# Literature Review on Factors influencing Intercountry Adoption Rates

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# Contents

# Executive Summary

## 1.1     Aims of the review

This report presents the findings of a review of literature about the factors influencing intercountry adoption in sending and receiving countries.

The specific aims of this review are to identify:

- factors that drive intercountry adoption in sending and receiving countries; and

- lessons from countries that can inform or enhance Australia's adoption policies and practices.

The Social Policy Research Centre (SPRC) at the University of New South Wales (UNSW) was commissioned to undertake this research by the Australian Government Department of Social Services.

This paper is not a systematic review of intercountry adoption but is designed to examine the factors in different sending and receiving countries which facilitate or mitigate the rates of intercountry adoption.

While the report examines both barriers and facilitators of intercountry adoption, it must be noted that the current emphasis in the vast majority of the research literature is on examining factors that help to explain the global decline in intercountry adoption. Peter Selman's work in compiling and analysing the movement of children to and from countries is most influential and shows that the numbers of intercountry adoptions peaked globally in 2004, and there has been in a rapid and steady decline since. Selman's analysis (2014, latest figures presented in Appendix A) shows a 64% reduction in total numbers of intercountry adoptions between 2004 (n=45,281) and 2013 (n=16,100). This pattern of peak and decline in numbers of children for receiving countries characterises intercountry adoption during the last decade although some countries peaked later than others. Australia has followed the global pattern: intercountry adoptions peaked in 2005 with a total of 434 and by 2014/15, only 83 adoptions were processed. This represents a reduction of 81% in 10 years (AIHW, 2015).  The literature does not identify any countries in which rates of intercountry adoptions are increasing.

A number of reasons have been proposed for the global decline in intercountry adoption. Economic and social changes including rising living standards associated with increased prosperity in emerging economies, and changing attitudes to single parenthood have reduced the number of adoptable children worldwide (Mignot, 2015). The growing prosperity of sending countries has also increased their capacity to build more effective local child protection systems, and implement social and

family policies that support orphaned or abandoned children domestically (Mignot, 2015; Selman, 2012).

Other reasons proposed in the literature relate to the implementation of the Hague Convention. Ishizawa and Kubo (2014) argue that the implementation of the Hague Convention by the United States in 2008[1] has contributed to the global decline in intercountry adoption numbers. This is because increased efforts are now directed at preventing acts of corruption such as child trafficking. Indeed, the continuing exposure of unethical and corrupt intercountry adoption practices has resulted in the suspensions of intercountry adoptions in some countries (Mignot, 2015; Petersen, 2014; Rotabi, 2012; Smolin, 2013). Countries that have placed a moratorium on intercountry adoption so that they can bring their practices into line with the Hague Convention and eradicate child trafficking include Guatemala since 2009 and Vietnam since its ratification of the Hague Convention in 2011 (Mignot, 2015).

Publicised instances of mistreatment of children adopted internationally, particularly Russian children adopted by American families, have also driven down numbers of intercountry adoptions (Hegar, 2015; Rotabi & Bromfield, 2012). Finally, a growing interest in domestic adoption and other alternatives such as global surrogacy has also impacted on the number of children being adopted across international borders (Selman, 2012; Rotabi & Bromfield, 2012).

## Method

The review process comprised the following steps:

- development of an appropriate search strategy;

- a literature search across multiple databases;

- screening and selection of studies, articles and other documents according to predetermined inclusion and exclusion criteria;

- review and information extraction from all documents; and

- thematic synthesis and write up of results.

A detailed account of the method is outlined in chapter 2. The documents sourced are dated between August 2015 and 1993 – when the Hague Convention on the Protection of Children and Co-Operation with Respect to Intercountry Adoption was established.

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[1] The United States signed the Hague Convention in 1994 however the Convention did not enter into force for the United States until April 1, 2008.

The first round of searching resulted in the identification of 45 articles and other documents for inclusion (for example books and reports). While writing the review a second round of searching was undertaken when additional information was required on factors identified in the first round of searching. This second round of searching was unanticipated but necessary because there were large gaps in information. It is suggested that this is because no meta literature reviews were found examining the factors driving intercountry adoption; and only a small number of empirical studies were identified. Typically, these studies were small in scope and examined one feature of intercountry adoption only such as the motivations of prospective parents (Welsh et al, 2008; Young, 2012). The bulk of the literature included in this review is commentary and analysis that draws on secondary data sources.

It is important therefore to interpret the findings and commentary presented in this report in the context of methodological limitations. For this project the main limitation is that the review is not a systematic examination of intercountry adoption, but rather a comprehensive examination of one area of current policy interest: the factors driving intercountry adoption and lessons for Australia.

## Key findings

The review examines a number of factors that drive intercountry adoption rates. These factors operate at macro levels such as economic and social conditions that impact on intercountry adoption in sending countries and and micro levels including the personal desire to have a child that drives many people to make an application in receiving countries.

For sending countries the literature identifies the following key factors and conditions:

- poverty and other political, social and cultural factors;

- the nature of the child welfare, out of home care and adoption systems;

- war, natural disaster and pandemics; and

- revenue associated with intercountry adoption.

For receiving countries the key factors that drive intercountry adoption are:

- Demand from prospective parents;

- The influence of intercountry adoption advocates and lobbyists;

- Acceptance of older children and those with special needs; and

- Parental views about domestic adoption.

The review findings indicate that the factors that largely drive intercountry adoption in sending countries are outside the control of the government of Australia.

The two case studies presented in chapter 6 that examine intercountry adoption in Spain and Ireland highlight that the specific historical, cultural and social context of a country that greatly influences beliefs about, and the practice of, intercountry adoption. While these case studies present a unique picture of intercountry adoption in Spain and Ireland, they provide few lessons for Australian policy in this area, in that the main drivers of adoption rates appear to be cultural and social rather than specific policies related to intercountry adoption. However there are some similarities between Australia and these countries in that adoption practice in Australia is similarly heavily influenced by past experiences and social attitudes.

Intercountry adoption rates are lower now than they were a decade ago in all receiving countries (Selman, 2014). Smolin (2015) argues that this decline is likely to continue into the foreseeable future, and the recent closure of many intercountry adoption agencies and dismantling of related infrastructure such as intercountry adoption peak bodies in the United States (Smolin, 2015) suggests that key industry stakeholders agree with his prediction.

The review found a lack of evidence linking bureaucratic processes associated with intercountry adoption to rates of adoption. The review also found little evidence to indicate that providing increased support to families throughout the process of intercountry adoption impacts adoption rates. However this link is not examined in the current empirical literature; support for prospective adopters is not identified as a driver adoption rates in the empirical literature to date, although it is identified as a cause of frustration for many prospective adopters. Further research will need to be undertaken to specifically examine the relationship between the nature of support to prospective adopters and how this influences the rate of intercountry adoption. The Australian Government has recently implemented a number of adoption reforms aimed at enhancing the support provided to prospective Australian parents.

# 2 Introduction

The Australian Government Department of Social Services commissioned the Social Policy Research Centre (SPRC) at the University of New South Wales (UNSW) to conduct a literature review examining the factors that influence intercountry adoption rates for sending and receiving countries. The focus of this review is on examining:

- The factors that influence intercountry adoption rates within countries of origin (countries that send children) and receiving countries;

- Factors or measures that could be used to increase intercountry adoption rates in Australia;

- Best practice or lessons that can be learned from countries with higher rates of intercountry adoption.

The review will only examine practices where the needs of the child are paramount, and that meet the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

## 2.1    Project Background

Australia has comparatively low rates of adoptions of children from overseas countries, and the number of intercountry adoptions have declined over the last decade – from 370 children in 2004 to 83 in 2014/15 (Selman, 2013; AIHW, 2015). This decline in intercountry adoption numbers is a trend that is reflected globally. From 2004 when total numbers of intercountry adoptions peaked, to 2012 there was an estimated 60% decline in intercountry adoptions around the world (Selman, 2014). The decline in Australia over the same period of time was slightly greater at around 67% (Selman, 2012).

The Australian Government has recently implemented a number of measures to make it easier for Australians to adopt from overseas when it is considered to be in the best interests of the child. At the end of 2013, the former Prime Minister, Tony Abbott, established an Interdepartmental Committee on Intercountry Adoption. The Committee's terms of reference were to identify barriers to intercountry adoption and to propose short and long term recommendations for reform that would ease the process for Australians. The Committee examined the issue and produced a report (Commonwealth of Australia, 2014) informed by over 100 submissions from organisations and individuals interested in and affected by intercountry adoption. A number of the report recommendations have been implemented to date, including the establishment of new adoption programs with South Africa, Poland and Latvia; and the passing of the Citizenship Amendment (Intercountry Adoption) Act (2014) that grants citizenship to intercountry adoptees as soon as the adoption process is finalised.

