

THE ROLE OF SOCIAL WORKERS IN INTERNATIONAL LEGAL COOPERATION:  
WORKING TOGETHER TO SERVE THE BEST INTEREST OF THE CHILD

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INTRODUCTION AND THESIS

The history and purpose of social work has not been free from controversy, particularly in the United States and Europe. In the post-World War II era social workers were often seen as simply extensions of the growing welfare state. Social workers were no longer visible, active members of the community but instead were housed in large, bureaucratic agencies that were intimidating and logistically confusing. Social workers were also viewed as being intrusive and having the power to determine who would, and who would not, be eligible for government subsidized benefits like food stamps and general public assistance. When a social worker did come into someone's home it was not viewed positively. It often meant that there was something "wrong" in the home: for example, a complaint had been made by someone and the social worker was there to investigate. During this era, the profession also became more dominated by men because men were seen to be stronger and better able to enforce rules and regulations than their female counterparts.

This view is a far cry from the historical roots of social work in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. During this early era, social workers were invested in neighborhoods and performed services more reminiscent of the immigrant mutual aid societies than government busybodies. Social workers were community and political activists who worked tirelessly to support the growing immigrant and minority populations in expanding cities of the United States and Western Europe. In these early days, social workers were by-and-large women who were able to enter the profession because it was seen as a "caring, nurturing" profession rather than one that required intelligence and

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strength. While viewed as a nurturing profession, the women who founded and developed the profession were also agents of social, legal, and political change. It is this foundation that has begun to re-emerge in the 21<sup>st</sup> century.

Many social work graduate schools in the United States offer degrees in MACO (Management and Community Organization) social work which represents the macro arm of the profession. Macro social work seeks to develop new and better services, social programs, and social policies. In practice, macro social work includes community organizing and development, social planning, policy analysis and development, political and social action, and government and nonprofit agency administration and resource development. Furthermore, there are now numerous social work-law dual degree programs that are illustrative of the need for a comprehensive, collaborative understanding of the complex nature of social work in action.

The focus of this paper will be the intersection of law, policy implementation, and social work in child protection. We will pay particular attention to international treaties, compacts, and conventions on the one hand, and the need to increase the capacity of social workers in the Americas to manage complex international child welfare cases in accordance with these laws and policies, on the other.

The first section of this paper will provide an overview of the role of social work in child protection, specifically focusing on how the practice of social work centers on protecting the best interests of the child. Next, the role of social workers when implementing relevant domestic and international conventions, laws, and treaties will be examined. The third section of this paper will explore how to best build the capacity of social workers to ensure that children are protected in international contexts. Strategies for instilling cooperation and collaboration between social workers and legal and judicial partners in child welfare will be examined in the fourth section. The final section of this paper will detail specific recommendations for mutually supportive and sustainable international social work and legal cooperation.]

## **SECTION ONE: Overview of the Role of Social Work in Child Protection**

While there is no explicit reference to the need or role of social workers in domestic and international laws, conventions, or policies on child protection, the effective implementation of these legal agreements and public policies relies on the efforts of social workers. Therefore, we argue that strong social work practices and the use of social workers is paramount to ensuring that children are safe and protected.

Unlike in the legal arena, where some legal protections do not take into account the best interest of the child, in social work when working with children, the primary focus is finding solutions in the best interest of children. The concept of the ‘best interest of the child’ is covered explicitly in Article 3 of the Convention on the Rights of the Child, and is also mentioned in articles 9, 18, 20, 21 and 40. Its philosophical and practical dimensions underpin most of the 42 articles that constitute the first part of this important treaty. From Article 3:

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal

guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.<sup>1</sup>

In addition, the work of the International Social Service (ISS), an international social work federation that works in the best interest of children and family separated across international borders, is based on the Convention on the Rights of the Child as well as on the principles articulated in the following treaties:

- Universal Declaration of Human Rights, 1948
- European Convention on Human Rights, 1950
- European Convention on the Exercise of Children's Rights, 1996
- Hague Convention on the Civil Aspects of International Child Abduction, 1980
- Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993
- Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996

Using these core principles, and in particular the best interests of the child, to guide the social work profession, social workers aim to protect children's interests in three specific ways. They are, as articulated by the International Federation of Social Workers, "**Social analysts**- helping people understand, **social catalysts** - helping people achieve change for themselves, and **social activists** - working through social relationships to sustain change. This work can be achieved on the individual, family, local, community, national and/or global levels."<sup>2</sup> Each of these roles played by social workers is described in more detail below.

