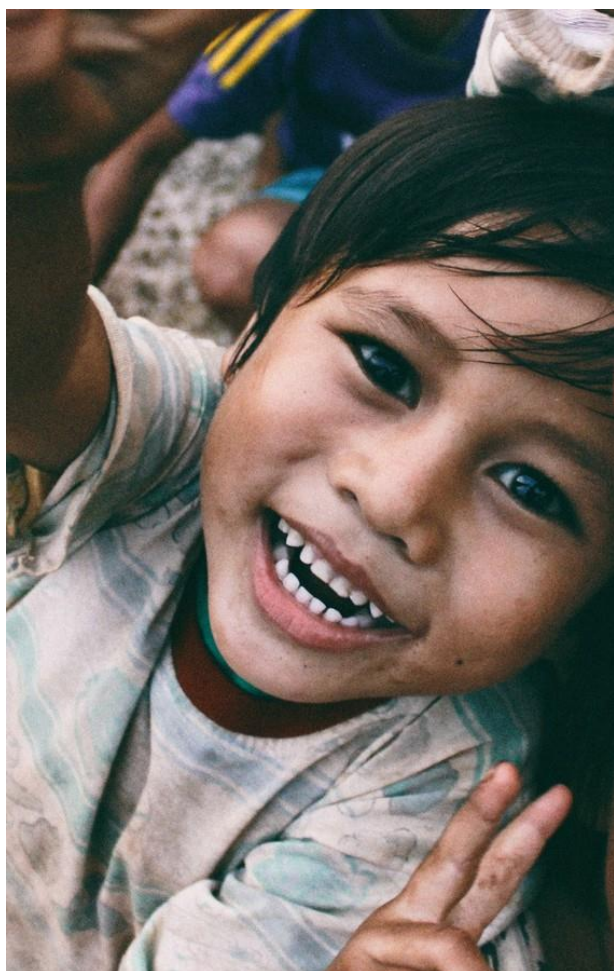




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# NEWSLETTER



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### Relocating Ukrainian children: ensuring safety while doing no harm

Over the past weeks, Ukraine has seen a rapid and massive displacement of millions of persons, whether internally<sup>1</sup> or across borders. As per available estimations, over 5 million persons<sup>2</sup> fled Ukraine to other European countries, mainly unaccompanied children, or children accompanied by their mothers, family member(s), informal caregiver(s), or institutional staff.

While this major and unprepared movement across borders – the largest since World War II - has called on rapid responses<sup>3</sup> in terms of protection, support, identification, registration and reunification, it has also raised numerous legal and practical questions, ranging from providing humanitarian relief to ensuring that, despite good intentions, no harm is being done, in compliance with international humanitarian law; hence upholding the rights of children, especially those who are deprived of parental care (see [CRC Committee statement](#) on 24 March 2022, [civil society statement](#) in March 2022).

For several weeks, there was unclarity and lack of information about children still or formerly in the Ukrainian care system, as well as children who were in adoption processes prior to the outburst of the conflict and children who were - or were about to – be born to surrogate mothers in Ukraine.

Today, fortunately, in addition to the work of civil society on the ground and at regional/international levels<sup>4</sup> (see also p. 6), further clarification has been brought by the Ukrainian authorities which are regularly sharing information and issuing statements as well as adopting new legal provisions applicable to the situation of Ukrainian citizen seeking refuge abroad (see e.g. [Ukrainian communication on evacuated children](#), March 18, 2022), including accompanied and unaccompanied children, or with the residential care staff (see in particular, [Resolution No. 166, adopted on February 28, 2022](#)) or children moving with a relative or a non-relative (see in particular Resolution No. 383, adopted on March 29, 2022) and children with disabilities (see [guidance](#)). Based on these provisions, several key elements are to be considered: as per the Ukrainian requirements, unaccompanied children shall for instance not be relocated beyond neighbouring countries. Children previously institutionalized in Ukraine and moving as a group are to remain together and not to be separated. Further, a delegation of Ukrainian Government officials is currently visiting different States, such as Poland, Germany and Italy, to collect information on the responses provided in terms of child protection in said countries.

It remains indeed extremely difficult to have an exact picture of the scale and pace of the situation, and the fate and whereabouts of children given the current absence of uniformed and coordinated registration systems at borders and among different national child protection and case-management systems; this existing gap increases risks for child rights violations, including children disappearing.

In addition, Ukraine has one of the largest populations of **children in residential care**: in 2020, there were over 700 institutions run by different ministries with a total of 102,570 children in residential care (77,000 as per the latest official data from January 2022)<sup>5</sup>. Nearly half of them having special needs.<sup>6</sup> In light of the conflict, these figures raise questions: Where and with whom are these children now? To what extent are [children with severe](#)

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<sup>1</sup> Over 7 million internally displaced persons as per the latest IOM data, [Update on Internally Displaced People Figures in Ukraine: 5 April 2022](#).

<sup>2</sup> See <https://data2.unhcr.org/en/situations/ukraine>

<sup>3</sup> A specific focus is also put on the consolidation of the child protection systems in Ukraine's neighboring countries to provide quality care to concerned children and families. The EU also reacted swiftly by activating for the first time the [Temporary Protection Directive](#), granting citizen of Ukraine a special temporary status in most countries. [Some countries have taken further national protection measures in response to the arrival of displaced persons](#)

<sup>4</sup> Ongoing mappings of children's whereabouts are being developed (e.g. by UNICEF, Eurochild), guidance documents and recommendations are being developed (e.g. [ChildCircle](#)) coordinated and comprehensive responses are being initiated, technical assistance provided, field child protection cluster groups and joint advocacy groups created.

<sup>5</sup> See Replies to list of issues, [CRC/UKR/RQ/5-6](#).

<sup>6</sup> Information provided during ISS mission in 2020.

