



Monthly Review

published by the International Reference Center for the Rights of Children Deprived of their Family-ISS

No. 222
JUNE 2018

EDITORIAL

The use of DNA tests: A sufficient safeguard to determine the identity of the child and their biological parents?

The resort to DNA testing in an adoption process may be beneficial in specific cases, but it is a risk to resort to such tests systematically, for example, in order to confirm or ensure the validity and ethics of intercountry adoption procedures.

In order to determine the identity of the child and their birth parents, DNA tests (see attached box) might currently be used at various stages of the adoption process. Such tests can be useful in specific cases and under specific conditions; however, they may also entail certain risks.

What does International Law state?

With regards, in particular, to the right and access to identity, Articles 7 and 8 of the UNCRC focus on registration at birth and preservation of identity. As for the 1993 Hague Convention, its spirit promotes collaboration and mutual trust among Contracting States, notably through a series of procedural safeguards, such as Articles 7, 16 and 17.c (see Editorial of Monthly Review No. 221 of May 2018).

Despite the almost universal acceptance of these international standards, their implementation remains complex in critical contexts, where the risk of illicit practices remains high. In the light of these situations, might the use of DNA tests be an effective means of preventing such practices? While some actors respond in the affirmative, nevertheless, concerns still arise. By allowing access to DNA testing for such purposes, does it not call into question the very spirit of these conventions, which promote, on the one hand, the rigorous compliance with established procedures and, on the other hand, trust and cooperation between Member States as mentioned previously? In the

event of doubts or proven risks, should the appropriate response not be to not initiate collaboration or to suspend the ongoing collaboration until the adoption practice is compliant with the said conventions?



When and how are these tests used?

Presently, such DNA tests are used at various points in the adoption process: to establish the child's adoptability, to search for one's origins, or to restore identity and reunite with one's birth family following the discovery of illegal practices. Despite their apparent benefits, DNA tests may present various risks, especially when used in countries that experience corruption and/or falsification of official documents, such as birth certificates. How may we ensure the reliability of DNA testing and its results in countries plagued by illicit practices? Additionally, the systematic requirement of DNA testing in intercountry

adoption procedures risks mobilising significant efforts and resources at the expense of other priorities, such as family strengthening and support in order to prevent family separation. Without adequate resources, it seems, in fact, difficult to manage the proper implementation of such tests and to ensure the preservation of collected data. On the other hand, does the binding nature of DNA testing and its potential implications – aggravated injunction into a person's privacy, prolonged procedures, higher costs and their assumption, etc. – not also question the systematic resort to the latter?

When and under what conditions may these tests be beneficial?

Given the aforementioned risks, should the use of DNA testing not be limited to specific cases, such as during investigations regarding the sale or suspected trafficking of children. If this is the case, it is essential that these tests occur within a specific framework and comply with a set of safeguards, detailed in the ISS/IRC's position paper on the matter¹. Among these safeguards, provisions related to the following are of particular importance:

- the establishment of collaborative rules between the receiving country and the country of origin on this specific issue that cannot be left at the discretion of one country;

- the provision of adequate professional preparation and support;
- a data protection policy, etc.

'Genetic test' [covering also DNA testing] refers to a 'test involving analysis of biological samples of human origin, aiming to identify the genetic characteristics of a person that are inherited or acquired (...)'.
Article 4 of Recommendation [CM/Rec\(2016\)8](#) of the Council of Europe.

The **DNA tests** discussed in this document are for the purpose of analysing the similarities between DNA samples taken from two persons to establish parental ties – or to refute them.

The ISS/IRC recognises DNA testing as a means that, in specific cases and under certain conditions, may ensure access to the identity of an adoptee or their birth family. However, the ISS/IRC also strongly recommends against the systematic and large-scale practice of such tests, especially if they aim at ensuring a system's compliance with international standards, as such tests risk calling into question the spirit and value of the applicable international instruments.

The ISS/IRC team,
June 2018

