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**Promotion and protection of all human rights, civil,
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including the right to development**

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography

Note by the Secretariat

In her report, prepared pursuant to Human Rights Council resolutions 7/13 and 25/6, the Special Rapporteur on the sale of children, child prostitution and child pornography provides an overview of her activities since her previous report, which was presented to the Human Rights Council in March 2016. It also contains a thematic study on illegal adoptions and recommendations on how to prevent and combat that phenomenon.

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Report of the Special Rapporteur on the sale of children, child prostitution and child pornography

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 7/13 and 25/6. It contains information on the activities of the Special Rapporteur on the sale of children, child prostitution and child pornography since her previous report, which was presented to the Human Rights Council in March 2016. It also contains a thematic study on illegal adoptions.

II. Activities

A. Country visits

2. The Special Rapporteur undertook a visit to Georgia from 11 to 18 April 2016.¹ She also conducted a joint visit to Nigeria, from 18 to 22 January 2016, with the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.²

3. The Government of the Dominican Republic postponed a visit agreed for 31 October to 7 November 2016. The Governments of Bulgaria and Cameroon responded positively to the visit requests sent by the Special Rapporteur, who also received an invitation to visit Paraguay. The Special Rapporteur encourages Bangladesh, Brazil, Ghana, India, Indonesia, Kenya, the Lao People's Democratic Republic, Malaysia, Mozambique, Nepal, the Philippines, the Republic of Korea, Senegal, Singapore, South Africa, Thailand, the United Arab Emirates, Viet Nam and Zambia to respond positively to her requests to conduct a visit to their countries, and invites India to propose dates for the agreed visit.

B. Other activities

1. Conferences and engagement with stakeholders

4. On 24 May 2016, the Special Rapporteur was a speaker at an event in The Hague marking the fiftieth anniversary of Terre des Hommes Netherlands. On 7 June 2016, in Geneva, the Special Rapporteur, with the support of Plan International, launched a series of publications on the mandate.³

5. As a member of the Interagency Working Group on Sexual Exploitation of Children, the Special Rapporteur spoke at the launch, held in Geneva on 14 June 2016, of the *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*.

6. On 21 June 2016, the Special Rapporteur spoke at the Parliamentary Assembly of the Council of Europe during a debate on the oversexualization of children, in Strasbourg, France.

7. On 12 July 2016, she made an intervention at the official launch of the Global Partnership to End Violence against Children, in New York.

¹ A/HRC/34/55/Add.1.

² A/HRC/32/32/Add.2.

³ See www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx.

8. On 13 October 2016, the Special Rapporteur presented her report on the sale of children for the purpose of forced labour to the General Assembly at its seventy-first session.⁴

2. Follow-up to thematic priorities

9. As a follow-up to her report containing a thematic study on the issue of information and communications technologies,⁵ the Special Rapporteur spoke at the annual full-day meeting on the rights of the child, held during the thirty-first session of the Human Rights Council, which focused on the sexual exploitation of children online. On 2 May 2016, she co-organized, with the International Telecommunication Union, a workshop entitled “Child online protection: the road ahead, emerging trends and technologies”, which took place in Geneva in the context of the World Summit on the Information Society Forum 2016.

10. In follow-up to her visit to Nigeria and in connection with her study on the care, recovery and reintegration of child victims of sale and sexual exploitation,⁶ on 13 June 2016, during the thirty-second session of the Human Rights Council, the Special Rapporteur co-organized an event on the rehabilitation and reintegration of the victims of Boko Haram.

3. Communications

11. Summaries of communications sent during the reporting period appear in the communications reports of special procedures. The Special Rapporteur sent six communications addressing such issues as child marriage, child abduction, the sale of children and the sexual exploitation of children, but has not yet received any replies.

III. Study on illegal adoptions

A. Objective, scope and methodology

12. The present study addresses an aspect of the mandate that was highlighted in the 1990 founding resolution, namely the problem of the adoption of children for commercial purposes.⁷ It should be noted that children can also be sold for the purpose of illegal adoption.⁸ In the present study, the Special Rapporteur aims to highlight the wide variety of illegal acts and illicit practices that have been and continue to be committed in the context of domestic and intercountry adoption processes with the ultimate goal of suggesting concrete solutions to prevent and combat the phenomenon.

