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Private and independent intercountry adoption: future perspectives for adoptive parents and adopted children
Preventing private and independent intercountry adoptions: promising practices

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I) Introduction

- Obligation of receiving countries: application of CRC+1993 HC to contracting and non-contracting states, but first and foremost to themselves
- ISS/IRC concerns: lack of supervision + lack of professional support by a competent body

→ Prohibition of private/independent adoptions as powerful means to combat abuses and prevent irregularities

→ Otherwise, we expose our children to serious violations of their rights
I) Introduction

II) State responsibility to ensure the Best Interest of the Child throughout each step of the adoption procedure

III) ISS/IRC Recommendations

IV) Conclusion
II) State responsibility to ensure the BIC in each step of the adoption procedure

1) Co-responsibility receiving countries – countries of origin

- Systematically ensure BIC for every child by qualified and specially trained professionals
- Some countries of origin remain ‘weak’ (e.g. Ethiopia)
- Legal responsibility of the state: possible class actions (e.g. Australia, Argentina, Canada)
2) Crucial assessment of PAP’s eligibility to adopt, essential preparation and continued support in the country of origin

- Quantitative and qualitative filter
- ICA as a child protection measure: “right to a family” and not “right to a child”
- Great importance for the adoption’s success
- Psycho-social support throughout the entire proceedings needed
  (e.g. emotional stress of first meeting)
Risks:

- Unsuitability of PAPs with regard to the child’s specific needs /no background check
- Inadequacy of the adoption project
- Great vulnerability of PAP’s when unsupervised and unregulated proceedings in the country of origin are undertaken
- Great exposure to irregularities and adoption breakdowns/disruptions
3) The child’s adoptability?

- Has the principle of subsidiarity been respected?
  - Proof unfruitful family reunification efforts?
  - Investigation about child’s background?
  - Other domestic options?

- Biological parent’s consent?
  - Counselling and information about consequences? Reflection period?

- What proofs do we have?
  - Result of comprehensive and professional evaluation of the social and medical situation, physical and psychological conditions, and legal status?
Risks:

Serious violations of children’s rights


→ Difficult implementation of the adoptee’s right to know one’s origins:

   ISS Professional Handbook: Responding to illegal adoptions
4) The matching procedure?

- Direct contact with biological parents or the child’s carer prior to the matching?
- Matching by a multi-disciplinary and independent body?
5) Procedure free of improper financial gain or transactions?
- What sums were involved in the adoption?
- In accordance with average incomes?
- Payments to the care facility?
- Prior to the matching? How did they occur?

6) Preparation of the child
- Progressive contact with PAPs?
- Explanations and preparation for the life with a new family in foreign country?
7) The fundamental role of diplomatic missions

- Embassies and consulates might have to assume functions that go beyond their mission

→ State control too late and less effective?
→ Not necessarily the adequate background and expertise in adoption matters

- Identification of obvious abuses: factors that might arouse suspicion (similar documents, identical court orders, interventions of same players, same birth dates etc.)
What can be done?

**Strengthened supervision and state interference**

- Internal guidelines (MFA & CA)
- Trainings & sensitization for diplomatic missions
- Strengthened coordination among diplomatic missions of different states
- Refusal of visa in case of apparent abuses or irregularities
- Issuance of visa conditioned to the recognition of the adoption order
  (e.g. Switzerland, Belgium)
8) What about the recognition procedure?
(Country-specific)

- Complexity of the recognition:
  → Take him/her out of this adoptive family? New family separation?
  → What alternatives?
  → Right to a private family life (art. 8 of the ECHR)?
  → Criminal provisions (§ 236 STGB)?
What can be done?

- BIC Determination:
  → Prior procedural steps in accordance with BIC?
  → Long-term considerations

- Problems tend to appear in adolescence or adulthood

- Stable and secure adoption: emotional and legal attachment must be given

- Centralisation of recognition procedures
ISS/IRC Recommendations

1) Total ban of private adoptions

- Political will and courage
- “Choose the right side of history” in the combat against fraudulent adoptions
- Eventual suspension of cooperation with certain countries of origin & moratoria
- Capacity building and awareness raising/sensitization of adoption professionals and PAPs
2) Prohibition of independent adoption: provide adequate framework

- **Financial support** (e.g. partial subsidies to AABs in Belgium, France, Iceland, Norway, Finland, Sweden, Denmark) or **total sponsorship** (Luxembourg, France-AFA)
- **Regular trainings** to foster professionalization of AABs
- **Promote cooperation** (e.g. Denmark fusion) and specialisation among AABs (Belgium, France, Italy)
- **Examples of professional legal and psychosocial support** of PAPs by the AAB in the country of origin: e.g. Chile, South Africa, Belgium.
- **Regular supervision and monitoring**
IV) Conclusions

→ PREVENTION: Prohibition of private/independent adoptions

• Compulsory recourse to CA/competent authorities in the receiving country and the country of origin, preferably through AAB

• Sensitization/awareness raising of PAPs: e.g. warnings on CA/decentralized CAs websites similar to practices regarding search of origins throughout social media without professional support (e.g. CA of Quebec and Sweden)
• Evaluation missions in the country of origin (e.g. French and Flemish Communities of Belgium or France)

• Cooperations with countries of origin: obligation to undertake adoptions in HC countries (e.g. Ireland) or chose countries of origin that have adopted the practice of “reversing the flow” into their adoption procedure (e.g. some states in Brazil, Burkina Faso)
The Role of Diplomatic Missions

- Identification of apparent abuses and irregularities
- Refusal of visa, if not Hague-compliant or condition to the recognition of the foreign adoption order (e.g. Belgium, Switzerland)
- Training and awareness raising needed
- Strengthened coordination among diplomatic missions
Recognition Procedure

- To determine the Best Interest of the Child long-term considerations are equally relevant
- Legal & emotional attachments for the adoption’s success
- Centralisation of recognition procedures by the CA or other competent body
→ Hear out adoptee’s voices

- Learn from the past and especially from the personal experiences of adoptees
  → Shape new adoption laws, policies and practices

- Active involvement in civil society organisations and advocacy for ethical ICAs that respect their rights (e.g. Voix des Adoptés)
Today, we must no longer close our eyes: in the coming years, thousands of adoptees across the world are going to discover the horror surrounding the context of their separation from their family of origin. We need to support them and put in place concrete solutions that respect their rights.

Céline Giroud (Voix des Adoptés),
Professional Handbook: Responding to illegal adoptions
Thank you for your attention

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