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EDITORIAL

Learning from the past to better respect the human rights of adoptees

The start of 2021 has seen several States publish studies into past practices, in relation to adoption and alternative care prior to the 1993 Hague Convention. These national retrospectives should be a source of inspiration for us all.

In July 2020, we commented in our Editorial that ‘all States that have undertaken intercountry adoptions have been marred by illicit practices to varying degrees. (...) The adequacy of State responses largely depends on political will and, more importantly, courage’. What if 2021 were the year of political courage?

These reports, which show a mix of courage and political will, are all different (see pp. 8, 10). However, they all converge on the same goal: investigating the past – and sometimes the present – to provide at least partial responses to the many persons affected by illicit practices, ensure this is not repeated in the future, and work towards adoptions centred on the child and his or her rights.

Taking action to learn and understand

Each report is unique, depending on the context of the study. Some focus on past collaboration with a single State (see article on Switzerland, MR N°. 248, January 2021) or with multiple States (see pp. 8, 10). Others investigate a period in their national history (see p. 8)¹. However, in most cases, the periods under investigation were before the 1993 Hague Convention entered into force in the respective States. We could therefore see this as underlining the rationale for and value of this key instrument, and the standards it sets for intercountry adoption, despite the need for ongoing and concerted efforts to implement it effectively.

Regardless of the range of approaches taken, it seems crucial that these investigations are built on close collaboration between the receiving States and States of origin involved, so they can provide true responses to those affected. How has this collaboration worked, and how could the process be supported and improved? How have actors in both States of origin and receiving States reacted to the findings of these investigations? Will the investigations impact on the principle of mutual trust - pillar of the 1993 Hague Convention?

In addition, there must be careful consideration about the methodology used (e.g. profiles and representativeness of interviewees, composition of investigative committee, retention of data collected, etc.), to make sure the approach adopted is as inclusive and participatory as possible. This is bound to improve acceptance of the findings, and the implementation of any recommendations.

The investigations were also conducted in response to a real need on the part of adoptees to question and understand the past, even if this is painful, and to recognise the impact of certain practices on the personal journey of many adoptees and their families. In fact, every report was undertaken in response to proceedings brought by adoptees, or to media revelations, parliamentary petitions, etc. Are these the drivers of political courage? Does this mean that State actions should only be reactive, not proactive? We do not agree.

Taking action to respond

Political courage is needed to initiate action, but there is also a need for political will – would it not be an empty gesture if there were no political will to implement the recommendations arising from the investigation?

We can see various types of recommendations emerging from the different reports: recognise the responsibility of various actors at the time under investigation and their knowledge about certain abusive practices, develop and improve support for those affected, create multidisciplinary investigation bodies, and showcase measures to be implemented within the current adoption system (suspension of adoptions, legislative reform of adoption procedure and the roles of various actors, etc.). These are all admirable recommendations.

However, the ISS/IRC feels that greater focus is also needed on another issue: how are these reports received by those primarily affected – the adoptees? Do they meet their needs and demands? While some will be satisfied by ‘collective’ responses (such as national recognition), others will need more individual responses (access to their file, search for their family, psychological support throughout the process, opportunities for redress, etc.). Professional support should be available for these approaches (see pp. 10, 12)². It is particularly in this context that there needs to be improved cross-border collaboration with actors in States of origin, as mentioned above, to provide the best possible support to those affected who feel the need to take these steps.

At the same time, it is encouraging to see that, in many States of origin, there is considerable progress on the search for origins (see MR N^o. 249, February 2021) and on removing some of the barriers to accessing information (see p. 15 and [ISS publication on access to origins](#)). However, a sensitive question then arises, at a time of continuing decline in intercountry adoptions: how do we finance increasing post-adoption needs when budgets for children’s services are shrinking?

Taking action to prevent

A blend of political courage and critical review is also needed to reform, redesign and readjust certain existing practices, to ensure they comply with international standards. In recent weeks, there have been some major developments in the field of adoption, such as the decision by the Dutch government to suspend all intercountry adoption following the publication of an investigative report (see p. 10). The main reasons given for this include recognition of a certain impunity for past actions, and the report’s revelation that the current adoption system still relies on environments conducive to illicit practices. This decision raises various questions: what will be the medium and long-term impact of this step on other countries, whether receiving States or States of origin? How do we achieve the balance required between a critical approach – definitely needed to address the particular challenges of intercountry adoption – and the good practices, experiences and testimonies that present a different and more positive perspective on adoption?

Many countries, both receiving States and States of origin, have initiated reforms to improve the implementation of international child protection standards, including for adoption, and the ISS/IRC hopes that this surge of investigations will help to advance current and forthcoming reforms. As part of this, and to ensure procedures respect children’s rights and prevent future illicit practices, there must now be greater focus on certain current practices. For example, what about the increasing number of children ‘adopted’ from States with legal systems based on or influenced by Sharia, as reflected in the ISS/IRC’s annual statistics for 2019 (see [Editorial](#), MR N^o. 247, December 2020)? How can we ensure adequate control and compliance with international standards in the case of intrafamilial intercountry adoptions (see [Editorial](#), MR N^o. 241, May 2020 and [ISS/IRC Publication of 2020](#)) or national adoption decisions requiring recognition in another State (see MR N^o. 241, May 2020)? How can we protect the rights of children born through international surrogacy arrangements, in legislation, policy and practice (see p. 6)?

In the spirit of cooperation and joint responsibility enshrined in the 1993 Hague Convention, this necessary reflection about adequate monitoring of certain existing practices should also lead to a more general review of

approaches to cooperation in the field of adoption. For example, faced with the proliferation of intercountry collaborations highlighted by the ISS/IRC in its [Editorial](#) in December 2020, how can we encourage collaboration exclusively with contracting States? How can we encourage States to use a ‘reverse flow’ approach, which provides an important safeguard for intercountry adoptions in the best interests of the child? How can we resolve the issue of foreign payments directly or indirectly linked to intercountry adoption procedures, which affect systems for protection and adoption from certain States of origin, creating incentives for the intercountry adoption of certain children and thus an environment conducive to illicit practices? (see p. 17 and [ISS/IRC Guide on financial support](#))³.

In conclusion, the ISS/IRC hopes that these reports – along with broader initiatives such as the HCCH Working Group on illicit practices – will create a lasting platform for constructive and inclusive dialogue about intercountry adoption. Is it not the responsibility of us all, and the noblest goal, to recognise the illicit practices of the past so we can address these and ultimately prevent them in future?

ISS/IRC Team
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References:

¹ See also sections on Australia, in the ISS Professional Handbook (2016). [Responding to illegal adoptions](#).

² See other ISS offices globally, offering support services related to search for origins processes: <https://www.iss-ssi.org/index.php/en/home/network>.

³ See also [2017 Report](#) of the Special Rapporteur on the sale and sexual exploitation of children.