Another indication of the government's increased commitment to streamlining the delivery of intercountry adoption services, and supporting people through the process is the recent establishment of Intercountry Adoption Australia. This national service provides a range of supports for Australians wanting to adopt a child from overseas. The website provides information for people at all stages of the process – those thinking about adoption, those part way through the process, and those who have completed the process but would like support to manage some of the challenges involved in bringing a new child into a family. The website provides information resources, contact details for state and territory authorities; and services that can assist prospective parents at all stage of the process. Intercountry Adoption Australia also provides a free telephone information line which is staffed by qualified social workers, who provide general support, help with immigration, citizenship and passport processes as well as referrals to support services

The Department of Social Services' commissioning of this literature review to examine the factors that influence intercountry adoption and compare Australia with other countries similarly reflects the government's commitment to examine the issue, enhance the process, and make improvements where possible.

## 2.2 Defining key terms and review scope

Adoption is a legal process where rights and responsibilities are transferred from children's biological parents to their adoptive parents (AIHW, 2014). Intercountry adoption is one category of adoption. Other categories used in Australian national reporting include local adoptions[2], expatriate adoptions and 'known' child adoptions[3].

For the purposes of this project, intercountry adoptions are defined as adoptions of children from other countries who are legally able to be placed for adoption, but who generally have had no previous contact or relationship with the adoptive parent (AIHW, 2014).

**Expatriate Adoptions**

Expatriate adoptions occur when an Australian citizen or permanent resident living abroad for more than 12 months adopts a child through an overseas agency or government authority. Australian adoption authorities play no role in these adoptions and do not assess or approve applicants. The adoption is therefore carried out without any of the safeguards which exist in Commonwealth managed intercountry

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[2] Local adoptions are defined as adoptions of children who were born or permanently residing in Australia before the adoption, are legally able to be placed for adoption, but generally have had no previous contact or relationship with the adoptive parent(s) (AIHW, 2014).
[3] Known child adoptions are defined as adoptions of children who were born or permanently residing in Australia before the adoption, who have a pre-existing relationship with the adoptive parent(s), and are generally not able to be adopted by anyone other than the adoptive parent(s). Known child adoptions include adoptions by step-parents, other relatives and carers (AIHW, 2014).

adoption programs. Rather, the adoption occurs through another country's domestic processes and is finalised in that country. The Australian Government's involvement in expatriate adoptions is limited to determining whether the child meets immigration requirements to be granted a visa to enter and remain in Australia. Expatriate adoptions are not included in the counts of intercountry adoptions reported by the Australian Institute of Health and Welfare[4] (AIHW, 2014), and similarly this form of adoption is excluded from the analysis presented in this report.

**Customary Adoption**

Intercountry adoption involves the migration of children from one country and culture to another (Hague Conference on Private International Law, 2008). To this end, customary adoption – a practice generally restricted to Indigenous people of the Torres Strait Islands that involves the permanent placement of children with members of extended family – is also excluded from the analysis presented in this report.

International and transnational adoptions are two related terms. The search results indicate that while these terms are often used interchangeably with intercountry adoption, the term 'international adoption' dominates the literature having produced the greatest number of results.

## 2.3    **Aims of the review**

The Department of Social Services commissioned this report to examine the factors that influence intercountry adoption and identify factors influencing adoption in countries that have higher rates of intercountry adoption. The focus of this project is to highlight ways and processes that may improve intercountry adoption processes for Australian prospective parents. This report is not therefore a systematic review of intercountry adoption, nor does it examine the barriers to intercountry adoption in Australia[5].

The global context of intercountry adoption is characterised by a rapid and significant decline in adoption numbers over the past decade (Selman, 2012). Commentators and researchers have proposed a number of reasons for the global decline in intercountry adoption. These have included country specific factors such as the continuing exposure of unethical and corrupt intercountry adoption practices (as in the case of Guatemala) and the subsequent suspensions of intercountry adoptions (Petersen, 2014; Rotabi, 2012; Smolin, 2013). To protect children from

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[4] Expatriate adoptions are reported as a separate category to intercountry adoptions by AIHW. In 2014/15, 97 adoption-specific visas were issued for children who were adopted through an overseas agency. This was a 13% decrease from the 112 visas issues in 2013/14. No literature was found linking changed rates in expatriate adoptions to changed rates in intercountry adoption.
[5] These barriers were most recently detailed in the report of the Interdepartmental Committee on Intercountry Adoption (Commonwealth of Australia, 2014) and include factors such as cost, waiting times, and the uncertainty of outcomes for prospective parents.

trafficking, some countries (such as Guatemala since 2009; Vietnam since its ratification of the Hague Convention in 2011, and Bulgaria since 2005) have placed a moratorium on intercountry adoption so that they can bring their practices into line with the Hague Convention (Mignot, 2015).

In South Korea there has been a growing demand by adoptees and birth mothers for stronger regulation of the practice and this has resulted in the introduction of local legislation to restrict the sending of children across national borders (Selman, 2012).

Other factors that influence the rates of intercountry adoption include a rising interest in domestic adoption (as in the case of China) and alternatives such as global surrogacy (Rotabi & Bromfield, 2012; Selman, 2012); and publicised instances of the mistreatment of children adopted internationally – particularly Russian children adopted by American families (Hegar, 2015).

More general factors that have been proposed in the literature for the global decline in intercountry adoption include economic and social changes including rising living standards associated with increased prosperity in emerging economies. The growing prosperity of sending countries has increased their capacity to build more effective local child protection systems and implement family policies that support children domestically (Mignot, 2015; Selman, 2012). Further, changing attitudes to single parenthood including the de-stigmatization of unwed mothers and illegitimate children have reduced the number of adoptable children worldwide (Mignot, 2015).

These factors which are leading to a decline in overall patterns tend to overshadow the factors which facilitate intercountry adoption both in sending and receiving countries. The factors which are driving rates of adoption down are therefore the focus of the empirical research in this area..

## 2.4    **Review Structure**

This literature review comprises seven chapters and an executive summary. The introductory chapter outlines the project background and scope. Chapter 2 details the method through which literature was identified and reviewed for inclusion in this report. Chapter 3 examines the international and national framework that regulates intercountry adoption. Chapters 4 and 5 examine the factors driving intercountry adoption in sending and receiving countries respectively. Chapter 6 provides case studies of two countries that have maintained high rates of intercountry adoption during a period of global decline. Chapter 7, the conclusion, highlights lessons that could inform and enhance Australian policy.

Supplementary information is provided in Appendix A which comprises comparative tables of statistics on intercountry adoption for sending and receiving countries.

# 3 Methodology

This chapter provides an overview of the methodology used to conduct the literature review.

The review examined international and Australian peer reviewed articles sourced from a number of academic databases (see section 2.2 below for a complete list of databases). In addition, the review examined grey literature sourced from a number of additional online search engines where the focus was on identifying relevant government and other reports not found on academic databases.

## 3.1    Review Methods

The review included a number of methods: a literature search across multiple databases; screening and selection of articles according to pre-determined inclusion/exclusion criteria; reading and review of identified articles and reports; and the thematic synthesis of results.

## 3.2    Search Strategy

As indicated in Table 3.1 below, the search strategy comprised three key words and six secondary words to focus the search.

**Table 3.1: Literature review search terms**

| Search term 1 | Search term 2 |
|---|---|
| Intercountry/Inter-country adoption | Drivers |
| International adoption | Comparisons |
| Transnational adoption | Rates |
| | Statistics |
| | Facilitators |
| | Motivations |
| | Supply and demand |
| | Push and pull |
| | Market forces |
| | Incentives |

The identified key words were used to search the following academic databases:

- Applied Social Sciences Indexes and Abstracts (ASSIA)
- Cochrane Library
- FAMILY: Australian Family and Society Abstracts Database – Informit
- MEDLINE
- PolicyFile
- ProQuest Databases

- ProQuest Central
- PsycARTICLES
- PsycINFO
- Social Sciences Citation Index
- Social Services Abstracts
- Social Work Abstracts
- Sociological Abstracts
- Web of Science
- In addition, the following sites were searched for related grey literature:
- Google Scholar
- OpenGrey
- Australian Institute of Family Studies library
- Adoption-Child Welfare Information Gateway
- Social Care Online

The first wave of searching involved a meta-search of all academic databases (excluding Cochrane Library[6]) using the phrase 'intercountry adoption' with no date restrictions. This resulted in the identification of 559 sources of information. Source results were significantly smaller when a secondary search term was added (intercountry adoption & drivers = 3 results; intercountry adoption & comparison = 49 results; intercountry adoption & rates = 49 results; intercountry adoption & statistics = 67; intercountry adoption & facilitators = 18 results; intercountry adoption & motiv* = 53 results; intercountry adoption & supply and demand = 15 results; intercountry adoption and push and pull = 1 result; intercountry adoption and market forces = 14 results; intercountry adoption and incentives = 11 results).

