convention on the Rights of the Child (CRC) and the Hague Adoption Convention recognise that the rights and interests of a child are best protected by a family in their own country. The country of origin often lack a youth protection system to provide alternatives to intercountry adoption.
- Research has also shown that intercountry adoption negatively affects the advancement of the youth protection system in the country of origin. Intercountry adoption inadvertently results in local youth protection services being of a lesser quality than would be the case if no intercountry adoption existed.
- Furthermore, intercountry adoption involves financial interests. These carry the risk of illegal and undesired practices.
- These risks increase the need for supervision. However, supervision on the adoption process and on whether the provisions of the Hague Adoption Convention are observed is very limited.
- Specific obstacles exist in a number of countries (China, the US and the EU countries).
- The quality of the adoption process is subject to a lot of criticism.
- The well-being of the children may suffer from unsafe attachment.

Arguments and assessment

Positive aspects and bottlenecks do not, in themselves, provide arguments for or against adoption. While the existence of the problem areas might result in the conclusion that the very phenomenon of intercountry adoption as such should be questioned, it might also result in a drive to change the system, instead. Some of the positive aspects and problem areas come to serve as arguments for and against intercountry adoption. These arguments can be divided into arguments at the micro level (related to the individual child) and arguments at the macro level (related to the system of intercountry adoption). The Council subsequently weighed these arguments against each other.

The 'interest of the child' can be divided into various components that each provide an individual argument for or against adoption. In assessing these arguments, the Council prefers 'placement of children in a family in the country

of origin able to provide *adequate care*' over 'placement of children in a family of adoptive parents in a foreign country able to provide *optimum care*'. This means that the *Family in own country*-argument counts heavily and the *Prosperous Netherlands*-argument and *Optimum care*-argument are given relatively less weight in our assessment.¹

The intercountry adoption dilemma is complex. While there are very strong arguments in favour of intercountry adoption at the micro level, the Council believes these are countered by strong arguments against it at the macro level. The Council, in weighing the above arguments against each other, finds as follows. Despite the benefits it provides to the individual child (micro level), the Council believes that the adoption system is not the ideal solution to protect the target group of children at large (macro level). This conclusion is highly reliant on the fact that, in view of the obligations of the government, arguments at the macro level (system) must be given more weight than arguments at the micro level.

A couple of macro-level arguments against intercountry adoption are decisive in the Council's view. Multiple scientific studies have demonstrated the 'pull' effect of adoption. The system of intercountry adoption creates a supply of children in children's homes. In addition, intercountry adoption undermines focusing on the solution preferred under the CRC (a family of the child's own culture, in the child's own country). Intercountry adoption impairs the implementation and advancement of a youth protection system in the country of origin. The Council believes that these arguments count more heavily than arguments related to individual children benefitting from intercountry adoption. The fact that most of the children adopted into the Netherlands do well does not change the fact that the CRC (Article 20) considers it better for these – and other – children to do well in their own countries. Finally, the Council attaches great value to the principle of subsidiarity: adoption of the child should only be considered if no other solution can be found. The Council believes that the principle of subsidiarity cannot, in practice, be properly observed, meaning that this *Principle of subsidiarity-argument* is, to the Council, a convincing argument against intercountry adoption.

In the opinion of the Council, intercountry adoption and the provision of aid with advancing the youth protection system cannot convincingly stand side by side. The option of having children adopted impairs in itself the further advancement of the youth protection system. A shift of focus to advancing such youth protection systems is essential. The Council refers to this scenario as the 'Family in country of origin' scenario.

¹ [Read the full report for a definition of these arguments.](#)

Advice on scenarios with management models

Having given its advice on the fundamental question on intercountry adoption, the Council gives its advice on the future scenarios presented by AEF.

Scenarios

The AEF report presents four scenarios.

- Scenario 1: 'Optimise the current model'

In this scenario, the current situation is kept the same as much as possible. All current parties remain in existence and all roles remain intact. This scenario revolves around the various actors changing their conduct at their own initiative.

- Scenario 2: 'Government manages the system'

No fundamental reform of the system takes place. All current parties remain existant and will continue to fulfil their current duties. However, in this scenario, the discharge of responsibilities does change. While the government will put more frameworks in place, it will distance itself from the actual performance.

- Scenario 3: 'Fewer actors'

In this scenario, the number of licensees will decrease (possible by way of a minimum number of matches) and the government will combine all supervision duties.

- Scenario 4: 'A public service'

In this scenario, intercountry adoption becomes a public service: the entire chain will be managed by the government.

Conclusion on the scenarios

The Council states that these scenarios are insufficiently able to provide an improvement to the identified problem areas. Various obstacles cannot be removed, as their nature makes it impossible for them to be solved by means of a different organisation of the intercountry adoption system. This has resulted in the Council recommending another scenario for the future ('Family in country of origin').

In answering the Minister's question, the Council asked itself which of the four scenarios are best able to provide an improvement of the established bottlenecks. The Council therefore assessed the future scenarios in relation to the identified bottlenecks. Regarding some of these bottlenecks the AEF scenarios can result in improvements. The principle of subsidiarity served as the standard criterion for the Council to assess which scenario is preferable. Weighing the opportunities and risks, the Council concludes that the 'A public service' scenario is best able to remove the concerns with respect to the principle of subsidiarity (to the extent possible).

Conclusion

This advisory report centres around two core questions. The Council has the following answer to the fundamental question, *'How can we provide the highest level of protection to children belonging to the intercountry adoption target group (children unable to grow up with their own families)?'*

The Council is of the opinion that intercountry adoption is not the best way of protecting children and calls upon the government to shift its focus and to protect these children by supporting the implementation and advancement of the youth protection system in the country of origin. This ideal scenario is referred to as the 'Family in country of origin' scenario by the Council.

With respect to the question '*Which of the future intercountry adoption scenarios outlined by AEF is preferable?*', the Council advises that the government selects none of the four scenarios presented by AEF, but adopts the aforementioned 'Family in country of origin' scenario. Considering these four future scenarios presented, the Council advises that the Minister adopts scenario 4 ('A public service'). This scenario is best able to remove the concerns with respect to the principle of subsidiarity (to the extent possible).

In addition to providing an advice on the fundamental question on intercountry adoption and an advice on the future scenarios presented by AEF, the Council makes the following recommendations.

Besides the five scenarios discussed, the Council recommends to terminate immediately the collaboration with countries with specific problems. This concerns China (supervision by Central Authority and accredited bodies not possible), the US (violates the intention of the Convention's provisions with respect to the principle of subsidiarity and freely given consent) and countries of origin that are EU Member States (principle of subsidiarity).

The Council calls upon the Minister to have a fundamental debate on adoption with the House of Representatives and not just to debate management models and their performance. The Council emphasises that, in view of the sensitivities involved in the debate on intercountry adoption, this debate must be based on arguments. The Council aims to contribute to this debate by way of this advisory report.

Intercountry adoption is a complex subject involving interests in addition to the interest of the child, including the interest of the parents wishing to adopt a child. The various interests involved render the subject politically complex. The Council calls upon the Minister to put the interests of the foreign children in need of protection first (also, or even in particular, because they cannot make themselves heard). The Council hopes that the Minister is willing, in the near future, to make a policy decision that will serve to better protect the rights of these children (as provided in the CRC) and, thus, the children themselves.