- **Social analyst:** Social workers assess the situation and help people understand their options. For example, in the case of a family wishing to pursue an intercountry adoption, a social worker will meet with the family and explain the process, the potential pitfalls and what to expect. Social workers will consider the family and whether a particular child's placement with that family would be in the best interest of that child. In the case of a family conflict, a social worker will explain the risks of relocation, the potential risks to the child, and refer the family to seek additional information about potential legal issues regarding a child's access to both parents.
- **Social catalyst:** Social workers are responsible for the provision of services that will bring about change for the individual, family, community, or system. On an individual level, social workers will: use information gained from an initial assessment to link children and families with needed

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<sup>1</sup> United Nations. Office of the High Commissioner for Human Rights. "Convention on the Rights of Child." *Office of the High Commissioner for Human Rights*. n.d. Web. 3 Oct. 2011. <<http://www2.ohchr.org/english/law/crc.htm>>

<sup>2</sup> International Federation of Social Workers. "The Best Interest of the Child: Making the Principle a Reality; Social Work Perspectives on Implementing the 'Best Interest' Principle." Jan. 2009: 6. Microsoft Word file.

services (e.g., counseling, medical, educational, legal, mediation); facilitate intra- and inter-system coordination by coordinating services in one domain (e.g., health) with services in another (e.g., employment).<sup>3</sup>; and/or provide services directly (transportation, counseling, preparation for court, advocacy, high quality assessments for both children and families, child welfare check, search for relatives, background check). On a broader level, social workers also advocate for systemic change. For instance, in the case of immigration detention in the U.S., social workers raise awareness of how our immigration system, and in particular parental detainment, has an impact on the well-being of children. In addition, the National Association of Social Workers is calling for social workers to “actively promote policies that are designed to keep family units together and preserve the quality of life for all children growing up in America”<sup>4</sup>

- **Social activist:** Social workers work to sustain change at all levels. In the case of individuals and families who have adopted a child domestically or from abroad, social workers are advocating for government funding for post adoptive services to help support the placement and to help prevent a possible adoption disruption. In the case of a family conflict resulting in a child abduction by a parent and his/her subsequent return, social workers provide services to assist the child with his/her reintegration process. In the case of immigration detention, social workers are changing their practices to better identify and serve families that could be affected by immigration detention.

## **SECTION TWO: Implementing Policy, Laws, and Treaties: The Role of Social Workers**

As described in the previous section, social workers have three important roles: analyst, catalyst, and activist. These roles enable them to provide and/or coordinate services, advocate, and educate; thereby, being critical in protecting and promoting the best interest of children. In addition to being part of their job responsibilities, by taking on these multiple roles social workers become a critical component in ensuring the effective implementation of treaties on child welfare issues. In this section, we will provide specific examples of how social workers’ actions ensure the proper enforcement of current domestic and international laws and conventions.

### **Multilateral Conventions and Treaties**

There are several multilateral treaties and conventions that establish international standards of behavior and rule of law on matters between countries related to child protection issues.

#### **1. International Adoption Convention (Hague 1993)**

As the adoption convention is being fully implemented in more and more countries, the implications of the convention for the work of social workers is being realized on multiple levels. On a practical level, social workers help enforce the treaty by carrying out some of the essential services

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<sup>3</sup> “Professional Social Workers in Child Welfare Work: Research Addressing the Recruitment and Retention Dilemma” *Child Welfare*. Social Work Policy Institute. 4 Jan. 2010. Web. 3 Oct. 2011. <http://www.socialworkpolicy.org/research/child-welfare-2.html>

<sup>4</sup> Bess, Amy. NASW International Committee, Human Rights and International Affairs Division. “Human Rights Update: The impact of immigration detention on children and families.” 2011. PDF file.

that the treaty specifies, such as conducting home studies of prospective parents in accordance to treaty and state regulations.<sup>5</sup>

In fact, the U.S. Department of State created a resource specifically for social workers about their roles in assisting with international adoptions under the Hague Convention. The resource cites six specific services that a social workers should be involved in the process: “1) Identifying a child for adoption and arranging an adoption; 2) Securing the necessary consent to termination of parental rights and to adoption; 3) Performing a background study on a child or a home study on prospective adoptive parent(s), and reporting on such a study; 4) Making non-judicial determinations of the best interests of a child and of the appropriateness of an adoptive placement for the child; 5) Monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; or 6) When necessary because of a disruption before final adoption, assuming custody of a child and providing (including facilitating the provision of) child care or any other social service pending an alternative placement.”<sup>6</sup>

In addition to carrying out some of the Convention’s core services, social workers are also educating and advocating for the correct applications of the treaty in less typical situations. Here are two examples:

1. When a U.S. family wants to adopt an undocumented child from a Hague country that is involved in the U.S. child welfare system, the social worker working with the child and family must ensure that all parties, including the lawyer and Judge, understand that the case needs to be handled under Hague guidelines, not state or local guidelines.
2. When sending a child from a Hague country to live in a kinship placement in another Hague country and the receiving family is considering adopting the child eventually, the social worker needs to advocate strongly for a Hague Adoption rather than kinship placement. The reason to advocate for an adoption over a kinship placement is that the U.S. is concerned with, and is actively preventing, kinship placements that are made in an attempt to circumvent the safeguards established through the Hague Convention on International Adoption.