[disabilities](#) being evacuated from care institutions? For children still in Ukraine, how to ensure tracking and monitoring of their whereabouts, safety and wellbeing? Should children who were relocated to other countries together with staff of the care facility be considered as being accompanied by a legal guardian? If yes, whom do these responsibilities concretely vest in, and what are the legal effects of such guardianship/custody *as per* Ukrainian law? What if no formally appointed process was followed?<sup>7</sup> Or should these children be dealt with as unaccompanied children who call for a new guardian to be appointed to protect and defend their rights in the host country?<sup>8</sup> If yes, under what conditions? In the host country, given the traumatising situation most children have gone through, how can sufficient attention be given to access to psychological support, and children able to maintain contact with their families?

Regarding cross-border child protection issues, especially related to recognition of placements, guardianship etc., it is important to recall the useful mechanisms provided by the [1996 Hague Convention](#), ratified by Ukraine and most European countries (see also [HCCCH statement](#)). ISS/IRC will continue exploring the application of this legal instrument in further newsletters.

As per **adoption**, in recent years, Ukraine has been an important State of origin (see [ISS/IRC 2020 Annual ICA Statistics](#)). Hence, certain receiving States were quickly faced with questions on cooperation issues, as well as on the status of initiated adoption procedures (*pending cases*). Consequently, different approaches and communications were adopted before clarity was provided by the Ukrainian government on the current situation of adoption proceedings in Ukraine (see p.10). However, remaining open questions relate to: how many families and children are concerned by such pending cases? Once an adoptable child has been relocated to a neighbouring country, what are the consequences on the initiated adoption procedure? Would the child's habitual residence be called to evolve depending on the duration of the war? What lessons can we learn from this armed conflict? Shall existing principles evolve to respond to current challenges that become more and more visible? And how to deal with the numerous appeals shared all over social media "to care for or adopt a Ukrainian orphan"? More than just an issue of standards and guidance, this armed conflict is clearly the occasion to further sensitise the general public on the international standards applicable to adoption.

For ISS, it is certain, and in line with international standards and its previous recommendations on intercountry adoption in times of humanitarian crises, whether man-made or natural catastrophe, that **intercountry adoption should not take place during or immediately after an emergency**, including in the context of armed conflict. Crises are a breeding ground for illicit practices, in part because there is little oversight, if any. Further, to avoid heterogenous practice and create hence an enabling environment for illicit practices, ISS urges all concerned States to **adopt a harmonised approach**.

Further, **PAPs in an adoption proceeding should refrain from any independent actions**.

(See [ISS factsheet](#)).

Finally, in recent years, an estimated 2,000 to 2,500 children have been born, per year, through **surrogacy arrangements** in Ukraine. Consequently, numerous foreign couples are currently in an arrangement with surrogate mothers and/or have embryos stored at clinics in Ukraine. In these cases, how to ensure quality care for surrogacy-born children in the absence of intending parents? How to adequately protect the surrogate mother? Should she stay in Ukraine and risk her life as well as that of the baby she is carrying, or look for refuge abroad and give birth in a country where surrogacy is eventually illegal?<sup>9</sup> How to ensure that she is not unwillingly separated from her own family and children? Some of the salient questions that require dire answers and actions to respect the rights of children and other parties concerned.

**In definitive, whatever the family situation of children, any child should benefit from adequate identification and registration processes at borders as key safeguards to counter any illicit practice or rights violations and allow for suitable responses in other child protection systems. As to children deprived of parental care, it is of peremptory importance to avoid unnecessary separations, including of siblings and groups of children as requested by Ukrainian officials (see p. 7), to deploy all efforts to reunify children with family members and to provide quality temporary family- or community-based care solutions based on existing promising practices (see p. 13).**

<sup>7</sup> Common practice for many residential care placements as per ISS 2020 mission.

<sup>8</sup> See [ISS Factsheet](#) and Annexes with certain answers to these complex legal questions available upon request.

<sup>9</sup> See "[Des mères porteuses ukrainiennes prises au piège de la guerre](#)", by [Julia Pascual](#), published in *Le Monde*, 24 April 2022.

Through its newsletter, ISS/IRC will continue informing its readers on the different developments, practice guidance and recommendations.

In addition, in light of the plight of many children, young people and families who have to face a war and displacement, without forgetting other ongoing conflicts in the world, CELCIS, IFRC and ISS and other partners are pleased to announce the reactivation of the MOOC *Children moving alone* in the coming weeks (see p.4) based on the strong conviction that the MOOC is an extremely valuable tool that concretely helps to equip professionals and volunteers to provide quality care and protection to **unaccompanied and separated children**.

ISS/IRC Team  
April 2022

## ACTORS IN INTERCOUNTRY ADOPTION AND CROSS-BORDER CHILD PROTECTION

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- **Belgium, Chile, Denmark, Guyana, Philippines, Portugal and Spain:** these countries have updated the contact details of their Central Authorities, competent authorities and/or accredited adoption bodies designated under the 1993 Hague Convention.
- **Denmark, Fiji, Georgia, Greece, Morocco, Sweden and Uruguay:** these countries have updated the contact details of their Central Authority designated under the 1996 Hague Convention.

Source: *Hague Conference on Private International Law*, [Latest updates](#).

## BRIEFS

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### Caring for Children Moving Alone - Protecting unaccompanied and separated children: new session of the MOOC – 9 May 2022

Around the world, thousands of children are travelling across and between borders as unaccompanied and separated refugee and migrant children. These children and young people retain their universal rights and have the right to protection. Recent events have led to the **reopening of this six-week online course** to anyone with a responsibility for responding to the care and protection needs of unaccompanied and separated children and young people. Backed by leading international humanitarian and children's rights organizations, including ISS, the course is informed by the expertise and experience of young people, professionals, volunteers, and academics.

Registration is possible at the following [link](#) - Available in English, Spanish, French and Arabic.

### Joint Declaration – the rights of children with disabilities

During their 89th and 26th sessions respectively, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities adopted a [Joint Statement on the rights of children with disabilities](#). The Declaration addresses, *inter alia*, the high reliance on institutionalisation for children with disabilities, and calls on States Parties to promote the development of family and community support mechanisms to ensure that children realise their rights to family life on an equal basis with other children.