This same meta-search process was followed for 'international adoption' (single word search resulting in 4,199 sources ) and 'transnational adoption' (212). Again, result numbers were significantly reduced when combined with secondary search terms. Results were then examined and inclusion/exclusion criteria were applied to finalise included literature.

The inclusion criteria for this review are:

- Documents sourced are dated between 1993 (when the Hague Convention on the Protection of Children and Co-Operation with Respect to Intercountry Adoption was concluded) and 2015.

- Documents included in the review are directly related to the review topic of drivers of intercountry adoption and comparison rates. Literature searches identified articles/books on topics not under consideration for this review (such as parents' experiences of intercountry adoption; outcomes for

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[6] Cochrane Library can not be included in a meta-search of multiple databases and must be searched individually.

children; human rights and theoretical approaches for examining the topic) and these were excluded from the review.

- Source documents are predominantly articles or reports. Books are only included where they are directly relevant to the review topic.

- Documents sourced are English language only. All articles written in languages other than English are excluded.

All articles written in languages other than English were excluded, as were book reviews; newspapers, and magazine articles.

Following this process, the remaining relevant sources of information were downloaded, and categorised into one of three groups:

- empirical studies;

- reports outlining circumstances in specific countries (such as Adoptions Australia 2014-15, AIHW); and

- articles/reports that draw on secondary data.

The first wave of searching resulted in the identification, review and inclusion of 32 articles and other documents. While writing the report it became clear that further information was needed. This second round of searching was unanticipated and was necessary because there is little direct information on factors influencing rates of intercountry adoption, indeed the search did not identify any empirical studies specifically focused on identifying and examining factors that influence intercountry adoption.

The second round of searching was used to fill gaps in the report. For this round the authors searched using the surnames of key authors in the field (such as Selman, Smolin, Bartholet, Rotabi). Further, the researchers searched the same databases listed above for sources directly related to intercountry adoption in the two case study countries: Spain and Ireland.

## 3.3 Review limitations

It is important to interpret the findings and commentary presented in this report in the context of identified limitations. This review is not a systematic examination of the issue of intercountry adoption, but rather an examination of one area of current policy interest: the factors driving intercountry adoption and lessons for Australia.

# 4 Intercountry adoption

Policy and legislation on intercountry adoption is the responsibility of individual countries, but is influenced by an international framework. This chapter examines this framework and the ways that intercountry adoption is regulated and controlled in Australia.

## 4.1　　**International framework**

The international principles that govern intercountry adoption are set out in the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (hereafter Hague Convention) (Hague Conference on Private International Law, 1993). The Hague Convention is an international agreement that establishes principles for the protection of children. The major principles of the Hague Convention are to:

1. Ensure adoptions take place in the best interests of the child and with respect for his or her fundamental rights;

2. Establish safeguards to prevent abductions, sale and trafficking in children for adoption;

3. Establish co-operation between states;

4. Ensure authorisation of competent authorities (Hague Conference of Private International Law, 2008).

In achieving the best interests of the child in intercountry adoption, the Hague Convention recognises that a child should be raised by his or her birth family or extended family whenever possible. This is known as the principle of subsidiarity and it is central to the enactment of the Hague Convention. According to the Hague Convention Good Practice Guide (No. 1)[7] this principle:

> implies that efforts should be made to assist families in remaining intact or in being reunited, or to ensure that a child has the opportunity to be adopted or cared for nationally. It implies also that intercountry adoption procedures should be set within an integrated child protection and care system, which maintains these priorities (Hague Conference on Private International Law, 2008, p. 29).

The Hague Convention was developed to create a multilateral agreement which would define substantive principles for the protection of children, establish a legal

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[7] To assist sending and receiving countries in the implementation and operation of the Hague Convention, two Guides to Good Practice have been developed (Hague Conference on Private International Law; 2008 and 2012).

framework for cooperation between sending and receiving countries, and to some degree unify private international law rules on intercountry adoption (Hague Conference on Private International Law, 2008). The need for this agreement became apparent in the 1980s when there was a dramatic increase in the numbers of intercountry adoptions, and growing concern at the complex human, ethical and legal challenges posed by this circumstance.

As at mid December 2915, 96 countries were listed as a Party to the Hague Convention[8] (Hague Conference on International Law, 2015).

Australia signed and ratified the Hague Convention in August 1998. The Convention came into force here in December 1998. In the same year the Commonwealth Government and all Australian states and territories signed a Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. An updated agreement was signed in 2008 to provide a framework for the continued implementation of the Hague Convention by the Commonwealth and states and territories.  The updated agreement sets out the roles and responsibilities for the Commonwealth and the states and territories in relation to intercountry adoption; and measures for ensuring compliance with the Hague Convention.

The Australian Government Attorney-General's Department (AGD) is responsible for ensuring that Australia fulfils its obligations as a signatory to the Hague Convention, and to establish and manage our intercountry adoption programs. Currently, Australia has active programs with 13 countries (see http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/CountryPrograms/Pages/default.aspx for current list). In addition, Australia has established bilateral agreements[9] with some countries that have not ratified  the Hague Convention. These agreements are only established with countries where Australia is satisfied that adoption processes uphold the principles of the Hague Convention. These countries include South Korea[10] and Taiwan.

## 4.2     The Australian system

In Australia, intercountry adoption operates within a strongly regulated framework comprising commonwealth responsibilities and federal law, and state and territory legislation.

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[8] A list of contracting states (countries of origin and receiving countries) that have signed and/or ratified the Hague Convention can be accessed at:
https://www.hcch.net/en/instruments/conventions/status-table/?cid=69
[9] Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 1998
[10] South Korea signed the Hague Convention in May 2013 and is working towards ratification.

### 4.2.1 Commonwealth responsibilities and legislation

The Commonwealth Government is responsible for ensuring that Australia meets its obligations under the Hague Convention. As part of this role, the Commonwealth Government manages existing overseas adoption programs, and establishes additional bilateral adoption program where appropriate (Commonwealth of Australia, 2014).

A number of federal laws also impact on intercountry adoption processes. Examples of relevant federal laws include the *Family Law Act 1975* that implements the Hague Convention into Australian law, largely through the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*. In addition, the *Immigration (Guardianship of Children) Act 1946*, the *Australian Citizenship Act 2007*, and the *Migration Act of 1958* all impact on intercountry adoption processes.

### 4.2.2 State and Territories responsibilities and functions

State and territory authorities are responsible for the consideration and facilitation of individual intercountry adoption cases. This role includes preparing and supporting prospective parents; assessing adoption applications and the eligibility of prospective parents; providing advice and assistance prospective parents about adoption programs; providing post-placement support and supervision for successful families; and functioning as the State and Territory Central Authorities under the Hague Convention (Commonwealth of Australia, 2014). This latter role includes liaising with the central authority or authorised agency in the sending country. The process of matching intercountry adoptive applicants with children is completed by the overseas government adoption authorities or their accredited agencies.

State and territory legislation governs the process and administration of intercountry adoptions in Australia, and each has developed their own legislation. There are significant discrepancies in state and territory legislation concerning procedures, participation in country programs, eligibility criteria and fees involves in the intercountry adoption process in each state. In addition, eligibility criteria differ for all states (Commonwealth of Australia, 2014).

There have been a number of attempts to harmonise state and territory legislation related to intercountry adoption but these have so far proved relatively unsuccessful. In the Report of the Interdepartmental Committee on Intercountry Adoption, the Committee concluded that harmonisation of legislation would not necessarily improve intercountry adoption processes and attempts should not be pursued (Commonwealth of Australia, 2014).

## 4.3     **Processing intercountry adoptions**

The Australian Government is concerned to streamline the intercountry adoption process for Australian families and reduce the wait times. AIHW (2015) reports that the median length of time from when an Australian applicant became an official client of a state or territory department to when a child was placed with them was 64 months (more than 5 years).This is an increase of 4 months in the median wait time from 2013/14. Wait times varied by country of origin with the median shortest time of 41 months for children from Taiwan to 95 months for children from China.

