



Fact Sheet N° 52

Specific cases

PREVENTING ABUSE AND TRAFFICKING

Adoption – whether domestic or intercountry – may unfortunately give rise to trafficking and abuse. The prospective adoptive parents' wish for a child is, sometimes, so strong, that some would be willing to do everything in order to care for one in their home, including turning a blind eye on doubtful practices. Some rather unscrupulous intermediaries benefit from this situation and sidestep the law in order to satisfy the pressing demand of prospective parents. In this context, it is important that States set up safeguards in order to prevent this trafficking, and that they dedicate the necessary means to it.

Definitions

Firstly, it is fundamental to clearly define the scope and the meaning of the terms used:

1. *Trafficking of children for adoption purposes*: These are practices, which may be considered as illegal adoptions. In the context of an adoption order, which has been issued by a court, the 'illegality' of this order may result from situations in which, on a range of grounds, the required procedures have not been complied with, the documents have been falsified, the child has been declared adoptable without a justifiable motive or owing to a manipulation, money has changed hands... In most cases, the illegality may be detected if minimum control has been exercised. However, the limit of the illegality is not always easy to determine (for example, one may think of the amounts paid to civil servants to speed up a file).
2. *Trafficking of children through adoption for exploitation purposes*: Rumours of child trafficking, via intercountry adoption, for exploitation purposes or for organ removal, have been disseminated worldwide in relation to numerous countries since the 1980s. However, these allegations stem more from a fantasy, than from proven facts, given that, to the best of our knowledge, no such case has been proved

to date. Indeed, it is highly unlikely that the channels of intercountry adoption are used for child exploitation purposes. Why would criminal networks choose a public and judicial procedure?

In this context, it is important to systematically draw a distinction between these two types of abuse and trafficking, so as to target the real problems and to effectively fight against illegal practices.

Legislative and procedural systems for the prevention of trafficking and abuse

In this struggle, a legislative framework has been established at the international and national level in most countries. The Convention on the Rights of the Child (CRC) provides for the prohibition of improper financial gain in the placement of children abroad (article 21.d), and, additionally, invites States Parties to take the necessary measures to prevent the abduction of, the sale of, or traffic in children, and to protect them against any form of exploitation prejudicial to their welfare (articles 35 and 36). Its Optional Protocol on the sale of children stipulates, in particular, that States must ensure that the improper inducement of consent, as an intermediary, for the adoption of a child, in violation of applicable international legal instruments on adoption, is covered by their criminal law. More

specifically, the 1993 Hague Convention establishes, as a fundamental principle, the prevention of abuse in matters of intercountry adoption (Preamble, para. 4, articles 1.b, 11.a and 32). It is then incumbent upon the States to ensure that their national legislation covers the violations committed, and to establish preventive measures. The latter may consist in:

- Protecting, informing and supporting the children's biological families;
- Ensuring that only children in need of a family are declared adoptable and are adopted;
- Establishing a mechanism, which ensures the transparency of the procedures' costs (see Fact Sheet N° 48);
- Putting an end to independent adoptions, and introducing the obligation to proceed via an accredited body, with a view to better supporting the prospective adoptive parents and to fully supervising the process;
- Regulating the intervention of agencies and individuals involved in intercountry adoption, particularly at the financial level;
- Training the actors in the adoption process in the steps to be followed in cases of identification of such illegal practices;
- Informing the public on the risks of trafficking and abuse, and on the authorities, to which the matter may be referred to;
- Reinforcing the shared responsibility and cooperation of receiving countries and countries of origin in the implementation of

measures of prevention against trafficking and abuse.

State responses in cases of trafficking and abuse

If, despite these measures, trafficking of children through intercountry adoption is proved, the States have the means to react at their disposal. Thus, countries of origin may suspend intercountry adoptions until an adequate legislative and procedural system is established to combat the irregularities. This was the case in Paraguay and Romania, which, since 1995 for the former and 2001 for the latter, have been closed to intercountry adoption. For their part, receiving countries may, at any time, suspend intercountry adoptions from a country of origin, whose procedures are marked by serious irregularities (Guatemala is subject to such measures by several receiving countries).

Nonetheless, it remains true that the struggle against trafficking and abuse is also the responsibility of each and everyone. In fact, everyone today has access to an important amount of information on the existing risks in some countries, in which intercountry adoption is practiced. It is a matter of their own choice to follow the recommendations of the authorities and bodies involved in the adoption process so as to prevent any irregular situation, for example, by refusing to initiate an individual procedure, and by acting in good faith throughout the process.

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For more information:

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BATSTONE David, *Not for sale: the return of the global slave trade – and how we can fight it*, New York: Harper San Francisco, 2007. pp. 301

DOTTRIDGE Mike, *A handbook on planning project to prevent child trafficking*, Terre des Hommes 2007, pp. 73, www.terredeshommes.org/pdf/publication/handbook_june8.pdf

UNICEF and Interparliamentary Union, *Combating child trafficking*, Inter-Parliamentary Union, Switzerland, 2005.

We are interested in your opinion! To tell us your experiences, ask us your questions about the themes addressed in this file, or to send us your suggestions for changes, don't hesitate to write to us at irc-cir@iss-ssi.org. We also invite you to share this file with other interested persons in your country. Thanks in advance!

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