Social workers also advocate for the key principles within the treaty. In particular, social workers are strong proponents of the appropriate use of intercountry adoption in relation to other permanency options. In addition, where appropriate, social workers are advocating for a system of care that enable families to remain together. The Hague adoption convention clearly states in the Preamble that these permanency decisions must ideally aim to enable the child to remain in the care of his or her family of origin. According to the most common interpretation, the “family of origin” consists of the father and mother. If the family of origin is ultimately separated, then they advocate for the child to be reunified first with parents, and if not possible, then with other family members. Further, the convention holds that domestic measures should be given preference over those that may be available

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<sup>5</sup> United States Department of State. Bureau of Consular Affairs, Intercountry Adoption. “Social Workers.” *Intercountry Adoption*. n.d. Web. 3 Oct. 2011. <[http://adoption.state.gov/adoption\\_community/social.php](http://adoption.state.gov/adoption_community/social.php)>

<sup>6</sup> United States Central Authority. Office of Children’s Issues, Intercountry Adoption. “FAQs for Social Workers.” n.d. PDF file. <[http://adoption.state.gov/content/pdf/FAQs\\_Guide\\_for\\_SOCIAL\\_WORKERS.pdf](http://adoption.state.gov/content/pdf/FAQs_Guide_for_SOCIAL_WORKERS.pdf)>

outside the country (see article 21b CRC: principle of subsidiarity) which can also fall under the purview of social workers.<sup>7</sup>

Social workers have been instrumental in advocating for the principle of subsidiarity, in particular in countries that have long relied almost exclusively on the use of institutional care for orphans. The research on institutional care is conclusive, “families, not orphanages” are in the best interest of children<sup>8</sup>. However, the lack of resources to fund a social work infrastructure to support families prevents some countries from implementing a well regulated and appropriate child welfare system.<sup>9</sup>

## 2. U.N. Guidelines for Alternative Care of Children

Realizing that alternative care systems are lacking in many countries, The Guidelines for the Alternative Care of Children (the Guidelines) are intended to enhance the implementation of the U.N. Convention of the Rights of the Child 1989, and other relevant provisions of international and regional human rights law. The Guidelines focus on matters of protection and well-being of children who are in need of, or who are at risk of needing, alternative care, or care outside of the family of origin. As stated in the U.N. Guidelines:

Each child in need of alternative care has specific requirements with respect to, for example, short or long-term care or keeping siblings together. The care option chosen has to be tailored to individual needs. The suitability of the placement should be regularly reviewed to assess the continued necessity of providing alternative care, and the viability of potential reunification with the family.<sup>10</sup>

The Guidelines establish specific actions for social workers to follow if a child is potentially in need of alternative care: “44. When a public or private agency or facility is approached by a parent or legal guardian wishing to relinquish a child permanently, the State should ensure that the family receives counseling and social support to encourage and enable them to continue to care for the child. If this fails, a social worker or other appropriate professional assessment should be undertaken to determine whether there are other family members who wish to take permanent responsibility for the child, and whether such arrangements would be in the best interests of the child. Where such arrangements are not possible or are not in the best interests of the child, efforts should be made to find a permanent family placement within a reasonable period.”

Some countries in the Americas continue to struggle with a large number of children in institutional care, rather than family based care.<sup>11</sup> In order to fully achieve the true intent of the

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<sup>7</sup> International Social Service. International Reference Centre for the Rights of Children Deprived of their Family. “Fact Sheet No. 35: Intercountry Adoption.” Apr. 2007. PDF file. <<http://www.iss-ssi.org/2009/assets/files/thematic-facts-sheet/eng/35.Subsidiarite%20eng.pdf>>

<sup>8</sup> Williamson, John and Aaron Greenberg. Better Care Network Working Paper. “Families, Not Orphanages.” Sept. 2010. PDF file. <<http://www.crin.org/docs/Families%20Not%20Orphanages.pdf>>

<sup>9</sup> Davis, Rebecca. The Global Health Technical Assistance Project. “Human Capacity within Child Welfare Systems: The Social Work Workforce in Africa.” Dec. 2009. PDF File.