AIHW (2015) indicates that the longest wait for families occurs between the time when a sending country receives an applicant's file from Australia, and when the overseas authority allocates a child. Prior to this process, there is often a wait time in sending an applicant's file overseas as some countries will not accept additional applicant files at a particular time because they do not have the resources to process them. It is important to note that most of the waiting time is not the result of policies and practices in Australia.

# 5 Factors influencing intercountry adoption in sending countries

This chapter examines the macro-level factors identified in the literature as sustaining intercountry adoption in sending countries.

## 5.1 Poverty and other political, social and cultural factors in sending countries

Economic, social and political factors within sending and receiving countries have been important in creating both a supply of children available for adoption, and a demand for children from abroad for adoption.

Poverty is most frequently the root cause of parents in developing countries making their children available for adoption (O'Halloran, 2015). Indeed, intercountry adoption has typically been characterised by the sending country being a low-resource, developing nation, and the receiving country being a wealthier, more industrialised nation[11] (Selman, 2009). This has led many commentators to label intercountry adoption as a form of neo-colonialism (see for example Smolin, 2007). However poverty also affects the sending country by limiting its capacity to develop an effective child protection system, as well as limiting the choices available to poor women to conduct family planning and care for their children.

Poverty as a driving factor in intercountry adoption is highlighted in the work of Selman. His analysis of rates in sending countries shows that when countries become more prosperous intercountry adoption sending rates fall. This is most evident in the case of South Korea (Selman, 2012). This is possibly because as countries wealth increases, they are able to provide better social protection for the poorest parents and are better able to support children.

Political factors also help to drive intercountry adoption in some sending countries. In Romania for example, Ceausescu's reproductive policies – which included every woman of 45 years or younger being compelled to have at least four children, coupled with the lowest standard of living in Europe resulted in many families being forced to place one or more of their children in institutional care. After the fall of Ceausescu's regime in 1989, there were estimated to be approximately 600-800 institutions, housing 100,000 to 300,000 children (Johnson, 2000). Following the collapse of the Ceaususcu regime, there was a rapid and huge wave of adoptions where it is estimated that more than 10,000 children were sent from Romania. However in July 1991 the newly established Romanian Adoption Committee imposed a moratorium on intercountry adoption (Selman, 2010).

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[11] A notable exception is the United States that is a large scale sending and receiving country.

China's international adoption program similarly resulted from a state sanctioned policy. The One Child Policy[12], introduced in 1979, instituted a set of regulations that limited the number of children per family as an attempt to control the population and reduce poverty in the country. This policy resulted in the abandonment of some infant girls. Boys are more valued in Chinese society (Human Rights Watch, 1996) because boys carry on ancestral names, inheritance laws pass property onto sons, and sons are responsible for taking care of aged parents, while daughters who marry are responsible for their husband's family. Children with disabilities and special needs are also more often abandoned in China as many parents do not have the money to provide for their treatment and care.

In response to the growing number of abandoned children, China implemented a law enabling foreigners to adopt its orphans in 1992. From this time until 2007, intercountry adoptions grew rapidly with children being sent to many developed countries. In 2007 however, China introduced changes to its adoption rules and began restricting applicants for its children by marital status, age, mental and physical health amongst other factors. Experts suggest many different theories as to why China began to impose restrictions on intercountry adoption although it is likely to be a response to multiple factors including changing economic and social conditions.  As China has become more prosperous, more Chinese couples want to adopt children themselves – either because they are infertile or because they have a girl and are willing to pay a fine to also have a boy.

Moreover, some evidence suggests that attitudes to adoption have changed following recent scandals. Between 2002 and 2008 there were exposures of child trafficking in Hunan and Guandong provinces with orphanages exposed as buying children and then sending them to foreigners for adoption (Meier & Zhang, 2009; ).

South Korea is another country where cultural factors have sustained its intercountry adoption program. Despite South Korea having one of the world's fastest growing economies, and domestic concern about a low birth-rate, it continues to rank as a top sending country. Commentators cite the main drivers as being the strong cultural stigma against unwed South Korean women who give birth and also towards couples who adopt as. The South Korean mothers who give up their children for adoption are mostly under the age of 25, often spend their pregnancies in the agencies' own maternity homes where they are counselled and coerced to relinquish their children, and the majority come from middle class backgrounds, where the stigma of premarital or extramarital sexual activity has the potential to ruin future social advancement for both the parent and the child (Hubinette, 2005).

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[12] In October 2015, the Communist Party of China announced a proposed change to allow couples to have two children. This proposed change must be approved by a National Congress early in 2016 before it may be implemented and the effect on this policy change on China's position as a sending country for intercountry adoption is unknown.

## 5.2    **War, natural disasters and pandemics**

Large-scale intercountry adoption has often taken place following civil or international war and natural events. Conflict and natural disasters often leave nations in turmoil and families displaced and dismantled. War-torn nations and those affected by natural events such as famine, earthquakes and tsunamis typically experience an increase in the number of children left homeless and parentless. Intercountry adoption offers outside nations an opportunity to provide a humanitarian response by assisting these children.

Intercountry adoption began at the end of WW2 when European orphans, particularly from Germany and Greece, were adopted by American families (Altstein & Simon, 1991). The second wave of large-scale intercountry adoption occurred in the 1950s following the Korean War. Thus historically, conflict has facilitated large-scale intercountry adoptions (Altstein & Simon, 1991). In Australia, intercountry adoption began formally with involvement in the Saigon baby lift in April 1975, and the subsequent adoption of Vietnamese children by Australian families (Fronek, 2012). Operation Babylift occurred at the end of the Vietnam War before the fall of Saigon to the North Vietnamese Army and involved the airlifting out of the city of several thousand children who were subsequently sent for adoption to the United States, Australia and Europe. Similarly, natural events often result in large numbers of children being orphaned and a reduced local capacity to care for children. This was most recently evident in Haiti following the earthquake in 2010 which resulted in a surge of children sent abroad for adoption (Selman, 2012).

Because of long-term unrest, famine, and the impact of diseases (particularly HIV/AIDS), some commentators have identified Africa as a nation where there is great potential for large scale sending to take place (Selman, 2012). The United Nations reports for example that 3 per cent of the population under the age of 18 in sub-Saharan countries such as Kenya, Malawi, Rwanda, Swaziland and Tanzania, have lost both of their parents (2009). However few African countries have been willing to follow the path of Ethiopia and sending numbers have fallen in countries such as Liberia and Madagascar (Selman, 2012).

The situation in some countries in Africa is complicated by the fact that countries in which family matters are governed by Sharia Law have different practices of fostering and guardianship to those practiced in western nations. This is partly because the nuclear family model, upon which adoption relies, is a recent and foreign practice in some societies. Countries governed by Sharia Law do not generally permit adoption (United Nations, 2009) but allow for *Kafala:* an Islamic form of long-term guardianship of orphaned children. The guardianship status does not align with adoption which is a permanent legal arrangement. This is why some

African countries[13] as well as Middle Eastern countries[14] do not permit western legal adoption. This is not a firm rule though, and some predominantly Islamic countries such as Indonesia and Tunisia do allow the practice of adoption.

Despite some countries processing intercountry adoptions immediately following wars and natural disasters, global child protection agencies such as UNICEF, UNHCR, and the UN Committee on the Rights of the Child caution against this practice. Following the expediting of pipeline intercountry adoption cases[15] from Haiti in 2010, the Hague Conference on Private International Law (2010) called for agreement within the international community and particularly by all contracting states to delay or suspend adoption following natural disasters. It was recommended that no new adoption applications should be considered in the period after the disaster or before the authorities in that state are in a position to apply the necessary safeguards; and that efforts to reunite a displaced child with family members should take priority over adoption (Hague Conference on Private International Law, 2011). Importantly, the Hague Conference recognised the need for a common approach on the part of Contracting States and Central Authorities in dealing with intercountry adoptions following a disaster situation (Hague Conference on Private International Law, 2011).

As stated in Annex 10 (Hague Conference on Private and International Law (2010):

> The case of children separated from their parents and communities during war or natural disasters merits special mention. It cannot be assumed that such children have neither living parents nor relatives. Even if both their parents are dead, the chances of finding living relatives, a community and home to return to after the conflict subsides exists. Thus, such children should not be considered for inter-country adoption, and family tracing should be the priority (Annex 10-2).

