

## **Children deprived of their family environment due to the armed conflict in Ukraine:**

### **Cross-border protection and intercountry adoption**

Information Note from the Permanent Bureau of the HCCH

In an international armed conflict like the one occurring in Ukraine, many **children become separated from their families**, losing the critical protection families provide, and finding themselves without basic necessities such as shelter, food and water, as well as without access to education. Many children are forced to leave their homes and their country or may be moved to a safe place.

In such situations, the **primary concern for these children should be their safety** as they are displaced or moved across borders. Children without parental care are at heightened risk of violence, exploitation, illegal adoption, abduction, sale or child trafficking. The *United Nations Convention on the Rights of the Child* and the *Guidelines for the Alternative Care of Children* (approved by the United Nations General Assembly) establish clear principles to protect all children, with special provisions for the protection and assistance of children temporarily or permanently deprived of their family environment, including in emergency situations, such as an armed conflict.

The [HCCH 1993 Adoption Convention](#) and [HCCH 1996 Child Protection Convention](#) also provide an important framework for the protection for children in such emergency situations. In case of an armed conflict, **the focus should be on child protection measures other than adoption**; the 1996 Child Protection Convention – and not the 1993 Adoption Convention – is therefore better suited to protect these children in such situations.

*In a Note Verbale dated 9 March 2022, the Embassy of Ukraine in the Kingdom of the Netherlands informed the Ministry of Foreign Affairs of the Kingdom of the Netherlands of its “inability to guarantee the fulfilment by the Ukrainian side of obligations under [the HCCH] treaties [to which Ukraine is party] for the period of armed aggression”.*

#### ***Protecting children internationally displaced from Ukraine***

With regard to unaccompanied and separated children internationally displaced from Ukraine, the HCCH 1996 Child Protection Convention, to which Ukraine is a [Contracting Party](#), constitutes an important complement to other global and regional instruments relating to the protection of children, including those dealing with unaccompanied and separated migrant and asylum-seeking children. More information on the application of the 1996 Child Protection Convention to unaccompanied and separated children is available [here](#).

#### ***Prohibition on intercountry adoption in emergency situations such as armed conflict***

Children who are separated from their parents in situations such as the one in Ukraine **cannot be assumed to be orphans and / or in need of adoption**. Until the fate of a child's parents or other close relatives can be verified, each separated child should be considered as still having living relatives or legal guardians and, therefore, **not in need of adoption**. This includes the “[n]early 100,000 children, half of them with disabilities, [living] in institutional care and boarding schools in Ukraine” as reported by [UNICEF](#).

Adoptions should always be made in the **best interests of the child**, with respect for their fundamental rights, and thus, in line with the 1993 Adoption Convention. This Convention also aims at protecting children and their families from illegal, irregular, premature or ill-prepared adoptions abroad.

Even if Ukraine is not a Party to the 1993 Adoption Convention, all receiving States should apply its standards and safeguards when cooperating with Ukraine ([Conclusions and Recommendations from the Special Commission meetings](#) (2010, C&R No 36), 2005 and 2000). In addition, all States – whether Party to the 1993 Adoption Convention or not – should **observe particular caution in order to prevent irregularities** in respect of any intercountry adoptions of refugee children or children who are internationally displaced as a result of disturbances in their countries, such as an armed conflict. **Efforts to reunite a displaced child with their parents or family members in situations brought about by armed conflict must take priority** ([HCCH Recommendation on Refugee Children](#) (1994)).

In an emergency situation such as an armed conflict, childcare and protection services cannot be secured. Thus, the risks of illicit practices in intercountry adoption are greater as it can be very difficult or impossible to ensure that adoptions are carried out in line with the guarantees and procedures of the 1993 Adoption Convention, as well as domestic legislation. This becomes all the more important as Ukraine has indicated, that it cannot guarantee the fulfilment of its treaty obligations in light of the current situation.

This caution aims to avoid a situation in which the child is unwarrantedly placed with prospective adoptive parents, and where the process of bonding and integration begins but then has to be terminated because legal obstacles or irregularities emerge. Such a situation has the potential to pose **serious harm to the wellbeing of the child**, the family of origin and the prospective adoptive parents.

In light of the above, in a situation of armed conflict,

- **the conflict should not be used as a justification for expediting intercountry adoptions, or for circumventing or disregarding international standards and essential safeguards for safe adoption;**
- **adoption procedures should be prohibited from taking place.** As [UNICEF](#) notes, “[a]doption should not occur during or immediately after emergencies”.

More information on the 1996 Child Protection and 1993 Adoption Conventions is available on the website of the HCCH at [www.hcch.net](http://www.hcch.net) under “[Protection of Children](#)” and “[Adoption](#)”.

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The HCCH is an intergovernmental organisation working for the harmonisation of the rules of private international law. It is composed of 91 Members – 90 States and the European Union – representing all regions of the globe. More than 150 States are Parties to one or more of the HCCH Conventions and instruments. In essence, the purpose of the HCCH is to build bridges between various legal systems, while respecting their diversity. In doing so it reinforces the legal security of private persons – an essential role in an age of globalisation.