<sup>10</sup> United Nations. General Assembly. “Resolution adopted by the General Assembly; 64/142 Guidelines for the Alternative Care of Children.” 24 Feb. 2010. PDF file. < <http://www.iss-ssi.org/2009/assets/files/guidelines/Guidelines-English.pdf>>

<sup>11</sup> The Relaf Project, the Latin American Foster Care Network, and SOS Children’s Villages International. “Children and adolescents without parental care in Latin America: Contexts, causes and consequences of being deprived of the right to family and community life.” June 2010. PDF file.

Hague Adoption Convention, and more particularly, the Guidelines on Alternative Care, social workers are instrumental in:

- Identifying children at risk and help to prevent family separation;
- When separated, searching for families or family members to care for the child;
- Providing reintegration services if children are placed with family;
- Finding and evaluating possible adoptive families if there are no foster or kin families available to care for the child;
- Providing post adoptive services to help prevent the dissolution of an adoption;
- Providing a host of case management, counseling or other needed services to support children and families in the various stages of separation and reintegration;
- Advocating for a children's right to family, and promoting policies and laws and best practices that support the care of children with their families or in family based care whenever possible.

Social workers play a critical role in the Hague adoption convention and in following UN Guidelines by providing necessary services and advocating for family-based care, first with their own families, and if not their own, then with 1) kin, 2) domestic, non-kin, families and 3) finally with families (non-kin) outside their country of origin, as a last resort.

### **3. Abduction Convention (Hague 1980)**

Unlike the Hague adoption convention, the Hague abduction convention does not focus on the best interest of children, but rather on the complex legal requirements of determining the appropriate jurisdiction to oversee the case. While this can be very frustrating to many social workers, they still have a critical role to play by providing services to prevent a parental abduction, to intervene during abductions, and to advocate for additional protocols to the current convention to better protect the best interests of children. Each of these roles is described below.

#### *Prevention—Awareness and early intervention:*

Ideally, parental child abduction is best dealt with *before* it happens. Therefore, social workers can play a critical role in prevention through education, awareness, and referrals to services. While one never thinks that an abduction could happen to their child, there are certain factors that predispose some families to be more at risk. For instance, a foreign parent with strong ties to his or her homeland can be more at risk to become an abductor because of their connection to extended family, the culture, and/or religion of their homeland. Parents who may consider abducting their child also tend to be those who idealize their own family, country, and culture while devaluing the culture they are currently living in. They also generally have emotional and financial support available to them in their home country in the event that the relationship with the other parent ends or is in crisis.<sup>12</sup>

When a couple considers starting a family, they are not usually thinking about what might happen to the child if their relationship fails or there is persistent marital conflict. However, children are most at risk for abduction when there is significant family conflict or the relationship dissolves

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<sup>12</sup> Hoff, Patricia M. Obstacles to the Recovery and Return of Parentally Abducted Children Project, American Bar Association. "The Hague Convention on the Civil Aspects of International Child Abduction: A Curriculum for American Judges and Lawyers." Oct. \1997: 86. PDF file. <[http://207.58.181.246/pdf\\_files/library/Hoff\\_97.pdf](http://207.58.181.246/pdf_files/library/Hoff_97.pdf)>

and one member, as described above, has strong ties to another country.<sup>13</sup> Therefore, social workers should help families consider the implications of current conflict, and the potential for it to escalate, when a child is involved. They should encourage couples to seek remedies for conflicts, such as counseling or mediation, and they should inform couples what could happen if the conflict is allowed to fester. Social workers should also promote alternatives and educate couples about the lasting emotional damage abduction could cause a child. Finally, parents should be encouraged to discuss and create parenting plans, even if there is no immediate concern for abduction.

### *Intervention in the Event of an Abduction*

Unfortunately, most couples do not come to the attention of the social work profession until just before, or just after, the conflict has escalated and one parent has left with the child(ren). Once an abduction has occurred, social workers can play a critical role in helping the left behind parent follow appropriate procedures and seek assistance from experts. For example, a social worker could ensure that the family files a missing person report, assist with the abduction petition, and connect the parent to the variety of resources available through government and non-governmental organizations.<sup>14</sup>

At any point before, during, or after an abduction social workers can assist families in learning about the benefits of using mediation, which is an effective tool to resolve cross border family conflicts. Since the use of mediation is fairly new in some regions, and recently becoming more mainstream in others, it is critical that the practice of mediation is appropriately explained and that parties fully understand the process before deciding whether to participate. Social workers can also actively work with one or both parties, the abductor and the left behind parent, as they pursue mediation as a means to resolve their conflict. Once a mediation is completed and an agreement is developed, social workers can again play a critical role in ensuring that both parties understand how to abide by the agreements and to help the child with returning to the left behind parent.<sup>15</sup>