13. The purpose of the study is to go beyond individual cases and to look at large-scale cases of illegal adoption and sale of children that occur at the national and international levels through illegal acts and illicit practices that reflect deficiencies in the child protection systems and/or the involvement of criminal networks. In all cases, States bear responsibility, either through omission or commission.

⁴ A/71/261.

⁵ A/HRC/28/56.

⁶ A/70/222.

⁷ See Commission on Human Rights resolution 1990/68, para. 1.

⁸ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, art. 3 (1).

14. Owing to the breadth of issues touching on illegal adoption, the practice of *kafalah*, the illicit transfer and non-return of children abroad and international commercial surrogacy arrangements are not covered in the present study.

15. In preparation for the study, the Special Rapporteur held an expert meeting in Leiden, the Netherlands, on 19 and 20 September 2016. The Special Rapporteur wishes to thank Leiden University for hosting the meeting, Terre des Hommes Netherlands for organizing it and for providing resources for the substantive research, and the expert participants for their inputs during the preparation of the study.

B. International legal framework

16. In the preamble of the Convention on the Rights of the Child it is recognized that children should grow up in a family environment. In articles 7 and 8, it is stated that children have, as far as possible, the right to know and be cared for by their parents and the right to preserve their identity, including family relations. In addition, States must ensure that children shall not be separated from their parents against their will, except when it is in their best interests (art. 9).

17. The Convention provides in article 20 that a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. The care envisaged in the Convention can include foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. In that context, adoption should be understood as one possibility among several alternative child protection measures to provide a family environment to the child. In addition, the development of international child rights norms and standards shows that the placement in institutions should only be used as a measure of last resort, when it is absolutely necessary and when it is in the best interests of the child.⁹

18. Article 21 of the Convention sets the best interests of the child as the paramount consideration in all matters related to adoption.¹⁰ In addition, its implementation obliges States to ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary. Article 24 of the African Charter on the Rights and Welfare of the Child and article 4 of the European Convention on the Adoption of Children (Revised) also require the best interests of the child to be the paramount consideration in adoption processes.

19. In addition, in respect to intercountry adoptions, article 21 of the Convention on the Rights of the Child establishes the principle of subsidiarity and the prohibition of improper financial gain for those involved in the adoption process. It also establishes that the same level of safeguards and standards for domestic adoptions apply in the context of intercountry adoptions. Regarding the principle of subsidiarity, article 21 states that intercountry adoption may be considered as an alternative means of child's care, if the child

⁹ See Committee on the Rights of the Child general comment No. 9 (2006) on the rights of children with disabilities, para. 47.

¹⁰ For an analysis on the determination of the best interests of the child in respect to adoption see https://www.unicef-irc.org/publications/pdf/unicef%20best%20interest%20document_web_re-supply.pdf.

cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.

20. The 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption develops the principles set out in the Convention on the Rights of the Child, including the principle of subsidiarity. According to article 4 (b) of the 1993 Hague Convention, an adoption shall take place only if the competent authorities of the State of origin have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests.¹¹ Even though article 24 (b) of the African Charter on the Rights and Welfare of the Child explicitly requires intercountry adoption to be a measure of last resort, it has been interpreted as meaning that intercountry adoption is generally subsidiary to other alternative means of care.¹² Therefore, all appropriate national alternative care solutions must be given due consideration before resorting to intercountry adoption.

21. The subsidiarity principle must be applied in accordance with the Guidelines for the Alternative Care of Children,¹³ which involves supporting efforts to keep children in, or return them to, the care of their family or, failing that, to find another appropriate and permanent solution, including adoption. While looking for permanent solutions, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care have to be found.¹⁴ States also have the duty, as set out in article 18 of the Convention on the Rights of the Child, to assist parents and legal guardians in the performance of their child-rearing responsibilities, and to ensure the development of institutions, facilities and services for the care of children.

