



Country fact sheet for the CRC

USA¹

REPORT N°	N° 5 periodic report for the CRC
PRE-SESSION/SESSION	Pre-session: 75 (October 2016) – Session: 75 (May 2017)
LAWS (THC-1993, GUIDELINES, DOMESTIC LAWS)	<ul style="list-style-type: none"> • CRC not yet ratified. • Optional Protocol on the sale of children, child prostitution and child pornography was ratified on 23 December 2002. • OPAC ratified on 23 December 2002. • THC-1993 came into force on 1 April 2008.
GENERAL SITUATION OF CHILDREN DEPRIVED OF THEIR FAMILY	<p>General child protection:</p> <ul style="list-style-type: none"> • Despite material prosperity, there are multiple human right breaches. For example, in 2014, the CERD Committee criticised the US for ‘stark racial disparities’ in the criminal justice system and responses to counter terrorism, racial disparities at all levels of the juvenile justice system, including disproportionate rate at which racial and ethnic minorities are arrested in schools. • In 2013, CRC Committee in its OPAC concluding observations criticised detention of over extended periods; subjecting alleged child soldiers to torture, ill-treatment, abusive interrogations etc. The Committee noted “a large number of children are trafficked for the purpose of labour, especially in the agricultural sector”. <p>Committee on the Elimination of Racial Discrimination : Concluding observations on the combined seventh to ninth periodic reports of the United States of America (September 24, 2014) CERD/C/USA/CO/7-9 and Committee on the Rights of the Child.; Concluding observations on the second report of the United States of America submitted under article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict (June 26, 2013) CRC/C/OPAC/USA/CO/2</p> <p>General services:</p> <ul style="list-style-type: none"> • Each USA State has the primary responsibility for children deprived of their family. Total expenditures on child welfare services were nearly \$29.4 billion dollars in 2010 (\$13.6 billion federal funds, \$12.5 billion state funds, \$3.3 billion local funds). In principle Child Welfare Information Gateway provides that all US families may benefit from community based support to help in their role as caregivers. • Despite such State investment and gatekeeping structures in place, 402,000 children entered into alternative care in 2013 (http://www.acf.hhs.gov/sites/default/files/cb/cwo10_13_exesum.pdf). <p>Child Maltreatment report 2014 notes verbatim:</p> <ul style="list-style-type: none"> • <i>The national estimates of children who received an investigation or alternative response increased 7.4 percent from 2010 (3,023,000) to 2014 (3,248,000).</i> • <i>The number and rate of victims of maltreatment have fluctuated during the past 5 years.</i>

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	<p><i>Comparing the national estimate of victims from 2010 (698,000) to 2014 (702,000) show an increase of less than 1 percent.</i></p> <ul style="list-style-type: none"> <i>Three-quarters (75.0%) of victims were neglected, 17.0 percent were physically abused, and 8.3 percent were sexually abused.</i> <p>http://www.acf.hhs.gov/sites/default/files/cb/cm2014.pdf</p> <ul style="list-style-type: none"> <i>For 2014, a nationally estimated 1,580 children died of abuse and neglect at a rate of 2.13 per 100,000 children in the national population. Child victim rates in 2013 varied rather substantially across racial/ethnic groups. Black children had the highest rates of victimization at 14.3 victims per 1,000 children in that racial group's overall child population.</i> <p>http://www.acf.hhs.gov/sites/default/files/cb/cwo10_13_exesum.pdf</p>
<p>ALTERNATIVE CARE OPTIONS</p>	<p>Children in out-of-home care may live in a number of possible settings. These include kinship or relatives' homes, family foster homes, treatment foster homes, or group/residential care.</p> <p>Foster Care:</p> <ul style="list-style-type: none"> In 2014, statistics from AFCARS showed that there were 415,129 children in foster care with an average age of 8.7. In 2014, African American children made up 24% of the children in foster care despite only accounting for 13.8 % of the population. <p>http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf</p> <p>Residential Care:</p> <ul style="list-style-type: none"> In a 2015 report covering congregate care, it notes that children in these settings are likely to have more serious mental health/behavioral issues: http://www.acf.hhs.gov/sites/default/files/cb/cbcongregatecare_brief.pdf: <i>Children in congregate care settings are almost three times as likely to have a DSM diagnosis compared to children in other settings.</i> <i>Children in congregate care settings are more than six times more likely than children in other settings to have “child behavior problem” as a reason for removal from home.</i> <i>On average, children spent a total cumulative amount of 8 months in a congregate care setting compared to an average time in a particular placement type of 11 months for children in other settings.</i> <i>The overall time in foster care was longer for children who spent some time in congregate care, with an average of 28 months compared to 21 months total time in foster care.</i> <p>The same report notes progress in the provision of congregate care</p> <ul style="list-style-type: none"> <i>“Proportionately, children in congregate care comprised 18 percent of the foster care population in 2004 and 14 percent in 2013—a notable decrease. Additionally, over the past 10 years, the number of children and youth in the child welfare system on the last day of the FY declined by 21 percent, from 507,555 in 2004 to 402,378 in 2013. Comparatively, the number of children in care on the last day who were placed in a group home or institution decreased by 37 percent (a decline from 88,695 to 55,916). Congregate care use is decreasing at a greater rate than the overall foster care population, which indicates states are making greater strides in reducing the number of children who spend time in a congregate care setting.”</i> <p>Children on the move:</p> <ul style="list-style-type: none"> In 2015, the US government estimates the number of unaccompanied child migrants to be nearly 130,000. In 2014, about 60,000 children, mostly from Central America and Mexico, entered the US without official approval. More than 90% of children caught trying to cross the Mexico-US border without parents come from Honduras, Guatemala and El Salvador. Between 2008 and 2011 the number of children in the custody of the Office of Refugee Resettlement fluctuated between 6,000 and 7,500 per year. The administration dramatically expanded detention of unauthorised families and expedited deportations as HRW documented how “the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA),