## 5.3  Revenue

The Hague Convention imposes restrictions on revenue associated with intercountry adoption. Article 32 of the Convention prohibits any person from deriving improper financial or other gain from an activity related to intercountry adoption[16]. However, despite the restrictions imposed by the Hague Convention (including for example that countries of origin are not allowed to ask prospective parents for donations),

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[13] African countries that do not recognise the institution of adoption: Algeria, Djibouti, Egypt, Libya, Mauritania, Morocco.
[14] Middle eastern countries that do not recognise the institution of adoption: Afghanistan, Bahrain, Iran, Iraq, Jordan, Kuwait, Maldives, Oman, Pakistan, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen.
[15] Pipeline cases in Haiti involved children for whom adoption procedures had started when the earthquake struck. Following the earthquake the adoption of these pipeline cases were expedited however concern arose because the children were at different stages of the adoption process (International Social Service, 2010).

and the Guide to Good Practice that provides further information, there are significant financial incentives to by-pass international conventions and domestic laws regulating practices in adoption (Fuentes, Boechat & Northcott, 2012). Indeed while the practice of prospective parents making donations was rejected by the Special Commission on the practical operation of the Hague Convention in 2005, these payments are frequently made (O'Halloran, 2015).

There is much variability in the financial transactions related to intercountry adoption and often little transparency. Some sending countries (such as China and Vietnam) have negotiated bilateral agreements where the financial arrangements are fixed at a government level – although additional payments may include 'donations' to the child care services of the sending country.

Selman (2009) has argued that the acquisition of revenue may very well be the reason some sending countries facilitate intercountry adoption. He describes the approach that China previously took towards placing children from overcrowded institutions for intercountry adoption as pragmatic, and argued that this approach was supported by the valuable revenue China derived from the fee charged to all adopters (Selman, 2009). This pragmatic approach has more recently changed with improvements to the domestic child welfare system and a larger interest in domestic adoption.

Smolin (2007) similarly argues that the 'fees' and 'donations' received by sending countries for intercountry adoption – and that are not available for domestic adoption – create an incentive to send children to other countries. The effectiveness of this revenue in driving intercountry adoption is evidenced by the anomaly in some countries where intercountry placements are being made while there are long waiting lists for domestic adoption (Smolin, 2007).

# 6 Factors influencing intercountry adoption in receiving countries

This chapter examines the main factors identified in the literature that drive intercountry adoption in receiving countries.

## 6.1    Demand from prospective parents

Improved social and economic conditions in Australia and other developed countries have had the consequence of reducing the number of children available for domestic adoption in these countries. These changes include the introduction of benefits and services for single parents, increased availability of contraception and abortion and the increased tendency of single mothers to keep their children as a result of changing attitudes and the de-stigmatization of babies born outside of marriage (UNICEF, 1999). This latter factor is most evident in Ireland where 97% of the children born outside of marriage were adopted in 1967, compared to just 1% in 2004 (Greene et al, 2005).

Despite the introduction of significant social changes that have led to fewer children being available for adoption – there has been no simultaneous fall in the demand for children from people seeking to adopt (Mignot, 2015; Selman, 2012). The fall in birth rates in developed nations, partly due to the increased incidence of infertility has led to more prospective parents viewing intercountry adoption as a pathway to family formation. Haworth and colleagues (2010) assert that infertility is the predominant motivating factor in the majority of intercountry adoptions worldwide.  O'Halloran (2015) agrees, stating 'while intercountry adopters are often also motivated by altruism, it is hard to avoid recognising that it is the needs of infertile couples in western societies that is the primary driving force [of intercountry adoption]' (p. 176).

## 6.2    Influence of intercountry adoption advocates and lobbyists

Intercountry adoption is a complex and controversial practice and much of the literature in this area is characterised by strong opinions on both sides of the debate. The pro-adoption discourse depicts intercountry adoption as a form of rescue – a humanitarian response to overseas orphans (Fronek, 2013). In this discourse, intercountry adoption is presented as a simple solution for both orphaned children and prospective adopters.

The dominance of this 'rescue' discourse in Australia is evidenced by the fact that the former Prime Minister, Tony Abbott, drew upon it when announcing adoption reform:

There are millions of children in overseas orphanages who would dearly love to have parents. There are thousands of Australians who would dearly love to help those kids have a family (Prime Minister of Australia, Media Release, 2015).

## 6.3 Acceptance of older children and those with specific needs:

The numbers of children available for adoption in countries of origin are declining. This is largely due to a growing commitment in these countries to improve their own child welfare systems and make better use of domestic fostering and adoption (Jordan, 2014). Many countries of origin however still struggle to provide resources necessary to care for children with special needs, and as a consequence these children are prioritised for intercountry adoption.

Most prospective adoptive parents want to adopt babies in good health. However, adoption programs between Australia and sending countries typically prioritise the adoption of older children[17]; sibling groups (2 or more children), and children with health or developmental needs. This suggests that parents willing to accept prioritised children are more likely to be successful in their application.

As identified by Selman (2010), a number of sending countries only send older children or those with medical or behavioural needs for intercountry adoption. These countries include Brazil, Latvia, Lithuania and Poland (Selman, 2010). In Italy, the only major receiving country to have experienced rising numbers of adoptions since 2004, a majority of children adopted have been five years or older.  In 2010, 15 per cent of adopted children had particular or special needs (Commission for Intercountry Adoptions, 2011).

The willingness of parents to accept older children and those with special needs may be considered a factor that helps to sustain intercountry adoption as the numbers of healthy babies available for adoption declines globally. A small study of intercountry adoption disruptions in Spain (Palacios et al, 2005) found that in 80% of adoption disruptions, there was a stark difference between the profile of the child requested by the prospective parents and the child assigned to the parents. Typically in these cases the child that the prospective parents adopted was older than requested and had health, behavioural and/or psychological problems (Palacios, 2005). The high proportion of families in this study who received a child who was older than requested or who had special needs suggests that a proportion of Spanish families who have adopted a child from overseas may have similarly received a child that was older and with special needs. Further research is required to confirm this.

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[17] The age at which children are deemed to be 'older' differs from country to country.

## 6.4     Parental views about domestic adoption

Some research indicates that some parents see intercountry adoption as their preferred pathway to family formation – above that of domestic adoption. Several international studies have shown that different groups of prospective parents perceive intercountry adoption to be faster and more likely to be successful than domestic adoption (Malm & Welti, 2010; Zhang & Lee, 2011). This is particularly the case in the United States. According to one study, parents who prioritized the speed of the adoption process were twice as likely to adopt internationally (Ishizawa & Kubo, 2014).

Several other studies have found that prospective adoptive parents negatively view the trend of 'open adoption' that is more likely to occur in domestic adoption (see for example Welsh et al, 2008; Young, 2012), and prefer intercountry adoption as a pathway to family formation. In Australia, the decline of domestic adoptions from the mid-1970s coincides with the rise of intercountry adoptions over the same period (Cuthbert et al, 2010). While it could be argued that the rise in intercountry adoptions in Australia occurred because of the limited availability of babies available locally, Cuthbert and colleagues (2010) present historical data to argue that the supply and demand thesis is not convincing, and that domestic adoption became less attractive to Australian families when adoption arrangements became open in nature. According to Cuthbert et al, the popularity of intercountry adoption in Australia represents a social attempt to bypass legislated reforms:

> The rise of ICA is a response to reformed local adoption. Overseas children are sought expressly to 'avoid this open adoption' available locally (Cuthbert et al, 2010 p. 432).

There is no universally agreed definition of 'open adoption' (McCaughren & Lovett, 2012), however, in the Australian context it refers to a form of adoption where the parties to an adoption (typically the birth parents) have access to the adopted child (AIHW, 2014). The degree of access varies by individual cases and across jurisdictions. Open adoption arrangements – where all parties have agreed to allow a degree of contact or information exchange to occur between adoptive and birth families – have been the predominant form of adoption arrangement for more than a decade in Australia (AIHW, 2014). While this is considered usual practice here, the case studies of Ireland and Spain highlight the fact that open adoption is not universally accepted. This suggests then the argument by Cuthbert and colleagues (2010) that intercountry adoption is sustained or preferred by families who wish to avoid open adoption is relevant only in countries where domestic adoptions are open in nature.. A study by Ishizawa & Kubo (2014) that drew on data collected via the 2007 National Survey of Adoptive Parents (n=1,600) supports this statement and found that 46% of international adopters felt that closed adoption was important, whereas only 14% of private domestic adopters viewed the closed nature of adoption as important.

Open adoptions are currently very rare in intercountry adoption (Rotabi & Gibbons, 2012). In intercountry adoption all ties are generally severed with the birth parents. Intercountry adoption is sometimes preferred by parents because it provides a sense of confidence that the child cannot be removed from them if the birth parents contest the adoption.  In addition some adopters prefer not to have to deal with their child contacting members of the birth family.