22. The prohibition of improper financial or other gain applies to any activity related to an intercountry adoption. According to article 32 of the 1993 Hague Convention, only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid. In addition, the directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered. In line with articles 8 and 11, central authorities must take all appropriate measures to prevent improper financial or other gain in connection with an adoption and accredited bodies must pursue only non-profit objectives, have qualified staff with ethical standards and be supervised.¹⁵ The prohibition of improper financial or other gain is also contained in the European Convention on the Adoption of Children (art. 17) and the African Charter on the Rights and Welfare of the Child (art. 24). That prohibition must lead to the criminalization of corruption at any stage of the adoption process, as corruption can lead to the sale of children and illegal adoptions.¹⁶

23. In addition, the 1993 Hague Convention creates safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights. It sets a system of cooperation among the contracting States to

¹¹ In relation to subsidiarity, see https://assets.hcch.net/upload/adoguide_e.pdf.

¹² See www.scielo.br/scielo.php?pid=S1806-64452009000100005&script=sci_arttext&tlng=en.

¹³ See General Assembly resolution 64/142, annex, para. 2 (a).

¹⁴ *Ibid.*, para. 2 (b).

¹⁵ The central authority is the office or body designated by a State party to the 1993 Hague Convention to perform certain mandatory functions in relation to adoption processes. An accredited body is an adoption agency that has been through a process of accreditation in accordance with the 1993 Hague Convention and that performs certain functions in the place of, or in conjunction with, the central authority. For more information on the financial aspects of intercountry adoption, see https://assets.hcch.net/upload/wop/note33fa2015_en.pdf.

¹⁶ For offences related to corruption, see chapter III of the United Nations Convention against Corruption.

ensure that those safeguards are respected, thereby preventing the abduction and sale of and/or the trafficking in children. As at December 2016, 98 States were parties to the 1993 Hague Convention.¹⁷

24. Article 3 (1) (a) (ii) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography establishes that, in the context of the sale of children, improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption must be criminalized both domestically and transnationally. Article 3 of the Optional Protocol is understood as containing specific examples of illegal acts that lead to the sale of children in the form of illegal adoption. While the sale of children always includes some form of commercial transaction, illegal adoptions can be performed in violation of existing national laws without necessarily amounting to the sale of a child.¹⁸ The Hague Conference on Private International Law defines illegal adoption as an adoption resulting from abuses, such as abduction, the sale of, traffic in and other illegal or illicit activities against children.¹⁹

25. In the context of the present report, adoptions resulting from crimes such as abduction and sale of and trafficking in children, fraud in the declaration of adoptability, falsification of official documents or coercion, and any illicit activity or practice, such as lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption, constitute illegal adoptions and must be prohibited, criminalized and sanctioned as such.

26. Illegal adoptions violate multiple child rights norms and principles, including the best interests of the child. That principle is breached when the purpose of an adoption is to find a child for adoptive parents rather than a family for the child. In that regard, it must be emphasized that international norms and standards do not establish the right to adopt a child or the right to be adopted.

C. Forms and methods of illegal adoptions

27. There is no reliable data on the number of children who have been or are being adopted as a result of being sold, trafficked or subjected to other illegal acts and illicit practices. Firstly, reliable figures are difficult to establish owing to the illicit and clandestine nature of those activities. Secondly, illegal adoptions can appear legal since many of the children concerned receive, at some point in the process, “official” adoption papers.

28. The abduction of babies (e.g. through kidnappings or by falsely informing parents that their baby was stillborn or died shortly after birth), the improper inducement of consent (e.g. through misrepresentation, bribery or coercion)²⁰ and improper financial gain (e.g. through payment for the child or the payment of bribes to intermediaries involved in the adoption process) are among the most common methods used in the sale of children and illegal adoptions. Inherent to the methods is the falsification of documents (e.g. birth and medical certificates, the identification documents of the biological mother, DNA test results and relinquishment or abandonment declarations) and the bypassing of regulations.

¹⁷ See <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69>.

¹⁸ See <http://luxembourgguidelines.org>.

¹⁹ See https://assets.hcch.net/upload/adoguide_e.pdf.