In addition to mediation, social workers can refer the left behind or abducting parent to other types of needed services. In the case of the left behind parent, while encouraging appropriate legal action the social worker might recommend individual or group support services. Likewise, the social worker in contact with the abducting parent (assuming the abducting parent is cooperating) can refer or link the child with services in the country to which s/he has been abducted. Additionally, the children involved also need support and counseling during the separation, and preparation during and post reunification with their other parent. Assuming appropriate permissions are granted by parties, services can be coordinated wherever possible by a social worker, whose role includes promoting the best interest of the child in both the country in which the child was taken to and in the child's country of habitual residence.<sup>16</sup>

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<sup>13</sup> Foreign Affairs and International Trade Canada, Consular Services. "International Child Abductions: A Manual for Parents." Sept. 2009. PDF file. <[http://www.voyage.gc.ca/publications/child-abductions\\_enlevements-enfants-eng.asp#intro](http://www.voyage.gc.ca/publications/child-abductions_enlevements-enfants-eng.asp#intro)>

<sup>14</sup> National Center for Missing & Exploited Children and Office of Juvenile Justice and Delinquency Prevention. "Family Abduction: Prevention and Response." 6th ed. 2009. PDF file. [http://www.missingkids.com/en\\_US/publications/NC75.pdf](http://www.missingkids.com/en_US/publications/NC75.pdf)

<sup>15</sup> "International Family Mediation: A global project for ISS." *International Social Service*. International Social Service, n.d. Web. 3 Oct. 2011. <<http://www.iss-ssi.org/2009/index.php?id=57>>

<sup>16</sup> United States Department of State. Bureau of Consular Affairs, Child Abduction. "Compliance Reports." *Child Abduction*. n.d. Web. 3 Oct. 2011. <[http://travel.state.gov/abduction/resources/congressreport/congressreport\\_4308.html](http://travel.state.gov/abduction/resources/congressreport/congressreport_4308.html)>



If parents cannot be present to escort children back to the child's country of habitual residence it might be necessary to enlist the help of social workers to prepare the child for transfer and to escort the child. Many people underestimate the myriad of challenges that occur for the child and family upon return. Therefore, it is best practice that once a child is resettled, a social worker should conduct a child welfare check to ensure the child's safety and well-being is being maintained. Social workers might also provide assistance with parental alienation syndrome or for other emotional and behavioral challenges that may occur during post-return and reintegration.

#### *Advocate for Additional Protocols*

As mentioned earlier, many social workers and lawyers alike are unhappy with the shortcomings of the Abduction Convention. Progress is underway in the Hague to develop additional protocols in order to enhance the Convention and promote better outcomes for children. A delegation of expert social workers from ISS around the world have been actively engaged in providing feedback to the Hague based on their expertise and experience in providing social work assistance in abduction cases.

#### **4. Child Protection Convention (Hague 1996)**

Like the Abduction Convention, The Child Protection Convention determines which country's authorities have jurisdiction to take measures to protect children across international borders. It also clarifies which are the applicable laws and enables recognition and enforcement of protection measures in all Contracting States. While the focus of this Convention is on jurisdiction and other legal aspects of children moving across international borders, the involvement of social workers is needed to implement many of the regulations set out in the articles of Chapter V of this Convention.

<sup>17</sup>

For instance, Article 31(b) of Chapter V states that the Central Authorities of each participating country are required to take all appropriate steps to facilitate, by mediation or similar means, agreed solutions for the protection under the Convention of the child's person or property. Social workers, as described above, are instrumental in explaining the mediation process, referring parties to mediation, and providing follow up in how to enforce mediation agreements if obtained. Article 32(a) states that upon request by the authority of a Contracting State where a child has substantial connection, the Central Authority of the State where the child is habitually resident and present may provide a report on the situation of the child. Likewise, Article 33 states that if an authority of a Contracting State contemplates placement of a child in foster or institutional care or the provision of care by Kafala<sup>18</sup> for a child in another Contracting State, it shall first transmit a report to the Central Authority of the latter State, and can only authorize the placement with the latter State's consent.

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<sup>17</sup> International Social Service, Australian Branch. "1996 Hague Convention on Parental Responsibility and Child Protection: Applications in the inter-country casework of International Social Service." 30 Sept. 2008. PDF file. < <http://www.iss.org.au/wp-content/uploads/2011/05/1996conventionreport.pdf>>

<sup>18</sup> Use for Adoption - analogous Islamic concept; Islamic law - concept analogous to Adoption; Kafalah (alternate spelling) Scope Arabic legal term for a formal pledge to support and care for a specific orphaned or abandoned child until the child reaches majority. Kafala is considered a form of unilateral contract, and is used in various Islamic nations to assure protection for such minors, as these nations generally do not legally recognize the concept of adoption. But unlike adoption, kafala neither conveys inheritance rights nor any right to use the grantor's family name. Although kafala is not identical with adoption, because of its close functional similarity, the term ADOPTION should also be entered as a finding aid in any record to which KAFALA is entered as a Subject Heading.