	<p>signed in September 1996, made further sweeping changes to immigration laws. It eliminated key defenses against deportation and subjected many more immigrants, including legal permanent residents, to detention and deportation ...”</p> <ul style="list-style-type: none"> • 2016 bipartisan congressional investigation “migrant children in the government’s care fell prey to human trafficking after the Health and Human Services Department failed to protect them ... Many adult sponsors didn’t undergo thorough background checks. Government officials didn’t visit homes and in some cases, had no idea that adult sponsors had several unrelated children, a possible sign of human trafficking.” <p>Sources</p> <ul style="list-style-type: none"> • Global Initiative to End All Corporal Punishment of Children, • https://www.hrw.org/news/2016/04/25/us-20-years-immigrant-abuses • http://www.pbs.org/newshour/rundown/u-s-placement-program-failed-to-protect-child-migrants-from-trafficking-senate-panel-says/
<p>ADOPTION</p>	<ul style="list-style-type: none"> • Almost 25% of children in foster care have case goals of adoption (As of 30 Sep 2014, 107,918 children were waiting to be adopted and average waiting time in 32.3 months) (http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf) • The numbers of children adopted out of the USA have been steadily increasing since 2000. (may be underestimated as the numbers from the UK and other countries are not available.) • It is unclear whether children adopted out of the USA, as a country of origin are those <ol style="list-style-type: none"> 1. waiting in State care (i.e.: among the 107, 918 children) or 2. those born from biological parents choosing an intercountry adoption for varied reasons, including to avoid racial stigmatisation or 3. whether attorneys/other third parties are involved to encourage an intercountry adoption which is more lucrative than a national adoption • The age of children adopted out of the USA is of concern. For example in 2013, Canada’s figures reveal that 17 children adopted out of the USA (out of a total of 126 children) were less than 1 years of age, with 55 children between 1 and 4 years age. These figures exist despite the CRC Committee recommending the practical implementation of the principle of subsidiarity as enshrined in Section 303 (a)(1)(B) of the Intercountry Adoption Act of 2000, in order to ensure that American children are primarily adopted in the United States • Situations 1 and 2 are even more worrying when the birth parent(s) have identified specific prospective adoptive parents (PAPs) or vice versa without professional intervention about appropriate matching (legal, psycho-social basis). It is difficult to gauge how “financial transactions” between PAPS and biological families are being monitored to avoid children becoming commodities – and what sanctions are in place to avoid the sale of children. • September 2016 “there 26,518 children photolisted on AdoptUSKids now live with permanent families” – safeguards needed to protect the privacy/human dignity http://www.adoptuskids.org/ • As the largest receiving country (children entering into the USA via adoption), it is of concern that the USA allows adoptions in countries of origins where safeguards are lacking (e.g.: weak child protection systems, lack of birth registration systems, consent of biological parents is questionable, adoptions occur for profit etc.). • In 2015, 5648 adoptions into USA, representing 75% decline since high point of 2004 and a continuing decline in line with international trends; a significant number continue to be from non- Hague Convention countries • An average (median) intercountry adoption costs \$30,024 but can be up to \$64,357 https://travel.state.gov/content/dam/aa/pdfs/2015Annual_Intercountry_Adoption_Report.pdf • Rehoming is a practice that requires further research – rehoming is a private system of exchanging children in care/adoption with other families. This occurs in situations where families may find themselves with challenging adoptions/adoption breakdowns (e.g.: older children, inaccurate evaluations of prospective adoptive parents, improper matching, insufficient post adoption support etc.). It seems that in many cases rehoming involves private agency adoptions where no one is responsible to provide services to try to prevent the adoption disruptions or for finding solutions when there is an adoption breakdown. When this occurs, adoptive families have the choice to relinquish the child into State care, which can