²⁰ When consent is absent, reference is often made to the notion of forced adoption.

29. The above-mentioned methods, illegal acts and illicit practices are generally linked to deficiencies in the child protection system (such as inadequate procedures for providing counselling to biological parents and flawed relinquishment procedures), which are exploited by criminal networks driven by the lucrative business of selling children and facilitating illegal adoptions, often with the involvement of State officials. When illegal acts and illicit practices are of a systemic nature, States bear responsibility for them by either omission or complicity.

30. The methods employed and the actors involved are often the same in cases of illegal domestic and intercountry adoptions. Similarly, in both cases vulnerable parents, in particular mothers, are often targeted (e.g. single mothers in situations of economic hardship, from rural areas, belonging to indigenous communities and/or without access to education).

1. Illegal acts and illicit practices that result in a determination of the adoptability of the child

31. Of the different stages involved in an adoption process, those leading to a determination of the adoptability of the child are the most vulnerable to illegal acts and illicit practices and are often linked to weaknesses in national child protection systems. Even though most of the following examples refer to cases of intercountry adoption, the acts and practices described may also be committed in domestic adoption procedures.

32. The placement of children in alternative care settings, in particular in residential facilities, is often a first step leading to a determination of their adoptability. The false assumption that all children in such institutions are adoptable has widely contributed to illegal adoptions, as children can be taken without the appropriate consent even though they still have a parent, family member or other kin willing and able to care for them. In Nepal, for example, intercountry adoptions have been interrupted by receiving countries owing to the insufficiency of the procedures in place to determine the adoptability of a child.²¹

33. The designation of children as having been abandoned or the relinquishment of parental rights on the child can be irregularly or illegally obtained. In Guatemala, abducted and purchased children have been brought before the courts to have them declared abandoned and thus eligible for adoption.²²

34. A key development is the increasing adoption of “children with special needs”.²³ The terminology used in such cases covers a broad series of realities based on criteria such as the child’s age, number of siblings, illnesses, disability status or traumas. Illicit practices in this context mostly concern cases of intercountry adoptions in which States prioritize the adoption of children because they do not have appropriate childcare policies. Moreover, there have been cases of false documentation being used to classify children as having

²¹ See www.gov.uk/government/uploads/system/uploads/attachment_data/file/288019/Adoptions_restricted_list_2010.pdf.

²² See www.cicig.org/uploads/documents/informes/INFOR-TEMA_DOC05_20101201_EN.pdf. Most intercountry adoptions in Guatemala were processed as relinquishments while recourse to the courts was made as a secondary option to process (illegal) adoptions. In general, newborn children were being procured for adoption while abandoned children were placed in residential facilities. Adoption, in particular intercountry adoption, became a response to a demand instead of being an alternative care measure.

²³ The Special Rapporteur encourages the use of child-rights compliant terms such as “children with specific or individual requirements”, which in the case of children with disabilities takes into account the specific impairments of the child and does not imply that children with disabilities have different needs.

“special needs” to render them adoptable abroad when such adoptions are prioritized or facilitated.

2. Illegal domestic adoptions

35. A large number of illegal adoptions committed at the national level at a given time reflect a pattern or modus operandi as well as the involvement of criminal networks. Such cases can be found in all regions of the world and entail the responsibility of the State owing to the direct involvement of State officials and/or the deficiency or permissiveness of State policies. Numerous illegal adoptions have also occurred as part of large-scale past abuses motivated by political or ideological reasons. Other domestic illegal adoptions have been committed for religious or moral reasons, fuelled by gender discrimination and gender-based violence or discrimination against minorities and indigenous peoples.