### Recent Case Law from the ECtHR: [D.M. and N. v. Italy \(no. 60083/19\)](#), 20 January 2022

“This case concerned an alleged violation of the right to respect for family life of a Cuban national, who was also acting on behalf of her daughter (born in 2012), on account of the latter's subsequent adoption. The applicants alleged that the reasons given by the domestic courts for declaring the daughter available for adoption did not correspond to the ‘wholly exceptional circumstances’ required for severing family ties. They submitted that the Italian authorities had failed to honour their positive obligations as defined by the Court's case-law and that they had not taken all the action that could reasonably have been expected of them to preserve their family ties and to strike a fair balance between the competing interests at stake, having regard, in particular, to the fact that no psychological assessment had been ordered for either of them.

The Court held that there had been a violation of Article 8 (right to respect for private and family life) of the Convention in the present case, finding that, notwithstanding the domestic authorities' margin of appreciation, the interference in the applicant's family life had been disproportionate to the legitimate aim pursued. It further considered that the impugned procedure had not been accompanied by safeguards proportionate to the seriousness of the interference and the interests at stake. The Court pointed out, in particular, that the fact that a child might benefit from being transferred into an environment more conducive to her upbringing did not, per se, justify taking her away from her

biological parents. (...). The Court further held that the arguments advanced by the domestic courts to justify the adoption procedure had been insufficient. It noted that no reasons had been given, apart from the time it would have taken for the mother to recover her parental capacities, to explain how such a radical measure as adoption could actually be in the child's interests. Lastly, under Article 46 (binding force and execution of judgments) of the Convention, the Court invited the authorities to promptly reconsider the two applicants' situation in the light of its judgment and to envisage arranging for contacts between them, taking account of the child's situation and her best interests."

Source: *European Court of Human Rights, Factsheet on Parental Rights.*

## RECENT DEVELOPMENTS LINKED TO THE ARMED CONFLICT IN UKRAINE

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**The Ukrainian government (The Cabinet of Ministers) adopted several decrees specifically related to children's rights during a state of emergency or martial law. Among the most recent and relevant ones:**

- **Decree No. 425, 9 April 2022:** Regulations on the creation of the working group for the protection of the rights of citizens who moved to the territory of the European Union, the composition of the group, its responsibilities, the regulations governing it. Available [in Ukrainian](#).
- **Decree No. 405, 5 April 2022:** Implementation of the project on additional social support measures for the most vulnerable categories of the population. Available [in Ukrainian](#).
- **Decree No. 383, 29 March 2022:** Rules of crossing the State border by citizens of Ukraine. Changes specifically concern persons with disabilities, including children and organized groups of children with disabilities. Available [in Ukrainian](#).
- **Decree No. 385, 27 March 2022:** The procedure for relocating children from vulnerable categories (child care institutions, shelters, medical rehabilitation centres, etc.) from the zone where hostilities are taking place to safer areas or abroad, available [in Ukrainian](#).
- **Decree No. 349, 22 March 2022:** Specificities related to the protection of children left without parental care when a state of emergency or martial law is imposed on the territory of Ukraine. Available [in Ukrainian](#).
- **Decree No. 302, 17 March 2022:** Establishment of the Coordination Hub on Rights of Children during martial law, co-headed by the Minister of Social Policy and President's Envoy on Rights of Children and Children's Rehabilitation. Composition, tasks, powers. Available [in Ukrainian](#).
- **Decree No. 264, 12 March 2022:** Rules for crossing the State border of Ukraine by all categories of children (children with disabilities, orphans, deprived of parental care, as well as with relatives and friends without parents). Available [in Ukrainian](#). Booklet prepared by the Ministry of Social Policy (in [Ukrainian](#) and in [English](#)).
- **Resolution № 179, 1 March 2022** on the documents required for children below the age of 18 and below 16, whether accompanied or unaccompanied, and the need for registration in the host country. Available in [English](#), and Ukrainian.
- **Decree No. 166, 28 February 2022:** The first changes that concerned the regulation of rules applicable to border crossing for orphans and children deprived of parental care. Available [in Ukrainian](#) and [in English](#).

**The European Union has adopted different texts via its different institutions:**

- [The 10-Point Plan For stronger European coordination on welcoming people fleeing the war from Ukraine](#) ;
- [Council Implementing Decision \(EU\) 2022/382](#) of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of [Directive 2001/55/EC](#) of 20 July 2001, and having the effect of introducing temporary protection;
- Communication from the Commission on [Welcoming those fleeing war in Ukraine: Readyng Europe to meet the needs](#)
- [European Parliament resolution of 5 April 2022](#) on the protection of the rights of the child in civil, administrative and family law proceedings (2021/2060(INI))
- [European Parliament resolution of 7 April 2022](#) on the EU's protection of children and young people fleeing the war in Ukraine (2022/2618(RSP))

In addition, a [web page](#) is dedicated to information for persons fleeing Ukraine.

## Many ISS members have launched different initiatives to support children and families from Ukraine. Here are few examples of their actions:

### ISS Moldova

Asociația pentru Abilitarea Copilului și Familiei “AVE Copiii” is on the frontline taking action to ensure that children and their families are being protected. They are mapping Ukrainian refugees for referral to social workers for case management and training local professionals in order to provide direct and individualized assistance. Further, a day care centre has been established on the premises of ISS Moldova to accommodate 25 children and their mothers by providing ludo therapy and counselling. Outreach activities and financial support are also been organised for Ukrainian refugees stranded in various Moldovan Cities.

See also: ISS Operational briefs of [30/03/2022](#) and of [07/03/2022](#)

### ISS Romania

Generatie Tanara is providing basic needs and guidance services for families escaping the war but more importantly, GTR teams are doing their best to identify cases of unaccompanied minors and those at risk of human trafficking.

See also: ISS Operational briefs of [30/03/2022](#) and of [07/03/2022](#)

### ISS Slovenia

As of mid of April, 5'800 Ukrainian refugees are registered in Slovenia. ISS partner in Slovenia, Slovenska Filantropija, has been active with 564 volunteers on duty. They have been organizing the following activities: Material aid, accommodation support and activities for children, direct individual support providing information about refugees' rights and possibilities, psychosocial and legal support, employment assistance, health services, and Slovene language courses.