In implementing the requirements of both articles, it may be necessary for a social work assessment to determine the child's situation (and whether a subsequent placement elsewhere might be in the best interest of that child) or the situation of a potential placement prior to relocating a child. Both of these activities need to be carried out by a qualified social worker in order for it to be recognized by the court. There must be coordinated system of social services, wherein social workers can work collaboratively between countries in order to facilitate timely and professional services, placements were appropriate, and follow-up in the best interest of the child.

### **Relevant Domestic Laws**

While international treaties and conventions help to set the standards of behavior and rule of law on matters between countries, there are cases of international child protection that do not fall neatly within the scope of an international treaty, and therefore are left to the jurisdiction of domestic family law or other domestic laws.

#### **1. Wrongful separation of children from their parents in the U.S.**

Sometimes in the U.S., two different sets of laws oppose each other in wrongful separation cases, creating the possibility for outcomes that contradict what is in the best interest of children in cross border situations.

In the case of Encarnacion Bail Romero, an undocumented woman from Guatemala living in the U.S., Ms. Bail Romero had her parental rights terminated on the grounds of abandonment due solely to being detained in immigration proceedings. Her child, a U.S. citizen, was taken into care and was later adopted by a local U.S. couple. In thinking about this case within the framework of international conventions, the outcome of this case is clearly in violation of the conventions related to child welfare that are in place. First, the child had a mother who, other than being detained for something unrelated to her parenting, was not deemed abusive or neglectful in any way. Based on the principle of subsidiarity, her child had the right to be with his/her family, and if her parents were deemed unfit or unable to care for her, then other kin. Clearly, nothing was done to ensure that this child was placed with his family and the child was ultimately, wrongfully adopted to non-kin<sup>19</sup>.

This case presents policy and practice questions arising from the conflict between immigration law and child welfare laws in the U.S. including:

- Once detained, how can a parent exercise his/her rights within the child welfare system?
- How can a parent in immigration detention ensure access to all the information in his/her native language, including representation?
- How can the detained parent ensure his/her right to visit and communicate with his/her child?
- If the parent wishes to leave the country with her child, is she/he permitted to do so?
- Does the parent have access to the appropriate travel documents for her child?
- Did the child welfare agency search for other relatives, within or outside the U.S., to care for the child while the parent is being detained?

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[http://www.glin.gov/subjectTermIndex.action?search=&searchDetails.queryType=BOOLEAN&searchDetails.queryString=mt%3Aequals\(%22Kafala%22\)](http://www.glin.gov/subjectTermIndex.action?search=&searchDetails.queryType=BOOLEAN&searchDetails.queryString=mt%3Aequals(%22Kafala%22))

<sup>19</sup> Thompson, Ginger. "After Losing Freedom, Some Immigrants face Loss of Custody of Their Children" *NYTimes.com*. The New York Times, 22 Apr. 2009. Web. 3 Oct. 2011. <http://www.nytimes.com/2009/04/23/us/23children.html?pagewanted=all>

In the instance of Ms. Bail Romero's case, the answer to these questions was a resounding NO. Based on cases like this, social workers are beginning to join together with immigration advocates to call for revised laws, procedures, and practices to prevent the inappropriate severing of families and to provide for many of the contingencies mentioned above.<sup>20</sup> Social workers are also being asked to identify people who might be at-risk for family separation due to immigration issues and to help them to proactively plan for the care of their children, in the event that they are detained.

## **2. Fostering Connections – seeking family connections and potential placements outside the U.S.**

Immigration issues are not the only reason why some children may be separated from family. In many instances, children are not placed with family simply because child welfare agencies are unaware of the fact that some of the children in their care may have family options outside the U.S. We know that in many cases due diligence in finding and notifying potential family resources outside the country is not taking place. Even if child welfare agency staff becomes aware of family outside the U.S., they often do not know how to find, engage, or evaluate the family as a possible permanency option or think to include them in the permanency planning for the child.

The U.S. Fostering Connections to Success and Increasing Adoptions Act of 2008 "...provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence...." The law does not impose, or suggest, geographic limitations in stipulating the need to notify family. Therefore, it is ISS-USA's position that the federal Fostering Connections legislation requires that family finding and engagement occur regardless of where the child's family may reside.

In order to effectively carry out the duty to identify potential family options, social workers need a) the mandate from the child welfare system, b) the tools to know how to identify children who have potential families, c) access to services to find and assess families and d) if appropriate, to learn how to advocate for cross border placements in a system that is not used to, and does not systematically encourage, transnational child welfare practices.