Past cases of large-scale illegal domestic adoptions

36. Gender discrimination and violence based on moral and religious constructs regarding the social or marital status of the mother have been a key driver of illegal adoptions in several countries.²⁴ In Ireland, the so-called mother and baby homes, which were managed by Catholic organizations, and other maternity institutions, were established in the 1920s to deal with unmarried pregnant women and girls and operated until the 1990s. Conditions in those institutions were deplorable and cases of violence against the women were common (e.g. abuse of expectant mothers, forced labour, neglect and detention). Before the 1952 Adoption Act, most children born out of wedlock were placed in foster care, “boarded out” or informally adopted. After passage of the Act, children were put up for formal adoption.²⁵ Consent was improperly induced or forcibly obtained and documents, including illegal birth registrations, were falsified on a large scale.²⁶ Furthermore, there were cases of intercountry adoptions, in particular to the United States of America, which often resulted from the same illegal practices.²⁷

37. In several instances, organized forced adoptions driven by prejudice targeted minorities, indigenous communities and other vulnerable groups.²⁸ In the United States, for example, following the launch of the Indian Adoption Project in the 1950s, hundreds of Native American children were adopted during that decade in order to ensure their assimilation and to take them away from their humble background. Those adoptions were

²⁴ For the United Kingdom of Great Britain and Northern Ireland, see <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06379>; for Australia, see www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2010-13/commcontribformerforcedadoption/index; for Belgium, see <http://docs.vlaamsparlament.be/docs/stukken/2014-2015/g356-1.pdf>; and, for Switzerland, see www.sodk.ch/fileadmin/user_upload/Fachbereiche/Opferhilfe/F%C3%BCrsorgerische_Zwangsmassnahmen/f_Information_SODK_F%C3%BCrsorgerische_Zwangsmassnahmen.pdf.

²⁵ See www.dcy.gov.ie/documents/publications/20140716InterdepartReportMothBabyHomes.pdf and http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/INT_CEDAW_NGO_IRL_21867_E.pdf.

²⁶ Ibid.

²⁷ See https://www.ihrec.ie/download/pdf/ihrc_assessment_of_the_human_rights_issues_arising_in_relation_to_the_magdalen_laundries_nov_2010.pdf.

²⁸ For Australia, see www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf; and, for Canada, see www.gov.mb.ca/legislature/hansard/40th_4th/vol_49b/h49b.html.

often based on partial assessments by social workers and amounted to forced or illegal adoptions.²⁹

38. Large-scale illegal adoptions have also taken place in the context of conflicts or authoritarian regimes and their aftermath.³⁰ During the military dictatorship that ruled Argentina from 1976 to 1983, for example, the authorities abducted hundreds of children from parents considered to be opponents of the regime.³¹ In most cases, arbitrarily detained pregnant women had their children removed once they had given birth; in other cases, children were arrested along with their parents and then separated from them. All the parents were forcibly disappeared or murdered by the regime. The babies were registered as the biological children of families close to or linked with the regime or of the individuals who had abducted them, and in some cases were given up for adoption. The falsification of documents was widely used to officialize such illegal acts and illicit practices.³²

39. The above-mentioned motivations for carrying out illegal adoptions often overlapped, as was notably the case in Spain throughout the Franco regime and during the first decades of democracy. Indeed, the practice of illegally adopting children for ideological and religious reasons soon morphed into a profit-driven criminal activity. Thousands of newborn babies were reportedly abducted from their parents by criminal networks involved in large-scale illegal adoptions. Medical personnel and clergy members actively participated in the abduction of children. Newborn babies were abducted from hospitals and subsequently told that their parents had died. The children were then given to other parents following the falsification of documents and, in certain cases, payments.³³

Recent cases of large-scale illegal domestic adoptions

40. Illegal domestic adoptions continue to occur in countries with weak child protection systems, in much the same way as they used to, in other words with the involvement of criminal networks and the participation of State officials and targeting vulnerable populations such as families in economic hardship. In China, there have been several cases of criminal networks abducting, trafficking and selling babies for the purpose of illegal adoption. Moreover, there have been reports of family planning officials being involved in improperly inducing consent from parents in order to sell the children or transfer them for domestic or international adoption or forced labour.³⁴

41. In several countries, private and independent adoptions occur legally, in parallel to State adoptions.³⁵ Because of their private nature and the absence of monitoring, private adoption procedures are quicker than public ones and are thus often favoured by prospective parents. Improper financial transactions have become inherent to private and independent adoptions and have resulted in the development of an adoption market.