See also Operational brief of [07/03/2022](#)

### ISS Germany

Since the armed conflict began in Ukraine, Internationaler Sozialdienst, ISS Germany, manages an advice line and responds to a variety of questions related to child placement in Germany, registration, education, family reunification and possible cases of child abduction. They also gather and provide information to local, national and international authorities on legal and non-legal aspects of children leaving the country applying international laws such as the 1996 Hague Convention.

For more information, visit <https://www.issger.de/en/home/home.html>.

### ISS Spain

Since the beginning of the war in Ukraine, our ISS Partner in Spain, Cruz Roja Española, has responded to the needs of children and their families. Their immediate response was to create a link on their website for people, including Ukrainian relatives, to send their queries. They responded to multiple queries related to the restoration of family links, offers to welcome families, and requests for medical care for refugees with serious pathologies. The Youth Red Cross is managing friendly and safe spaces, where recreational and educational activities are offered to Ukrainian children and adolescents. Finally, the Spanish Red Cross is also offering emergency humanitarian assistance in Ukraine.

For more information and support, please refer to their [website](#).

### Scotland: Strengthening the law to protect the rights and relationships of brothers and sisters in care

*In this article, Lizzie Thomson, Policy Associate at CELCIS, and member of Scotland's 'Stand Up For Siblings' coalition, outlines the approach taken in Scotland to better ensure the rights and relationships of siblings are protected when children are involved with the care system.*

When children are separated from their parents, staying together with their brothers and/or sisters is crucially important for their wellbeing, identity, and to uphold their right to family life. For many people, relationships with brothers and sisters are lifelong, providing rich family connection throughout adulthood: this should be no different for people who have childhood experience of alternative care.

#### A life-long and evidence-based impact

Research evidence, and what children and young people have shared, tells us that positive sibling relationships can be a source of resilience, and provide continuity and stability during the change and uncertainty of experiencing alternative care.<sup>10</sup> Yet, often these relationships are disrupted when the State needs to take a direct responsibility for children's care. Research indicates that in Scotland, around 70% of children in care experience separation from their siblings.<sup>11</sup> This has been recognised as an issue requiring concerted attention, action and change. Care experienced people have been calling for such change for many years, and the developments in Scotland come in the wake of powerful testimony shared publicly by care experienced young people about their experiences of separation from their brothers and sisters.

#### Action and reform

Scotland is a nation with renewed energy and focus on improving the lives and experiences of children

and families who experience alternative care. In October 2016, Scotland's First Minister announced an Independent 'Root and Branch' Review to consider the legislation, culture, practices and ethos of the care system.<sup>12</sup> Unlike previous reviews examining how Scotland cares for its children, the Independent Care Review was driven by those with experience of care, and at its conclusion, had listened to the experiences of over 5,500 children, young people and adults who had lived in care, as well as carers and the paid and unpaid workforce, including the Stand Up For Siblings coalition<sup>13</sup>. The final report

of the Independent Care Review - The Promise - published in February 2020, sets out the need for concerted transformational change to ensure that love is

embedded as the central value around which the care system works; that families are actively supported to stay together; that children are involved and listened to in all decisions affecting them; and that their important relationships are upheld.

The Independent Care Review heard from children with brothers and sisters whose contact with the care system led to their separation, the pain of this experience, and its life-long impact. The Review also heard about the important relationships children developed with other children they lived with when living away from their family. The Promise subsequently called for a stronger legal framework to acknowledge, protect and promote sibling

*CELCIS is Scotland's Centre for Excellence for Children's Care and Protection, based at the University of Strathclyde in Glasgow. CELCIS is a leading improvement and innovation centre which aims to narrow the implementation gap between legislative, policy and practice aspirations and the experiences and outcomes of children, young people, and their families.*

<sup>10</sup> Wojciak, A. S., McWey, L. M., & Waid, J. (2018). Sibling relationships of youth in foster care: A predictor of resilience. *Children and Youth Services Review*, 84, 247-254.

<sup>11</sup> Jones, C., Henderson, G., & Woods, R. (2019). Relative strangers: Sibling estrangements experienced by children in out-of-home care and moving towards permanence. *Children and Youth Services Review*, 103, 226-235; Henderson, G., Jones, C. and Woods, R. (2017). Sibling birth order, use of statutory measures and patterns of placement for children in public care: implications for international child protection systems and research. *Children & Youth Services Review* 82, 321-328.

<sup>12</sup> Sturgeon, N. (2016) *Address given by SNP Leader and First Minister of Scotland Nicola Sturgeon to SNP conference*, 15/10/16, Glasgow. Available at: <https://www.snp.org/nicola-sturgeon-address-to-snp16/>

<sup>13</sup> Stand Up For Siblings is a collaboration between a broad range of children's welfare, children's rights and legal organisation, public bodies and academics within Scotland formed in 2017, in order to raise awareness of the issues faced by brothers and sisters with care experience, and influence developments in the law, policy and practice. A range of information and resources for children, families, and practitioners are available from <https://www.standupforsiblings.co.uk/>.

relationships and rights, the need for support to enable the workforce to undertake high quality assessments of the relationship needs of children with brothers and sisters, and to meet these needs.<sup>14</sup> The Scottish Government has committed to 'keeping The Promise' by implementing action to address the conclusions of the Review, which all political parties' support. The Review set a 10-year timeline for the Promise to be realised, with expectation that some changes take place immediately. The changes for children with brothers and sisters are a key priority for the first three years of this work.<sup>15</sup>

### **Sibling relationships and the law**

Legislative change is a key part of the wider cultural and practice change required to ensure the sibling relationships between children with care experience are maintained and supported to flourish. In the wake of the work of the Independent Care Review, Stand Up For Siblings, the Scottish Government, and others, new laws<sup>16</sup> giving increased legal protection to the rights of care experienced brothers and sisters came into force in Scotland in July 2021. These laws recognise sibling relationships as much broader than simply relationships between those who share a birth parent. They also include children who are not related by birth but have lived with one another and see themselves as a brother or a sister. This is an important recognition of the range of relationships that care experienced children may hold. These relationships may have the meaning and character of relationships between any siblings, for example, relationships which develop with other children that they live with in foster or residential care. These relationships may develop between some children living together, and not others, therefore it is essential that the child's view is at the centre of determining which relationships are, to them, sibling-like.