raise questions about their parenting skills or they can attempt to find another placement for the child through rehoming. The latter occurs without professional intervention, competent body approval and monitoring - leaving room for all kinds of risks. An important question is about safeguards needed to prevent adoption breakdowns occurring in the first place (see <http://www.reuters.com/investigates/adoption/#article/part1>)

Sources:

- The Hague Convention of 1993, Authorities http://www.hcch.net/index_en.php?act=authorities.details&aid=555.

STATISTICS

Children adopted from the USA (country of origin) between 2006 and 2013

	2013	2012	2011	2010	2009	2008	2007	2006	Total
Austria					2				
Australia							1	4	
Canada	126	107	33	N/A	52*	91	90	98	
Denmark								1	
France					1				
Germany **	6	10	5	13	44	45	27	12	
Ireland								2	
Netherlands	27	48	43	34	34	56	39	38	
Sweden					5	7	2	10	
Switzerland ***	8	13	16	-	14	10	22		
UK	N/A	N/A			NA	NA	23	14	
Total	167	178	97		155	209	204	189	

AICAN, <http://www.aican.org/statistics.php?region=0&type=birth>

SURROGACY

- [Families Through Surrogacy](#), an international non-profit surrogacy organisation, has estimated the approximate average costs are \$110,000 per surrogacy in the USA
- Lack of regulation about
 1. birth mothers ensuring proper healthcare, consent etc. – in some US States, consent of the birth mother is allowed prior to birth of the child and some contracts allow for selective abortions at the request of intending contractual parents.
 2. lawyers, third parties, clinics etc.
 3. use of gametes (e.g.: harvesting, numbers, origins, sale etc.)
 4. Rights of children born through national/international surrogacy arrangements to know their origins, birth registration and nationality
 - When regulation exists “some states regulate surrogacy wrongly through a legal theory of parentage by pre-conception/pregnancy contract without regard to genetic or gestational connection or the best interests of the child; such wrongful surrogacy regulations legitimize a large-scale commercial surrogacy industry and legalized market in children under which commercial surrogacy typically involves the sale of children as defined by OPSC”. (Smolin)

RISKS

- Lack of respect of principle of subsidiarity where USA is a country of origin (e.g.: large numbers of young infants). Problematic in private adoptions when either birth family or prospective adoptive parents “choose” each other by passing professional matching.
- Continued lack of regulation of surrogacy arrangements leads to the sale of children but some states adopt regulations which actually legitimises the sale of children
- Inadequate monitoring of financial transactions in both adoption and surrogacy (especially through the “private” nature)

POTENTIAL QUESTIONS/RECOMMENDATIONS

- What safeguards are in place to prevent adoption breakdowns and private “rehoming”?
- What measures are in place to ensure that adoptions – both national and intercountry – do not lead to the sale of children?
- Recommend the prohibition of private and independent adoptions as per the conclusions of the 2010 Special Commission for parties to the 1993 Hague Convention
- What plans exist to improve the protection of migrant children against exploitation?
- What is being done to prevent the sale of children through surrogacy arrangements?
- Recommend that the USA work with other States and international organisations to develop international standards for surrogacy practices