42. There have also been mounting concerns in several countries regarding the practice of child protection services using the placement of children in alternative care, which may

²⁹ See www.narf.org/nill/documents/icwa/federal/lh/hear080477/hear080477.pdf.

³⁰ For Guatemala, see www.centrodehistoriahistorica.gov.co/descargas/guatemala-memoria-silencio/guatemala-memoria-del-silencio.pdf and www.odhag.org.gt/html/Default.htm.

³¹ See <https://www.abuelas.org.ar/caso/buscar?tipo=2>.

³² See www.cels.org.ar/blogs/2012/Plan%20sistem%C3%A1tico.pdf.

³³ See www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_C_10_178.PDF and www.poderjudicial.es/search/doAction?action=contentpdf&database=AN&reference=3420935&links=&optimize=20081127&publicinterface=true.

³⁴ CRC/C/CHN/CO/3-4.

³⁵ For Greece, see Katerina Nanou, "The social acceptance of illegal practices in the Greek domestic adoption system", *Adoption and Fostering Journal*, vol. 35, No. 3 (2011), pp. 60-67; and, for Poland, see <http://brpd.gov.pl/aktualnosci/adopcja-ze-wskazaniem-uregulowana>.

involve adoption, as an option of first resort, rather than providing the required support to families.³⁶

3. Illegal intercountry adoptions

43. Intercountry adoptions have been fuelled by a demand from prospective adoptive parents in higher-income countries for children from lower-income countries. That demand has put major pressure on countries of origin with weak child protection systems and often led to illegal acts and illicit practices that have resulted in the sale of children and illegal intercountry adoptions.

44. In Romania, for example, the fall of the Ceausescu regime was followed by a surge in the number of intercountry adoptions.³⁷ Widespread illegal adoptions were reported, in particular through the use of private procedures that targeted children who had not been placed in institutions. Of note was the rapid development of private adoption agencies, which were allocated a number of adoptable children depending on the size of their financial contributions to local child protection authorities.³⁸ That system amounted to sale and was further compounded by the direct purchasing of children by intermediaries and the improper inducement of consent. As a response, national authorities implemented legislation to limit the number of adoptions on three separate occasions, namely in 1991, 2001 and 2005. That legislation amounted to a moratorium on adoptions. Throughout that period, external pressures from receiving countries strongly influenced intercountry adoptions in Romania.³⁹

45. As the case of Romania demonstrates, one response to deficiencies in the intercountry adoption procedure has been the provisional suspension of adoptions, often known as moratoriums. In numerous countries of origin and receiving countries, moratoriums have been imposed following scandals revealing illegal practices in adoption procedures. The Hague Conference on Private International Law has noted that many States have a reactive approach to financial malpractice and abuse in intercountry adoption and tend to wait until problems are pervasive before addressing them.⁴⁰

46. Certain countries of origin have notably deemed it impossible to ensure probity in intercountry adoptions under the prevailing conditions and in the face of pressure from receiving countries, and have responded in a variety of ways. For instance, Paraguay has decided to apply strictly the principle of subsidiarity after ratifying the 1993 Hague Convention; since then, it has deemed it unnecessary to process intercountry adoptions. Several African countries (e.g. Lesotho, Liberia and Togo) have also found it necessary to suspend intercountry adoptions in order to attempt to resolve serious malpractice.⁴¹ For their part, receiving countries may decide to impose moratoriums on specific countries of origin in the light of evidence that widespread irregularities have been taking place. This has been decided in the cases of Cambodia, Ethiopia, Guatemala, Haiti, India, Nepal and Uganda.

47. As a general rule, suspension decisions are unilateral, uncoordinated and often belated, which reflects the lack of a common understanding (or willingness to implement) by receiving countries as to what the protection of children's rights demands in the sphere

³⁶ See <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-fr.asp?FileID=21567&lang=fr>.

³⁷ See <https://www.unicef-irc.org/publications/pdf/digest4e.pdf>.

³⁸ See https://www.unicef.org/ceecis/UNICEF_ICA_CEE_Guidance_WEB.pdf.

³⁹ Mariela Neagu, "Children by request: Romania's children between rights and international politics", *International Journal of Law, Policy and the Family*, vol. 29, No. 2 (2015), pp. 215-236.