### **Sibling relationships and decision-making processes**

The new laws state that when local authorities take direct responsibility for the care and protection needs of a child, they must ensure that they are kept together with any siblings who are also in care, as long as this is appropriate and safe for the children. Previously, local authorities had duties to consider the need to place siblings together, but this legal change significantly strengthens siblings' legal rights. If it is determined that living together is not appropriate, local authorities must ensure children live near to their siblings, as long as this itself is

appropriate. This is important to ensure that children who cannot live together with their brothers and sisters can still be part of the same community, and do not have to travel long distances to see one another and spend time together. The law places new duties on local authorities to support these relationships when siblings do not live together, by requiring them to regularly take steps to promote direct contact and personal relationships between any child in care and their siblings, as long as this is appropriate. This is an important new right for children with brothers and sisters to be supported and helped to keep in touch and to maintain and develop their relationships, rather than risk becoming estranged.

The new laws also strengthen brothers and sisters' participation rights. Local authorities are now required to ask children's brothers and sisters for their views before making decisions about a child's care. This gives brothers and sisters new and important rights to be heard, and for their views to be considered. The new legislation also creates duties for Children's Hearings - which, in Scotland, take legal decisions about children's care and protection - and our courts. Children's Hearings must consider whether a legal order is needed for children's contact with their brothers and sisters, and give them an opportunity to participate in the legal process when decisions are being made that will affect them seeing one another. When courts make decisions about where children will live and whom they have contact with, they too must take account of children's important relationships, including with their brothers and sisters.

### **Addressing enduring challenges**

Taken together, these changes advance the legal framework in Scotland to better uphold the rights of children in alternative care, and whose relationships may be impacted by this. They ensure sibling relationships are legally protected and supported, and that decisions take brothers and sisters views into account. And yet, changing the law does not, in itself, change practice, or the experiences of children and their brothers and sisters. Challenges remain, in several areas. Practical and resource challenges such as a lack of foster care settings with sufficient space to care for larger sibling groups; or the limited availability of homes close to one another presenting transport and logistical issues, which can be particularly pronounced where Scotland's rural and island geography is a factor. Challenges in terms of

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<sup>14</sup> Independent Care Review (2020) *The Promise*. Glasgow: Independent Care Review. Available at: <https://www.carereview.scot/wpcontent/uploads/2020/02/The-Promise.pdf>.

<sup>15</sup> The Promise (2021) *The Plan 21-24*. Available at: <https://thepromise.scot/plan-21-24-pdf-spread.pdf>

<sup>16</sup> Three pieces of legislation bring about these legal changes. These are: the [Children \(Scotland\) Act 2020](#); [The Looked After Children \(Scotland\) Amendment Regulations 2021](#); and [The Children's Hearings \(Scotland\) Act 2011 \(Rules of Procedure in Children's Hearings\) Amendment Rules 2021](#)



workforce confidence, dedicated time to make assessments about children's sibling relationships, and ensure what is needed to support them to grow and flourish is in place. Challenges involving changes to culture and ingrained ways of practice, such as changing how children spend time with their brothers and sisters when they do not live together, so that it is more natural, child-centred, and supports their relationships to develop. While it is too early to truly know the impact of these legislative changes, what is clear is the commitment and motivation to overcome these challenges and implement change in Scotland.

### **Translating policy change into practice**

Given such challenges, it was recognised that new [national practice guidance](#) to support the implementation of change would be required. Published by the Scottish Government and written in collaboration and consultation with people with experience of care, parents, carers, and a wide range of practitioners across the workforce, the guidance emphasises the central importance of listening to children's views about their sibling relationships and practicing in a way which promotes and supports these relationships. The guidance is an important resource, providing detailed practice advice based on research and evidence about what all children need to grow and flourish through positive connections with their siblings, alongside shining a spotlight on creative solutions to barriers and challenges, and practice examples illustrating excellent practice already underway in Scotland. Concerted, cross-sector work led by the Scottish Government continues, alongside the continued work of Stand Up For Siblings, to facilitate the implementation of the new law and guidance, and drive forward positive changes for brothers and sisters with care experience in Scotland.

### Ukraine: Intercountry adoption during armed conflict

*In this article, ISS/IRC seeks to map out the different information and positions on intercountry adoption of Ukrainian children that have been issued in recent weeks following the Russian invasion of Ukraine, while reminding all practitioners of the importance of adhering to and upholding international standards.*

The events experienced by the Ukrainian people since late February 2022 have inevitably had catastrophic and irreparable consequences for the whole child protection system, with thousands of children displaced both within Ukraine and beyond its borders.

Even before the crisis, Ukraine had one of the highest numbers of children deprived of their family in Europe, with almost [100,000 children](#) in residential care. At the same time, despite not having ratified the 1993 Hague Convention, Ukraine had for many years been one of the world's leading States of origin for intercountry adoption (the second [in 2020](#) and among the top six in the preceding years).

Additionally, although some States of origin for adoption have been affected by natural disasters in recent years, this is the first time that a State of origin has faced armed conflict on such a scale since the 1993 Hague Convention was introduced. Given this context, ISS/IRC reiterates the importance of strictly and properly implementing the applicable standards, from the Convention on the Rights of the Child to the 1993 Hague Convention.

#### Response by Ukraine

On 23 February 2022, the Government of Ukraine declared a state of emergency and closed its airspace to all commercial flights because of the Russian military action.

On 13 March 2022, the [Ukrainian Ministry of Social Policy](#) announced a **ban on all intercountry adoption** until the conflict is over. This firm position, in line with international standards, was taken because the current conditions make it impossible to ensure that an intercountry adoption is in the best interests of the child and respects the fundamental rights of the child and their biological family.

At the same time, Ukraine confirmed to the [US authorities](#) that there were no fast-track or simplified procedures available for intercountry adoption processes, including those already underway.

This position was taken in response to the escalating situation, but also to numerous demands of future adoptive parents, coupled with increasing interest to adopt Ukrainian children who had been orphaned or separated from their families in recent weeks.