# 7 Case Studies of two countries with relatively high levels of intercountry adoption

This chapter presents two case studies of intercountry adoption in countries with relatively high levels of intercountry adoption. Spain and Ireland have been chosen for examination because in 2008 Ireland had the highest rate of intercountry adoption per 100,000 population of all European countries, and Spain had the third highest rate (9.4 and 7.1 per 100,000 respectively; Selman, 2010). Possible learnings for Australian policy and practice are discussed in the final section of this chapter.

## 7.1 Intercountry adoption in Spain

Spain is bordered to the south and east by the Mediterranean Sea, to the north by France and to the west by Portugal and the Atlantic Ocean. By land size, Spain is the second largest country in Western Europe and the European Union. Spain has a population of approximately 46.5 million.

### 7.1.1 Trends and patterns in intercountry adoption

As indicated above, in proportion to its population, Spain has one of the highest rates of international adoption in the world (Marre, 2009; Selman, 2010). In 2004, Spain recorded 5,541 international adoptions, making it second only to the United States in that year in the number of adoptions of foreign children (Selman, 2014). While the number of intercountry adoptions has fallen in the last decade (1,669 international adoptions were recorded in 2012; Selman, 2015; Garcia, 2015) the country has maintained a comparatively high rate of intercountry adoption. In an analysis of standardized adoption rates, Selman (2015) identified Spain as having one of the highest rates of intercountry adoption when analysis takes account of both population size and birth-rate (see Table 7.1 below). As evidenced in Table 7.1 below, in 2008 Spain was second only to Sweden in the number of adoptions per 100,000 of population; and behind only Sweden and Italy in adoptions per 1,000 live births.

**Table 7.1 Intercountry adoptions per 100,000 population (crude adoption rate) and per 1,000 live births (adoption ratio), 2008.[18]**

| Country | No. of adoptions for 2008 | Adoptions per 100,000 population | Adoptions per 1,000 live births |
|---------|---------------------------|----------------------------------|----------------------------------|
| Norway | 304 | 6.4 | 5.2 |
| Spain | 3,156 | 7.1 | 6.4 |
| Sweden | 793 | 8.6 | 7.4 |

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[18] Statistical data sourced from Selman, 2015.

| Country | No. of adoptions for 2008 | Adoptions per 100,000 population | Adoptions per 1,000 live births |
|---|---|---|---|
| Netherlands | 767 | 4.6 | 4.1 |
| Italy | 3,977 | 6.7 | 7.3 |
| Canada | 1,614 | 4.8 | 4.6 |
| USA | 17,438 | 5.6 | 4.0 |
| France | 3,271 | 5.3 | 4.3 |
| Australia | 270 | 1.3 | 1.0 |
| Germany | 664 | 0.8 | 1.0 |
| UK | 225 | 0.4 | 0.3 |

There has been an increase in Spain over the last 2 years in the number of international adoptions of children with special needs (Garcia 2015). Despite the high rates of intercountry adoption, Spain is a relative new-comer to the practice. Intercountry adoption was not practiced prior to ratification of the Hague Convention in 1995, and the incorporation of these principles into Spanish law in 1996 (Palacios et al, 2005). This means that intercountry adoption began much later in Spain than in other countries such as the UK, the US or Norway.

The process of intercountry adoption in Spain is managed through public agencies and accredited professionals. Prospective parents may choose to make an application through the public agency, or to hire accredited professionals or agencies. Applying through a public agency is a more lengthy process but is free-of-charge, while hiring accredited professionals or agencies to manage the process is a faster but more expensive alternative. Palacios et al (2005), report that prospective parents usually choose to use the faster but more costly accredited agency approach. Therefore in Spain, most of the workload for international adoption is carried out by accredited agencies, while the public agency mostly concentrates on domestic adoptions.

## 7.1.2 Factors influencing intercountry adoption

A number of factors can help to explain why intercountry adoption rates in Spain remain strong in a global context of significant decline. These are:

- A severe shortage of local children available for adoption.

This circumstance is a result of the history of Spain and related social changes that happened much later in this country than in other European countries. The Spanish civil war during the 1930s ended in a nationalist dictatorship, led by Francisco Franco. Franco's dictatorship of Spain did not end until his death in 1975, when Spain became a democracy organised in the form of a parliamentary government under a constitutional monarchy. The end of Franco's dictatorship brought rapid social change to Spain. Contraception was allowed in 1978, divorce legalised in 1981, and abortion legalized in 1985. These and other social changes promoted the rights of Spanish women to choose not to marry, delay childbirth or to remain childless.

Marre (2009), reports that in 1996, the adoption authorities in two localities of Spain (Catalonia and Madrid) did not process any domestic adoptions because no children were available. Most recently however, in Catalonia in 2005, the regional government began promoting domestic adoption and above all the fostering of local children in out of home care over international adoption (Anzil, 2013). This change in policy coincided with the first year of a decline in the number of intercountry adoptions.

- A very low birth-rate

International adoptions began in Spain in 1995. This was the year that Spain recorded the lowest birth rate in the European Union at 1.17 children per woman (Marre, 2009). The low birth-rate has been attributed to rapid social change following the death of Franco as the birth-rate dropped from 2.8 children per couple in 1975 to 1.2 per couple in 2002 (Palacios & Amoros, 2006).. While the birth-rate has increased slightly since this time, Spain still has the highest average age at first maternity in Europe (31 years; Marre, 2009). The low birth rate in Spain has been linked to women's unequal and low level participation in the labour market, due largely to the fact that women in Spain do not enjoy the same wage rates and working conditions as men. This combination of women's low fertility and low participation in the labour market is characteristic of some Mediterranean countries where women are supported by a family centre welfare system (Bettio & Villa, 1998).

- Status of domestic adoption

Another factor that according to Marre (2009) helps to explain the popularity of intercountry adoption in Spain is that family law in Spain tends to preserve the biological parent's rights. Marre (2009) argues that this excessive protection of biological parent's rights is one cause of the rarity of domestic adoption in Spain. This rarity of domestic adoption is evidenced by the fact that in 2009 Spain had more than 30,000 children and youth under state protection, but also had the fourth highest intake of intercountry adoptees globally (Selman, 2014).

## 7.2     Intercountry adoption in Ireland

Ireland is located in the North Atlantic to the west of Great Britain. Ireland is divided into the Republic of Ireland (hereafter referred to as Ireland) which covers five-sixths of the island, and Northern Ireland, which is located in the northeast of the island and is officially a part of the United Kingdom. Ireland has a population of approximately 4.6 million (Central Statistics Office, 2015).

# 7.2.1 Trends and patterns in intercountry adoption

Ireland has a difficult and dark history with adoption. Adoption was only legalised in 1952, which is much later than in Britain where this occurred in 1926. Despite this late introduction of legislation, during the nineteenth and twentieth centuries Ireland sent a considerable number of children overseas and many of these children grew up in institutions in Australia. These children were illegitimate born to unwed mothers. In a largely Catholic society, unwed mothers were viewed as sinners and their children as tainted outcasts (McCaughren & Lovett, 2014). In this context, adoption or institutionalization of children was seen as a solution to scandal. Accurate records were not kept at the time as much of the adoption process was carried out in secret, but it has been well documented that many illegitimate Irish children were sent abroad prior to adoption being made legal, and the practice continued for 20 years after adoption legislation was introduced. (Milotte, 2012). Thus historically, whereas in Australia large numbers of 'illegitimate' children were adopted, Ireland dealt with this issue by institutionalising children or by sending them to other countries. It is only recently that Ireland has become a receiving country rather than a sending country.

Historically, adoption in Ireland has been greatly influenced by the Catholic Church although this influence has decreased over the last decade (McCaughren & Lovett, 2014).

All adoptions of children in Ireland, whether domestic or intercountry, are governed by the Adoption Authority of Ireland (AAI). The AAI is an independent, quasi-judicial body appointed by the Irish Government. Under the Adoption Act 2010 all organisations that wish to facilitate adoptions must do so with the recognition, supervision and accreditation of the AAI, and accordingly it is responsible for the regulation of adoption practice.

- A severe shortage of children available for local adoption

Over the past two decades the number of children being placed for domestic adoption in Ireland has been in steady decline. In 2014 only 112 children born outside of marriage were placed for adoption compared to a peak of 1,493 children in 1967 (Adoption Authority of Ireland, 2014). Reasons proposed for this reduction include legal changes that have led to women being better able to control their fertility including increased availability of contraception and the opportunity to access abortion abroad[19]. Further, the state now provides financial support for women wishing to parent children on their own – something that was not available prior to 1973.