## **SECTION THREE: Building Capacity of Social Workers to Protect Children in International Contexts**

In order for social workers to be able to effectively engage in the direct service, educational, and advocacy activities as described in a previous section, they need access to the appropriate training and resources. Unfortunately, social workers typically work in environments with limited financial, staff, and other resources. Therefore, we argue that building the capacity of social workers both in the U.S. and other countries needs to become a priority and resources need to be devoted to the social work profession to ensure the protection of children in international contexts.

While there are a growing number of reputable social work programs in some parts of the world, there is still a shortage of quality social work education in many countries and regions of the world. In addition, too often there is also a disparity between the number of trained social workers and the

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<sup>20</sup> Bess, Amy. NASW International Committee, Human Rights and International Affairs Division. "Human Rights Update: The impact of immigration detention on children and families." 2011. PDF file.

needs of the community. Even in countries that have sufficient educational opportunities, there is still a serious need to revise social work curricula to integrate the notion of transnational families, and how to best support them, into basic child protection training.

One in five U.S. children has at least one foreign-born parent today; many more have family living outside the U.S. due to military deployment, jobs overseas, and adults retiring in a foreign country. While the number of children involved in the U.S. child welfare system with international family connections is unknown, it is becoming increasingly common for child welfare workers to work with clients that have an international dimension to their case. Therefore, it is necessary to rethink how we prepare social workers to work with children and families. Rather than including “international social work or international child protection” as a specialty, social work programs need to find ways to incorporate the notion of a global family in its routine curricula.

In addition to globalizing curricula and expanding social work education programs, attention needs to be paid to the recruitment and retention of professional social workers. In many countries there are shortages of social workers, not only because there are not schools of advanced social work training, but because of poor salaries, high stress, and low prestige associated with the field of social work. The professionalization and globalization of the discipline of social work including fair wages, better working conditions, and opportunities for advancement will help to attract and retain more social workers. This in turn will improve outcomes for children and families.

#### **SECTION FOUR: Social Work and Legal Cooperation**

In order to have an effective system of child protection in any one country, regionally, or globally, it is imperative that all the actors are working cooperatively with the single aim of ensuring the best interest of the child. This collaboration and cooperation must occur between the fields of social work and law as well as with the many levels of government and nongovernmental organizations often involved in a child welfare case. Therefore, in this discussion about the social work profession across national borders, it is imperative to examine how legal and social work actors should work together towards a regional approach to child protection issues.

##### *Social Workers, Lawyers, and Judges*

Social workers, lawyers and judges have a much better chance of achieving outcomes in the best interest of the child when working together. In some instances, social workers can step in where the law ends in order to best meet the needs of the child. For example, in abduction cases, once it is decided that a child is going to be returned, the social worker can begin to prepare the child and secure services to help the child adjust. In the case of Fostering Connections, the law does not prohibit notification and search for family outside the U.S. Therefore, social workers can advocate for, and work towards, considering relatives in other countries even though this might not be common practice. Beyond social workers collaborating with the legal profession and vice versa, both professions need to partner with the judiciary, governmental and non-governmental organizations at every level to ensure that a child’s best interest is served. Judges can also be instrumental in facilitating the cooperation between social workers and lawyers, and ensuring that best practice in both professions is followed.

### *Government*

The issue of child protection involves all levels of government (multinational, federal, state, local) and multiple departments within each level of government. When working within the parameters of an international convention or treaty, another governmental layer to consider is the Central Authority. In order to ensure the best interest of the child while also abiding by the regulations of the convention and/or law, lawyers, social workers, and government workers must work cooperatively and proactively to ensure the best outcome for every child.

### *Non-Governmental Organizations*

Many non-government organizations have been founded with the purpose to address specific issues within the field of child protection. Lawyers and social workers rely on the expertise of these organizations to provide services and promote awareness on best interests and international child protection. One challenge is that there is an organization for every issue, and while there can be a great deal of collaboration, there can also be a great deal of fragmentation in the knowledge base and service delivery. Therefore, it is incumbent on social workers and lawyers to familiarize themselves with who is doing what and create opportunities to bring various groups together across related issues or themes.

If social workers and lawyers worked together with all levels of government and nongovernmental actors around issues of international child protection many things could be accomplished on behalf of children. Often this collaboration happens on a per-child basis or on a national basis. However it is critical to consider how this type of collaboration might be facilitated across borders on a regional level. Specifically we need appropriate mechanisms, in addition to central authorities, to link social workers, lawyers and judges in one country to their counterparts in others. By adding this layer of a regional collaboration in child protection, outcomes for children can improve on a much larger scale.