It is important to note that, under Ukrainian law ([Family Code](#)), the adoption of a Ukrainian child by foreign nationals or Ukrainian citizens living abroad falls under the responsibility of the National Social Service, competent adoption authority alongside the courts delivering final decisions on adoption. At present, however, according to the Ukrainian communiqué (see above), apart from in certain very urgent cases, neither the National Social Service nor the courts are currently able to operate or to ensure compliance with the requirements of national and international law.

Moreover, the Government of Ukraine has pointed out that most of the children in residential care were not orphans but had parents and families who had placed them there mainly for economic or medical reasons.

To protect displaced Ukrainian children, the Ukrainian Ministry of Social Policy subsequently issued a [communication](#) on 23 March 2022, inviting 23 countries to sign bilateral memoranda<sup>17</sup> on protecting the rights of children from vulnerable categories. In particular, it is designed to guarantee their return to Ukraine after the situation improves, and to prevent the adoption of Ukrainian children

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<sup>17</sup> A template of a bilateral memorandum is available at ISS/IRC. This document reiterates the ban on adoption; there is a request to actively identify unaccompanied children; the host country is required to “ensure the return of every Child, (including unaccompanied and accompanied children) to the territory of Ukraine to a designated destination (by agreement of the Parties), while guaranteeing safety and other conditions.” Further, there is a large focus on keeping children who were formerly in institutions together.

without the consent of Ukrainian authorities and the application of the national law on adoption.

### **Response by the European Union**

Meanwhile, the European Union has adopted several texts through its various institutions (see page 6). The Resolution of 7 April 2022 calls for greater protection of children fleeing war in Ukraine, particularly vulnerable children, for the registration of children entering the EU from institutional care, and for monitoring of their well-being and location in the EU. It also calls on the Member States ‘to halt child adoptions in order to avoid further or permanent separation for children from their parents and families against their best interests’ (paragraph 32).

Most recently, on 21 April 2022, an extraordinary joint meeting of the Legal Affairs Committee and the Employment and Social Affairs Committee (see [video extracts](#)) took place during which the risk of illegal adoption of Ukrainian children in institutions was raised by the European Parliament's coordinator for children's rights, Ewa Kopacz, and other experts.

### **Response by some receiving States**

The response by receiving States to the Russian invasion varied in terms of approach, duration or countries affected.

For example, some countries decided to suspend intercountry adoptions to and from Ukraine. On 11 March 2022, [France](#) announced its decision to suspend intercountry adoptions with Ukraine and Russia, for a renewable period of three months. Where matching had already taken place, the procedure could be completed, in accordance with international rules and where the local situation allowed. In the same spirit and on the same day, [Switzerland](#)'s federal Central Authority called on the cantonal Central Authorities not to respond to adoption requests for children from regions experiencing armed conflict or natural disaster, until that country's institutions are able to function normally once more. Likewise, many of [Canada](#)'s provinces and territories have decided to suspend all activities on adoption with Ukraine – in particular Alberta, Manitoba, Ontario, [Quebec](#), Newfoundland and Labrador. By contrast, the province of British Columbia has indicated that the suspension will apply only from 15 May 2022, due to an ongoing case.

Other countries, such as [Italy](#), have reported that they are working to resolve cases where children had already been matched with Italian families.

As for the United States, the [statement issued by the US Bureau of Consular Affairs](#) explains the risks of

intercountry adoption in wartime, and the priorities in this context. It does not include a firm declaration on suspending intercountry adoptions, but simply a recommendation to take extra caution when considering adopting a child during a crisis, such as hiring an experienced immigration attorney. Despite the current warning from the [US Department of State](#) not to travel to Ukraine, apparently some PAPs and foster families are considering travelling to Poland and other neighbouring countries to visit children who have been evacuated.

### **Response by civil society and international institutions**

There is broad consensus among the international community that intercountry adoption is not an acceptable or appropriate response during or straight after a humanitarian crisis, partly due to the increased risks of abuse or illicit practices when there are no competent authorities able to check the application of and compliance with legal and procedural standards.

Strengthening their [general statement](#) on intercountry adoption, UNICEF and UNHCR reiterated on [7 March 2022](#) that “adoption should not occur during or immediately after emergencies. Every effort should be made to reunify children with their families when possible, if such reunification is in their best interest”.

Other NGOs have issued statements based on the same principles. These include national statements (e.g. by the US [National Council for Adoption](#)) and international ones such as that prepared by an ad hoc group of children's rights organisations formed to address care issues in the current context, under the umbrella of the Alliance for Child Protection in Humanitarian Action (currently being finalised). In addition, a document drafted by [Hope and Homes](#), and signed by many NGOs, lays out key recommendations for all Ukrainian and international actors involved in the care of Ukrainian children deprived of family care, on championing the rights of these children.

Meanwhile, the [United Nations Committee on the Rights of the Child](#) and the [Hague Conference on Private International Law \(HCCH\)](#) have stated the immediate measures that need to be taken to protect children affected by armed conflict. In particular, the HCCH Note of 16 March 2022 underlines the importance of Member States prioritising efforts and activities to protect and ensure the safety of children who are displaced. Where the displacement is across borders, the Note also points out that the provisions in the [1996 Hague Convention](#), which was ratified by Ukraine, are applicable.

### **ISS/IRC position**

As already stated in our [fact sheet](#), and as in previous crises, ISS/IRC stresses the importance of coordinated joint action by all receiving States, in accordance with the various international obligations, when faced with humanitarian situations such as the armed conflict in Ukraine or natural disasters (see also the **Conclusions and Recommendations** by the Special Commissions on the 1993 Hague Convention, e.g. in [2010](#), paragraph 40).

Suspension of intercountry adoption with a country experiencing armed conflict is sometimes the only measure to prevent illicit practices and protect the rights and interests of children and of families (both biological and adoptive) involved in adoption procedures. A unified approach, in line with the


position adopted by Ukraine (see above), must be accompanied by additional measures, such as awareness-raising for the media and for prospective and future adoptive parents – in addition to proper support – on why measures such as suspending intercountry adoption are essential.