Whilst social changes that improve women's ability to control their fertility have reduced the number of babies being born and subsequently made available for

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[19] Abortion is not legally permitted in Ireland.

adoption, the Irish out of home care system also works to ensure that fewer children can be adopted domestically.

- Irish adoption legislation places restrictions on domestic adoption

Ireland was slow and reluctant to develop legislation and policy to distinguish between intercountry and domestic adoption. The 1952 Adoption Act imposes many restrictions on domestic adoptions. The Act prohibited interdenominational adoptions, mixed-marriage couples were not allowed to adopt, and abandoned or orphaned children of mixed religious backgrounds, as well as any child whose parents were married could never be adopted (McCaughren & Sherlock, 2008). These restrictions have been lessened as amendments to the Adoption Act have been passed, however, historically very few families wishing to adopt were able to adopt domestically. As a result, intercountry adoption was seen as an achievable alternative.

- Irish out of home care system does not promote domestic adoption

Ireland does not promote adoption as an option for local children in care. Further, Irish law only permits the adoption of children by married couples, except in exceptional circumstances.

In 2013 there were 6,486 children in out of home care in Ireland, with just over 90% of these in foster care. In 2013, the number of children adopted from long-term foster care was 17. In Ireland, very few children from the care system are placed for adoption and many children subsequently live for long periods in long-term foster care (McCaughren & Lovett, 2012).

- Late legal recognition of intercountry adoption and ratification of the Hague Convention

The Adoption Act of 1952 has had six amendments, one of which was the 1991 Act that recognised intercountry adoption. This amendment was enacted as a response to public concern regarding the many children that had been adopted from Romania in the in the early 1990s who had no legal recognition (McCaughren & Sherlock, 2008).

In addition to showing a reluctance to recognise intercountry adoption in domestic law, Ireland did not ratify the Hague Convention until 2010. This delay in ratification was necessary as Ireland needed time to implement a number of changes to adoption law. To sustain intercountry adoption prior to the ratification of the Hague Convention, Ireland negotiated a number of bilateral agreements with developing countries (particularly South American countries and Vietnam) to govern the adoption of children. In 2004 for example, the governments of Ireland and Vietnam reached an agreement on the adoption of Vietnamese children by Irish prospective parents and this led to 115 adoptions in the first year of operation of the agreement.

In 2014, there were 104 intercountry adoptions in Ireland. Of these, only 34 were carried out under the terms and conditions of the Hague Convention (Adoption Authority of Ireland, 2014). Some commentators have argued that the decline over the last decade in intercountry adoptions is partly attributed to the tighter regulations introduced as a result of the implementation of the Hague Convention (see for example Ishizawa & Kubo, 2014), and consequently, Ireland may have sustained higher numbers by arranging adoptions through bilateral agreements.

## 7.3     Can any lessons be learned from these case studies?

These case studies show that a deeper understanding of intercountry adoption is gained through an examination of the complex cultural, social and policy context of specific countries. It seems apparent however that this understanding sheds little light on intercountry in adoption in Australia. Indeed, these case studies do not provide generalizable lessons that may be used to enhance policy in Australia.

O'Halloran (2015) argues that the key factor that now determines the involvement of a receiving country in intercountry adoption is the lack of children domestically available for adoption. This is certainly a key factor in Spain and Ireland. In Spain, few children were available for local adoption as the birth-rate was so low; and in Ireland few local children were available for adoption as there were until recently strict limitations on children available for adoption.

Since intercountry adoption began in Spain in 1996, the Hague Convention has provided the framework through which legislation has been drafted and the practice has developed. In contrast, Ireland has only recently ratified the Hague Convention, and consequently the intercountry adoption of children by Irish parents has been governed by independently negotiated bilateral agreements (O'Halloran, 2015). These bilateral agreements may help to explain the high level of intercountry adoption in Ireland. Efrat and colleagues (2015) conducted a study to analyse the determinants of international child adoption and found that the Hague Convention reduces the likelihood, as well as the total number, of intercountry adoptions. They argue that this is because the Hague Convention has increased transaction costs (such as fees and waiting times) for prospective families, who are consequently more reluctant to adopt from countries that have ratified the Hague Convention. This suggests that Australia may be able to increase intercountry adoption numbers by entering into additional bilateral agreements with potential sending countries that are yet to ratify the Hague Convention, however, such a move could damage the international reputation of Australia in ethically undertaking intercountry adoptions.

These case studies highlight the considerable differences in the types of government, history, culture, demographics, socio-economic levels and the role of religion in various societies that may underpin variations in numbers of adoptions. The only factors common to both Spain and Ireland are that they are traditionally

Catholic countries which have not had a history of large scale adoptions from out of home care, and in which there are currently few adoptions from care. The lack of opportunities to adopt domestically is said to drive the high rates of intercountry adoption in these countries, although, as indicated below, this is not the case in Australia which has low rates of both adoptions from care and intercountry adoptions.

The case studies offer no apparent guidance on improving the intercountry adoption processes. Very little is written about this in the literature, and although lengthy waiting times are reported to be very frustrating for prospective adopters, there is no evidence that they actually reduce the number of such adoptions. Indeed, the case studies did not identify bureaucratic processes as factors influencing the rates in Spain or Ireland, and there is no indication that these processes are any less burdensome in those countries than they are in Australia.

# 8 Conclusion and lessons for Australia

This report shows that intercountry adoption is influenced by a range of different factors in sending and receiving countries. In sending countries, factors that sustain the practice include poverty, the revenue associated with intercountry adoption placements; lack of an adequate child welfare systems and circumstances that lead to children being orphaned or displaced such as war and natural disasters.

In receiving countries, intercountry adoption is driven by factors such as the pressure from prospective parents who want to form a family; pressure from intercountry adoption advocates and lobbyists to continue and to streamline the process; the preference of some parents for intercountry adoption as this form is perceived by some to be quicker than domestic adoptions, and more likely to be closed in nature and thereby offering a greater sense of permanence and security; and the willingness of people to accept children who are older or who have special needs.

A key finding of this review is that the long term trends related to intercountry adoption are significantly affected by policy decisions in sending countries. Australia, and other receiving countries can do little to affect these decisions. This may explain why many jurisdictions are making sustained attempts to increase numbers of children in out of home care being adopted.

Most importantly, the number of internationally adoptable children worldwide has rapidly and significantly declined in the last decade (Petersen, 2014; Selman, 2012). Intercountry adoption rates are lower now than they were a decade ago in all receiving countries (Selman, 2014). In this context, the intercountry adoption literature focuses on examining reasons why fewer children are being adopted internationally.

This review found no studies specifically linking the adoption process and the rates of intercountry adoption and these are not identified as significant drivers of rates of adoption in the empirical literature. However it is recommended that further empirical research be conducted to establish the extent of the relationship between adoption processes and rates of intercountry adoption.

The two case studies presented in chapter six that examine intercountry adoption in Spain and Ireland highlight that the historical, cultural and social context of a country greatly influences beliefs about, and the practice of, intercountry adoption. These case studies indicate that rates of intercountry adoption in Spain and Ireland are driven by specific historical and cultural factors in those countries and not by specific government policies. Although both countries have historically had high rates of intercountry adoption, the rates of intercountry adoption are declining rather than increasing. The lessons for Australia from these jurisdictions are therefore very

limited. If anything the case studies confirm that the context of decline in intercountry adoption rates dominates the practice globally.

The review has presented a number of reasons for the global decline in intercountry adoption. Some evidence, such as the closure of as many as 400 international adoption agencies and the Joint Council on International Children's Services – the peak body for intercountry adoption agencies in the United States (Smolin, 2015), suggest that key adoption stakeholders believe that the decline will continue. Smolin (2015) goes further by stating that it is no longer necessary to debate the pros and cons of intercountry adoption as:

> these disagreements now have little relevance for the present or immediate future of ICA… Given such small and declining numbers, it has become increasingly difficult to see ICA as either a global solution or global threat for the millions of vulnerable children and families around the world. Instead, ICA is increasingly an issue at the margins for those concerned with children globally, as a solution for a small number of primarily 'special needs' children, defined generally as older children, children with various kinds of serious disabilities, and sibling groups' (Smolin, 2015).

Streamlining the process in Australia to ensure that prospective adoptive parents are not unnecessarily delayed by bureaucratic process and complexity is desirable, and some efficiencies may be achievable. However, the literature makes no connection between the complexity of the process in receiving countries and the rates of intercountry adoption and no evidence was found linking the complexity and length of the process in receiving countries with numbers of intercountry adoptions in those countries.  This is a significant gap in the literature and it is recommended that comparative studies of the process in different countries be conducted. Nevertheless the literature does indicate that streamlining the process in the receiving country does not address the main delays in the process.  These are generally caused by bureaucratic processes in sending countries, many of which do not have extensive infrastructures to support intercountry adoptions.

