



# Monthly Review

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## EDITORIAL

### Alternative avenues sought by adoptees

*Actions of adoptees and adoptees' associations around the world are manifold and provide invaluable support to other adoptees and their families. More recently, one can observe that many of these actions target how to respond to the discovery of - systematic or individual - illicit adoption practices and seek to mitigate their impact on an adoptee's life and find solutions of different nature (legal, psycho-social, etc.); motivation for ISS/IRC to reflect on these more recent actions through this editorial.*

**W**hile more and more States take serious steps to assume responsibility and accountability for past and present adoption practices, different adoptees' movements have also significantly stepped-up in force and in velocity. Indeed, these movements around the world are getting more and more organised, interconnected and specialised. While State and peer support are certainly complementary in nature and both undoubtedly essential, one cannot but wonder - given the overall increased specialisation and professionalism of adoptees' associations - whether we are assisting in a shift away from the traditionally prevalent distinction professional vs. peer support? In fact, numerous are the adoptees who have made it their life-goal to support other adoptees in their professional capacity; or examples such as *La Voix des Adoptés* in France). Of significant added value and benefit in such support role are of course these professionals' personal history, lived experiences as well as their capacity to relate to other adoptees and understand recurring questions surrounding identity, belonging, interculturality, emotional sensitivity, etc., that bind many adoptees across cultures and countries.

Hence, ISS/IRC started exploring the nature of these movements and associations as well as their motivations, and is actively pursuing to seek contact based on its conviction that they reflect different needs and give crucial orientations and insights into solutions needed. When stating that we are to pay careful attention to the great variety of adoptees' voices, are we not bound to actively support these actions? And how should such support precisely look like?

### Exploring judicial avenues to investigate and seek justice

Official State apologies (see e.g. Australia, Canada, the Netherlands)<sup>1</sup> on past adoption practices may be part of the healing and restorative process of some adoptees. What is however being done by States to provide concrete legal avenues to support investigations and seek justice in case of a proven illicit adoption practice? While some State legislation include provisions that are applicable to illicit adoption practices (see e.g. the Netherlands, Guatemala)<sup>2</sup> and case law has started to emerge especially at national level (see i.e. in the Netherlands<sup>3</sup>, the Philippines<sup>4</sup>), what is done to ensure that the effectiveness of the solutions provided within a given State are regularly assessed and reviewed? Hence, in certain contexts,

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<sup>1</sup> See Baglietto C, Cantwell N, Dambach M (Eds.) (2016). *Responding to illegal adoptions: A professional handbook*. Geneva, Switzerland: International Social Service

<sup>2</sup> Idem 1.

<sup>3</sup> See <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHDHA:2018:3107>.

<sup>4</sup> See ISS/IRC Country situation, Philippines (2020).

adoptees' associations started providing legal support in national and cross-border contexts where the right to know one's origins and right to identity would or has encountered legal, administrative and practical difficulties.

If all available domestic remedies have been exhausted and/or proven ineffective or inaccessible, what are the legal avenues available at international level to seek justice for human rights violations in the context of illicit adoption practices? Aside from the main international human rights instruments (see Legal chapter in *ISS (2016). Responding to Illegal Adoptions*), might there be other texts that could provide possible avenues? These questions seem to have been asked by a Swiss adoptees' association regarding the 2010 International Convention for the Protection of All Persons from Enforced Disappearances: can illicit adoption practices qualify as forced and involuntary disappearances? If yes, under what circumstances? Is this Convention applicable to past adoption practices, prior to the Convention's entry into force? While opinions on avenues provided through the Convention differ, it clearly shows that the dire need for certain adoptees to continue their quest for justice and truth<sup>5</sup>, (and) "to obtain reparation and to prompt, fair and adequate compensation".<sup>6</sup>

## Exploring new technologies to search and respect identity rights

The recourse to DNA Databases can be beneficial especially for adoptees who are searching for their origins and/or seeking to restore their identity, often in situations where their records and adoption files provide little or no information on their identity prior to adoption or when their identity has been forged/falsified as a result of an illicit practice (see *editorial*, MR No. 222, June 2018). Despite the proliferation of DNA Databases allowing for accessible and affordable search processes via DNA tests for diverse purposes (genealogical, medical, criminological, etc.), there is currently little support available to beneficiaries of these databases, such as information sharing, counselling, follow-up, support groups, financial support. Hence, how to prepare persons for potential search results, matches with close or far-relatives and how to support them and other concerned parties in a progressive manner in contact and reunification processes? Apart from few specialised NGOs in certain contexts, such as FIOM in the Netherlands providing such psycho-social support services along the process, the general lack of support appears to be gradually filled by newly founded adoptees' associations. But do these actions count with the necessary State support and/or with support from the private sector (e.g. MyHeritage, 23AndMe, etc.)? To which extent and under what circumstances should the State and/or the private companies support these activities? With the increased development of official search for origins pathways and programs, how to best articulate private search efforts via DNA Databases with official search for origins processes? Should related fees and costs for instance be regulated and covered through post-adoption services? And, are there Central adoption authorities that have experience in supporting persons who have conducted search processes with the recourse to DNA databases especially when it comes to search outcomes and contact attempts?