Failure to adopt a common approach compliant with applicable laws would risk sending a mixed message to the Ukrainian authorities, implicitly accepting the use of a compromised adoption system. It would also carry the risk of developing fragmented approaches that could encourage illicit practices, particularly given how difficult it is for local competent authorities to carry out their duties at the present time.

## INTERDISCIPLINARY RESOURCES

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### The PRIDE Model of Practice to Support Families as Team Members in Child Protection and Trauma-Informed Care of Children

 This article provides an overview of the PRIDE Model of Practice made available internationally through the Child Welfare League of America (CWLA). The information shared here is based on an interview with Mr. Marcus Stallworth, LMSW, Director of Training and Implementation at CWLA and a book chapter on the implementation of the PRIDE Model of Practice in countries beyond the USA.

#### The history and goal

The [PRIDE \(Parent Resources for Information, Development and Education\) Model of Practice](#)<sup>18</sup>, was inspired by foster and adoptive parents in Illinois, a US State, who wanted a comprehensive approach to help ensure they could meet the safety, well-being, and permanency needs of children who have experienced loss and trauma. Its ancestry dates back almost 30 years when CWLA, in collaboration with public and private child welfare agencies, organizations, a foundation, and universities in the United States came together to create this model of practice. They created the name as an acronym encompassing what the focus would be along with a positive feeling about the work. Including “model of practice” in the name was essential. There had to be a shared commitment that protecting and nurturing children at risk and strengthening all their families – whether birth, foster, or adoptive - requires teamwork among individuals with diverse and culturally responsive knowledge and skills, but all working from a shared vision and towards a common mission.

Hence, the **PRIDE Model of Practice** aims to:

- Strengthen families, whether they are families of origin, kinship, foster, adoptive or members of tribes or clans – however families are defined.

- Enhance the quality of family foster care and adoption services by providing a standardized, consistent, structured framework to recruit, develop, support, and retain foster and adoptive families.
- Share resources among public and private agencies, educational settings, and of course advocacy organizations, such as CWLA and ISS.

#### The PRIDE Model of Practice is based on research that evidenced the need for foster and adoptive families to have five core competencies:

- Protecting and nurturing children – essential round the clock assurance of safety and well-being.
- Meeting children’s developmental needs, which includes promoting health, intellectual growth, social skills, academic progress, and positive ethnic and cultural identity as well as positive sexual orientation and gender identity and expression (SOGIE).
- Supporting the relationship between children and their birth families, for whatever contact children and families may have it has an impact on their feelings and behavior. Loss and trauma histories and experiences must be healed.
- Connecting children to safe, nurturing relationships intended to last a lifetime or permanency planning, because children need

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<sup>18</sup> **Examples of the implementation of the PRIDE Model of Practice beyond the USA:**

The Needs Of Children Know No Borders by Dr. Eileen Mayers Pasztor, Dr. Donna D. Petras, Sir Rob van Patee, Dr. Maria Herczog, and Dr. Michele Del Conte. In *Voices for the Forgotten – Thirty Years of the International Foster Care Organization: IFCO*, pages 147 – 172. Edited by Emily Jean McFadden and Myrna McNitt. Published in 2012 by the International Foster Care Organization and available online from [www.amazon.com](http://www.amazon.com). This book chapter explains the methods by which the PRIDE Model of Practice has been transferred among countries using teams of facilitators from receiving and sending countries; since that date, many more countries have been implementing. Working with the PRIDE Model of Practice Around the World in Difficult Times by Eileen Mayers Pasztor, DSW; Marcus Stallworth, LMSW; Donna Petras, PhD, and Samantha Carter. MSW. In *Children’s Voice, Special Issue – CWLA, Universities, and Communities*, December 2020, pages 17 – 20.

continuity, commitment, legal and social status that comes from having a family of their own.

- Serving as a member of a professional team which includes everyone who makes policy, program, and practice decisions about every child and especially the foster and adoptive families who have the significant responsibility of round-the-clock care.

### **The PRIDE Model of Practice is organized around three major components:**

- **Planning Component:** preparation stage during which the mission of the agency is clarified together with the role of foster and adoptive families to meet that mission; the number and nature of foster and adoptive families to be recruited are determined, i.e., how many families for siblings, or children with specific cultural or SOGIE identification.
- **Development Component,** during which prospective foster and adoptive families participate in preservice training and a mutual assessment (both virtual/in-person) with the agency of their ability, resources, and willingness to be team members in the cultural and trauma-informed care of children who join their families. Topics covered include the dynamics of attachment, loss, healing, abuse and neglect, the implications of parenting children with traumatic stress, the role of children's birth families and how to support those relationships.
- **Support Component:** the needs of the children are matched with the families they join, to the fullest possible extent. Note the strength-based language of "join." The **PRIDE Model of Practice** does not use the word "placed" as children are not objects and as it does not use the word "home" as it is not homes that heal or hurt children but families that do. This phase is crucial, as it requires families to implement all the acquired knowledge. A plan is equally established for the ongoing development and support related to the needs of children in their families and the support of the families themselves. Again, the **Model of Practice** is essential as all agency staff must support the foster and adoptive families as key team members: there is no foster care nor adoption without them. Also notice the focus on families more than parents. While every family

has parents, every member of the family must be recognized for their unique value.

### **"The Needs of Children Know No Borders"**

The **PRIDE Model of Practice** was introduced to our colleagues in Canada, Europe, and Scandinavia through the International Foster Care Organization (IFCO). It has been implemented in more than 20 countries. And while countries are diverse in geography, language, currency, customs, and practices we know that the needs of children to be protected and nurtured and the need for family have no borders. Further, foster and adoptive families are a rare, valuable resource. According to one of the principal developers of the original **PRIDE Model of Practice**: to be any parent – birth, grand, step, foster, adoptive – or to be a child welfare professional is a privilege and not a right; but for children to be protected and nurtured is a right and not a privilege.