Intercountry adoption is a complex issue driven by a range of ever-changing social, cultural and economic forces in both receiving and sending countries.  This is an area where research is clearly important but where much of the literature is characterised by ideological debate and strong emotions on both sides rather than empirical evidence. It will be important to continue researching the factors which drive rates of intercountry adoptions in both receiving and sending countries so that the combination of factors influencing these can be better understood and policies improved to serve the best interests of children.

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# Appendix A     Intercountry adoption numbers for receiving states, 2003-2013[20]

| | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2003-2013 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| USA | 21,616 | 22,884 | 22,728 | 20,679 | 19,613 | 17,438 | 12,753 | 12,149 | 9,320 | 8,668 | 7,094 | 174,942 |
| Andorra | 2 | 0 | 1 | 4 | 6 | 5 | 7 | 9 | 2 | 1 | 4 | 41 |
| Australia | 278 | 370 | 434 | 421 | 405 | 270 | 269 | 222 | 215 | 149 | 129 | 3,162 |
| Belgium | 430 | 470 | 471 | 383 | 358 | 364 | 439 | 388 | 351 | 260 | 178 | 4,092 |
| Canada | 2,167 | 1,949 | 1,858 | 1,568 | 1,715 | 1,614 | 1,695 | 1,660 | 1,513 | 1,162 | 1,242 | 18,143 |
| Cyprus | 3 | 3 | 3 | 0 | 19 | 16 | 12 | 4 | n/a | 1 | n/a | 61 |
| Denmark | 523 | 528 | 586 | 450 | 426 | 395 | 496 | 419 | 338 | 219 | 174 | 4,556 |
| Finland | 238 | 289 | 308 | 218 | 176 | 157 | 187 | 160 | 163 | 175 | 141 | 2,212 |
| France | 3,995 | 4,079 | 4,136 | 3,977 | 3,162 | 3,271 | 3,017 | 3,504 | 1,995 | 1,569 | 1,343 | 34,048 |
| Germany | 674 | 650 | 560 | 583 | 778 | 664 | 571 | 504 | 525 | 415 | 330 | 6,254 |
| Iceland | 25 | 29 | 41 | 19 | 18 | 13 | 17 | 18 | 19 | 17 | 8 | 224 |
| Ireland | 358 | 398 | 366 | 313 | 392 | 422 | 307 | 201 | 188 | 119 | 72 | 3,136 |
| Israel | 258 | 226 | 191 | 176 | 218 | 150 | 120 | 114 | 115 | 88 | 69 | 1,725 |
| Italy | 2,772 | 3,402 | 2,874 | 3,188 | 3,420 | 3,977 | 3,964 | 4,130 | 4,022 | 3,106 | 2,825 | 37,680 |
| Luxembourg | 51 | 56 | 41 | 45 | 23 | 28 | 36 | 40 | 24 | 14 | 11 | 369 |
| Malta | 23 | 46 | 39 | 60 | 64 | 53 | 34 | 42 | 50 | 57 | n/a | 468 |
| New Zealand[b] | 273 | 339 | 30 | 20 | 49 | 30 | 16 | 19 | 17 | 22 | n/a | 815 |
| Netherlands | 1,154 | 1,307 | 1,185 | 816 | 782 | 767 | 682 | 705 | 528 | 488 | 401 | 8,815 |
| Norway | 714 | 706 | 582 | 448 | 426 | 304 | 344 | 343 | 304 | 239 | 144 | 4,554 |
| Spain | 3,951 | 5,541 | 5,423 | 4,472 | 3,648 | 3,156 | 3,006 | 2,891 | 2,573 | 1,669 | 1,188 | 37,518 |
| Sweden | 1,046 | 1,109 | 1,083 | 879 | 800 | 793 | 912 | 729 | 630 | 466 | 341 | 8,788 |

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[20] Appendix A table is sourced from Selman, P. (2014). Key tables for intercountry adoption. Available at: http://www.hcch.net/upload/adostats2014selman.pdf

| | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2003-2013 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Switzerland**[a] | 664 | 567 | 389 | 410 | 394 | 367 | 349 | 388 | 367 | 314 | 280 | 4,489 |
| **UK** | 301 | 333 | 369 | 363 | 356 | 225 | 200 | 175 | 153 | 120 | 124 | 342,711 |
| **TOTAL (23)** | 41,516 | 45,281 | 43,698 | 39,492 | 37,248 | 34,479 | 29,433 | 28,814 | 23,412 (22) | 19,338 | 16,100 (20) | |

[a] Total for Germany and Switzerland are for non-relative adoptions only.
[b] Totals for New Zealand for 2003 and 2004 include relative adoptions from Samoa which are no longer classed at intercountry adoptions.

# Appendix B    Intercountry adoption numbers for states of origin, 2003-2013[21]

| Top 15 States of Origin 2003-2013; by number of ICA to 23/27 Receiving States over period | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **2003** | **2004** | **2005** | **2006** | **2007** | **2008** | **2009** | **2010** | **2011** | **2012** | **2013** | **2003-13** |
| **China** | 11,231 | 13,415 | 14,483 | 10,765 | 8,748 | 5,875 | 5,012 | 5,429 | 4,367 | 4,135 | 3,400 | 83,460 |
| **Russia** | 7,737 | 9,384 | 7,492 | 6,770 | 4,881 | 4,132 | 4,003 | 3,360 | 3,292 | 2,586 | 1,767 | 53,637 |
| **Ethiopia** | 858 | 1,524 | 1,789 | 2,186 | 3,036 | 3,888 | 4,553 | 4,385 | 3,452 | 2,800 | 2,025 | 28,471 |
| **Guatemala** | 2,676 | 3,427 | 3,873 | 4,232 | 4,854 | 4,186 | 785 | 58 | 36 | 16 | 26 | 24,143 |
| **Colombia** | 1,749 | 1,714 | 1,472 | 1,640 | 1,634 | 1,608 | 1,407 | 1,785 | 1,573 | 917 | 566 | 15,500 |
| **South Korea** | 2,332 | 2,242 | 2,121 | 1,816 | 1,226 | 1,367 | 1,396 | 1,122 | 951 | 814 | 221 | 15,387 |
| **Ukraine** | 2,051 | 2,019 | 1,989 | 1,047 | 1,614 | 1,569 | 1,505 | 1,096 | 1,065 | 715 | 641 | 14,673 |
| **Viet Nam** | 931 | 486 | 1,198 | 1,368 | 1,698 | 1,721 | 1,504 | 1,266 | 706 | 214 | 289 | 11,092 |
| **Haita** | 1,049 | 1,159 | 956 | 1,103 | 786 | 1,332 | 1,195 | 2,564 | 161 | 256 | 471 | 10,561 |
| **India** | 1,169 | 1,079 | 875 | 846 | 1,013 | 756 | 722 | 606 | 632 | 394 | 350 | 8,092 |
| **Kazakhstan** | 863 | 877 | 843 | 717 | 780 | 728 | 640 | 508 | 217 | 3 | 24 | 6,176 |
| **Philippines** | 416 | 408 | 508 | 483 | 568 | 590 | 555 | 497 | 489 | 407 | 521 | 4,918 |
| **Brazil** | 471 | 472 | 479 | 524 | 485 | 490 | 469 | 380 | 349 | 338 | 241 | 4,457 |
| **Thailand** | 489 | 511 | 467 | 419 | 442 | 382 | 335 | 306 | 270 | 282 | 298 | 3,903 |
| **Poland** | 347 | 420 | 409 | 395 | 383 | 408 | 403 | 325 | 299 | 249 | 310 | 3,638 |
| **23 states** | 41,516 | 45,281 | 43,698 | 39,492 | 37,248 | 34,479 | 29,433 | 28,814[a] | 23,412 | 19,338 | (16,100) | 342,711 |
| **(27 states)** | | | 43,768 | 39,562 | 37,292 | 34,544 | 29,503 | | | | [20 states] | |

Source: Statistics from 23-27 Receiving Countries (for 2005-09, includes Austria, Monaco, Portugal and Slovenia)

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[21] Appendix B table is sourced from Selman, P. (2014). Key tables for intercountry adoption. Available at: http://www.hcch.net/upload/adostats2014selman.pdf

[a] includes ISS estimate for Germany (62) and 1,090 humanitarian visas to US (also included in 2010 total)