## **SECTION FIVE: Recommendations**

While there is much to be done to a) create best practices for effective collaboration of law, policy, and social work professionals in child protection and to b) improve the capacity of social workers so they can provide the best support to children and their families when they are involved in international child protection and/or international family-finding issues, there are some concrete steps that can be taken now to help work towards these long-term goals.

Below we provide some specific recommendations for creating mutually supportive, sustainable international social work and legal cooperation with the aim to continue and further this dialogue and protect the best interests of children separated across borders. We promote:

1) **The child as the focus.** Regardless of discipline or role, when working on international child protection issues the best interest of the child needs to be the priority. In order to do this, we need to be realistic about the strengths and weaknesses of the legal and social work remedies available to us in any given situation. If the legal remedy does not take into account the best interests of the child then that dimension needs to be added and potential social remedies should be considered. Similarly, if the social remedy does not take into account the best interest of child, we must search for legal or other remedies that do. Regardless of the strengths and shortcomings of the tools we have available, we all aim to treat all people, especially children with the respect and dignity they deserve.

2) **All of us are social analysts, social catalysts, and social activists.** Regardless of our role or job title, as someone who works in the child protection field, part of our responsibilities is to improve the lives of children. This includes helping children and families to assess the situation and understand their options, achieve change for themselves, and advocate and work to sustain change at all levels.

3) **Joint consideration of policy and practice.** While domestic laws and international conventions and treaties are very important to establish policy and laws related to child protection, they often focus on the big picture and do not consider the logistics of who will ultimately be implementing them. Similarly, in order to create services that will be consistent to applicable law, it is necessary to have lawyers informing the implementation strategies to ensure consistency in practice and policy. Either way, legal and social practitioners alike should seek out guidance from when another when creating policy and practice.

4) **Appropriate training and resources.** Programs at the undergraduate and graduate levels need to include course work on working on transnational cases as part of their core curriculum because in today's world, more and more children are involved in cross border issues. Just as important, resources need to be provided to child welfare agencies and other related organizations who handle cases with international dimensions. We must recognize that while knowing about applicable laws and services is helpful, understanding what laws and services are available and how to apply them is critical. Most people want to do the right thing, but many are not sure what the right thing is, and how to go about it.

5) **Dialogue and knowledge-sharing between social workers, lawyers, and judges.** Opportunities and forums need to be created so that social workers, lawyers, and judges can exchange ideas, share expertise, and explore best practices and potential remedies. When conducting a social worker training, representatives from the legal profession should be included and vice-versa. When resources are being created on a child protection topic, all groups should receive the same information even if the delivery or particulars are adapted for each stakeholder's specific role and responsibilities. When drafting new legislation, invite social workers to join the conversation and provide comments. Be sure that child welfare agency workers know and understand the relevant domestic laws and international conventions and treaties, and the legal implications if the guidelines are not followed, that are applicable to their work.

6) **Collaboration among stakeholders.** Find ways to collaborate across government and nongovernment organizations as well as across regions. Get to know as many people as possible within your Central Authority. Get to know other organizations doing similar types of work to yours. Create a multidisciplinary and multi-topic panel of experts in your region. If you are a social worker, invite more legal and judiciary professionals, if you are a legal professional, invite more social workers and child advocates.

7) **Understanding the big picture.** Remember that the field of international child protection is expansive and there is much to be learned from other facets of this field. Joining email lists that cover other topics within international child protection can be a good first step. Learning about and networking with other organizations or agencies, whether similar to or different from your own. For example, if your area is adoption, spend some time getting to know people working on child trafficking or child labor. If your area is trafficking, make an effort to reach out to organizations

working on immigration and abduction issues. Remember that policies can be changed, but before change can occur, we need to have a thorough understanding, from all angles, as to why we are advocating for change and what we hope that change will accomplish.

## **CONCLUSION**

In this paper we provided a brief description of the role of social workers from a historical context to the present. Next, we offered some examples of how social workers intervene on issues that affect the international protection of children, including their role in implementing multilateral treaties and conventions as well as domestic family law. Then we described the need for additional training and building capacity within the field of social work. Next, we provided some brief examples of how the field of social work could effectively collaborate with other key stakeholder groups. Finally, we provided concrete recommendations centered on keeping the child as the focus of all of our works and finding the appropriate mechanisms to collaborate on training, policy, and practice across disciplines, organizations and regions. While these recommendations are straightforward and may sound easy to do, time, resources, and a familiar way of thinking can easily prevent us from implementing them effectively. If, however, we continue to challenge ourselves by asking the question, “*Who else can I involve that can help make this situation better for this child, or children in general?*” we will, in time, be able to ensure the safety of and improve the outcomes for all our children.

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