With the aim to conduct respectful and supported search, contact and reunification processes, the following set of questions will need to be further scrutinised: Can privacy rights (right to consent, to remain anonymous, veto rights, etc.) as well as data protection rules be upheld in the light of such proliferation, widespread use and accessibility of data? Are certain regions more prone and open to search processes via DNA databases due to less restrictive laws, regulations, policies? Should the recourse to DNA Databases be further regulated and monitored, and how feasible would their concrete implementation be? On the other side, how to make sure and guarantee that identifying information is not misused? Is any beneficiary of a DNA Database for example informed and aware when entering his or her data on how it is being used, made visible and accessible? How to deal with cases in which the adoptee wishes to approach a birth parent or their (direct or extended) family and might in this process infringe the birth parent's rights to privacy? How to ensure that support is available for the birth family, whether they are open to or refuse any contact? While happening in some States of origin – often through unofficial channels through distributed DNA test kits - might accessibility to DNA Databases on larger scale also be an option for birth families in the State of origin in order to initiate a search for their child given up for adoption? What are their experiences? And who is to cover related costs?

... an endless list of questions.

One thing is however for certain: the use of DNA Databases for establishing and restoring adoptees' identity rights, still requires further debate as it leads to delicate questions related notably to the concrete implementation and extent of the

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<sup>5</sup> See for instance para. 34 of Concluding Observations of the Committee on Enforced Disappearances towards Bolivia; see also pp. 5 and 6.

<sup>6</sup> See article 24, 2010 International Convention for the Protection of All Persons from Enforced Disappearances.

right to know one's origins, the necessary balancing act between the adoptee's and other parties' rights as well as the respect of evolving data protection and privacy rules. In such discussions, organisations whether governmental or non-governmental, should enrich the debate with their experiences in this field allowing to adapt laws, policies but also suitable practice thanks to collaborative efforts, sensitisation and training initiatives.

### **Exploring alternatives to heal and support**

One cannot but relentlessly recall the importance of considering post-adoption support as an integral part of the adoption process which should therefore count on adequate resource allocation (see also [ISS \(2018\). \*Towards a greater capacity; Analysis on possible topics for the Fifth Meeting of the Special Commission\*](#)). But are existing post-adoption services accessible to all, holistic, diverse and specialised enough to cater to adoptees' and their families' needs? Despite all efforts made in many contexts to provide high-quality post-adoption support, numerous adoptees vocalise their struggles and the lack of specialised post-adoption resources, and decide to create spaces to heal and support. In fact, many adoptees feel that the support pre-and post-adoption provided to (prospective) adoptive parents are not equally available nor specifically targeted to cater their needs. Further, others advocate for specialised post-adoption support – if foreseen for a specific timeframe – to be prolonged in time, similar to claims by careleavers in the alternative care field.<sup>7</sup> Consequently, do States take stock of the available and needed post-adoption services? Numerous States actually do, as shown through reforms in the last years, and should be encouraged to seek direct feedback and responses from concerned people themselves on the effectiveness, accessibility and affordability of such State services or subsidised services. In addition, when doing so, are innovative forms of therapy and psycho-social support services being considered/turned to? What are adoptees' experiences with therapeutic approaches involving music, art and other sensory therapies? Is there a need to introduce new professional figures such as adoption coaches that exist in certain contexts and often have a personal adoption history (California, US)?

**In light of the above, all these actions driven by adoptees need to be commended as they are filled with legitimacy. Further, they are proof of adoptees' courage, strength and relentlessness, to find answers for themselves and for their peers. For ISS/IRC, time is long-overdue, not only to put more emphasis on post-adoption in all its various dimensions, but also to integrate adoptees perspectives and actions as professionals and as persons with lived experiences into responses provided.**

***In this Monthly review, ISS/IRC wishes to share several perspectives on the above-mentioned elements, and invites others to contact ISS/IRC should they wish to do the same.***

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<sup>7</sup>See [ICAV Submission from 2019-2020](#).