It should be noted that this Model of Practice does not guarantee competencies on the part of the foster and adoptive families who participate in the program. This is because CWLA has no way of measuring the quality of the implementation of the **PRIDE Model of Practice** or the extent to which the participating team members – agency staff and family members as well as policymakers and administrators and supervisors establish accountability. It is a **Model of Practice** in intent but not in evidenced outcomes; that would remain the responsibility of the implementing organizations.

The **PRIDE Model of Practice** can be purchased through a license from the CWLA. The license offers access to the all the **PRIDE Model of Practice** resources that can be adapted to each country. These [resources](#) include *Facilitator's Guides*, *PRIDEbooks (handouts for families)*, *videos*, and an *Implementation Guidebook*. CWLA staff and colleagues from other implementing countries are available for consultation. License holders also are entitled to change the name of the program, for example in Hungary it became FIKSZ ("make it happen"). The price of the license is negotiated on a case-by-case basis through an agreement with the CWLA.

## FURTHER READINGS AND MATERIAL

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### Recent resources on specific topics related to child protection, alternative care and adoption:

#### Resources related to the Ukraine response:

- The Alliance for Child Protection in Humanitarian Action. [\*Child protection resources for Ukraine\*](#).
- Better Care Network. [\*Ukraine response. \(daily updates\)\*](#)
- Actions developed by [Missing Children Europe](#)
- Changing the Way We Care, [Critical Considerations for Movement of Children During a Humanitarian Crisis](#), March 2022
- [Guardianship systems for unaccompanied children in the European Union: developments since 2014](#)
- KIND, [Note on Unaccompanied Children Fleeing From Ukraine](#), March 2022
- Ukraine Protection Cluster: [Recommendations on Humanitarian Evacuation of Civilians in Ukraine](#)

#### Eastern and Southern Africa regional learning platform on care reform

"The Regional Learning Platform on care reform for Eastern and Southern Africa provides an opportunity for government, UNICEF and others involved in care reform in the region to share learning through webinars, document exchange, a HelpDesk, and pairing and mentoring. The platform and its corresponding documentation were planned and conceptualised by UNICEF Eastern and Southern African Regional Office (ESARO) and Changing the Way We Care." *Source: Better Care Network; March 2022 Update*

#### Prof. Gilligan, R. (e.a.) (2022). [\*The lived experience of care leavers in Ireland during the Covid-19 pandemic\*](#).

This study explores the lived experiences of care leavers in Ireland during the Covid-19 pandemic and provides overview of key findings for stakeholders in the care leaver and children in care systems.

#### McSherry, D. & McAnee, D. (2022). [\*Exploring the relationship between adoption and psychological trauma for children who are adopted from care: A longitudinal case study perspective\*](#).

This study aims to use longitudinal data pertaining to children who had been adopted from care to examine the relationship between being adopted from care and psychological trauma.

#### Porter, R. (e.a.) (2022). [\*Continuing Care: An exploration of implementation\*](#).

This new research, published by CELCIS on Scotland's policy of continuing care for young people, aims to provide a clear picture of how continuing care is implemented and interpreted across Scotland. The recommendations cover what is needed to address culture and leadership, guidance, and practice, building on the good practice already taking place in some circumstances, and highlighting where improvements are needed.

#### H. Ward (e.a.) (2022) [\*Outcomes of Open Adoption from Care: An Australian Contribution to an International Debate\*](#).

This book presents findings concerning the extensive vulnerability of the population of children at the point of entry to care and provides evidence which shows how continuing post-adoption contact was experienced by adoptees and their adoptive parents.

#### Webinar recording: [\*Spotlight Series on Foster Care Practice: Webinar 1 – Introduction to Foster care\*](#)

This webinar, held on 7 April 2022, included presentations on the existing global guidance in Foster care, an examination of how Foster Care is significant to care form, a review of the different types of Foster care and an exploration of the personal experience of being a foster carer.

#### Webinar recording: [\*Recovery of Internally Displaced and Refugee Ukrainian Children – International Data Alliance for Children on the Move\*](#)

During this webinar, recorded on 11 April 2022, the need for concrete data and information, which is essential to support affected children inside and outside Ukraine, was discussed.

#### Webinar recording: [\*International Approaches to Supporting Kinship Care\*](#)

This webinar presents the programme of three civil society organisations on how they support extended family members and the vulnerable children they care for in Brazil, Zimbabwe and New Zealand.

## FORTHCOMING CONFERENCES AND TRAININGS

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- Spotlight series on Foster Care Practice: Webinar 2 - Identification of Foster Carers, 5 May 2022, Transforming Children's Care.
- Children in Focus - Child Welfare and Child Rights in Cross-Border Social Work – 90th Anniversary Conference of the German member of the International Social Service (ISS), Essen (Germany), 11-12 May 2022. Please contact [isd@deutscher-verein.de](mailto:isd@deutscher-verein.de) for further information.
- The Legal Framework of Orphanage Trafficking: Cambodia, Nepal and Uganda, 17 May 2022, Transforming Children's Care.
- Les enlèvements parentaux internationaux, 19 May 2022, ISS France – *Droit d'Enfance*.
- Les enjeux de l'Adoption au Québec en 2022, 31 May 2022, COCON Adoption Québec.
- The Special Commission on the 1993 Hague Convention, 4-8 July 2022, Permanent Bureau of the Hague Conference.
- « *Être enfant, être parents au XXIème siècle : Quel accueil au Cerf-Volant ?* », Cerf-Volant (Geneva – Switzerland), 21 May 2022. For further information, contact: [cvo-inscription@ipe-ge.ch](mailto:cvo-inscription@ipe-ge.ch)



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## **EDITORS & COORDINATORS**

Juliette Duchesne-Roulez and Jeannette Wöllenstein-Tripathi

### **DRAFTING COMMITTEE & DISTRIBUTION:**

Liliana Almenarez, Carlotta Alloero, Judith Binder, Juliette Duchesne-Roulez, y Jeannette Wöllenstein-Tripathi.

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International Social Service – General Secretariat  
32, Quai du Seujet  
Geneva 1201 - Switzerland  
[www.iss-ssi.org](http://www.iss-ssi.org)

**For further information:** [irc-cir@iss-ssi.org](mailto:irc-cir@iss-ssi.org)

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