⁴⁰ See https://assets.hcch.net/upload/wop/factsheet_finasp_en.pdf.

⁴¹ See <http://resourcecentre.savethechildren.se/sites/default/files/documents/6520.pdf>.

of intercountry adoption, as well as a lack of a common understanding of the sale of children and other illicit practices at the source of illegal adoptions.

48. An overarching violation of the intercountry adoption procedure has been the perception of adoption taking place independently from the national child protection system. In certain countries, such as Haiti and Nepal, the absence of or severe deficiencies in the alternative care system have not prevented the launching of intercountry adoptions.⁴² The core principle of subsidiarity has thus been completely circumvented.

49. In several instances loopholes have been used to conduct private and independent intercountry adoptions, which are prohibited by the 1993 Hague Convention, as the absence of oversight seriously jeopardizes the integrity of the process.⁴³ Prospective adoptive parents have, for example, resided temporarily in countries of origin long enough to be able to conclude a domestic adoption and then brought the adopted child back to their country, thus bypassing the intercountry adoption process.⁴⁴ Similarly, in Uganda foreign parents have been granted legal guardianship of children and taken them abroad where they then concluded a domestic adoption in the receiving country.⁴⁵ The conversion of a *kafalah* guardianship arrangement into a domestic adoption, once the child has been brought back to the receiving country, has also been used to circumvent intercountry adoption procedures under the 1993 Hague Convention.⁴⁶

50. As indicated in the section on adoptability, documents are often falsified to render a child eligible for intercountry adoption. This is particularly true for children with specific or individual requirements, who are preferentially selected for intercountry adoption by certain countries of origin. In several countries in Central and Eastern Europe and of the Commonwealth of Independent States, medical reports have been falsified to create or exaggerate the seriousness of a child's illness or disability in order to make him or her eligible for intercountry adoption.⁴⁷

51. Intercountry adoptions in the context of emergency situations are specifically open to several abuses. For example, in Haiti adoption processes were not interrupted but rather expedited following the 2010 earthquake, under the pressure of receiving countries.⁴⁸ In Rwanda, during the genocide, several children were evacuated abroad and some were subsequently adopted without the consent of surviving parents.⁴⁹

52. International commercial surrogacy is a growing phenomenon quickly overtaking the number of intercountry adoptions. The international regulatory vacuum that persists in relation to international commercial surrogacy arrangements leaves children born through this method vulnerable to breaches of their rights, and the practice often amounts to the sale of children and may lead to illegal adoption. Indeed, several countries do not recognize such arrangements and, in order to establish a parent-child relationship, national laws often require parents to legally adopt the child born through international commercial surrogacy. However, if the international commercial surrogacy arrangement is found to amount to the

⁴² See https://assets.hcch.net/upload/wop/nepal_rpt09.pdf and https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288019/Adoptions_restricted_list_2010.pdf.

⁴³ https://assets.hcch.net/upload/wop/adop2010_rpt_en.pdf.

⁴⁴ Information elicited through a questionnaire.

⁴⁵ See www.alternative-care-uganda.org/resources/adoption-study-march-2015.pdf.

⁴⁶ See <https://travel.state.gov/content/adoptionsabroad/en/adoption-process/faqs/islamic-sharia%20law.html>.

⁴⁷ See https://www.unicef.org/ceecis/UNICEF_ICA_CEE_Guidance_WEB.pdf.

⁴⁸ A/HRC/19/63 and Corr.1.

⁴⁹ CRC/C/70/Add.22.

sale of a child, the adoption too will consequently be illegal under international standards. Such a situation underscores the need for States to ensure that they are not inadvertently legitimizing the sale of children born through international commercial surrogacy by granting adoption orders.

D. Push and pull factors and the enabling environment

53. The underlying push and pull factors that affect illegal adoptions and the sale of children are multidimensional and linked to the political, legal, socioeconomic, cultural and environmental context, at both the national and transnational levels. Situations of poverty and economic hardship, the lack of birth registration and discrimination, including gender-based discrimination and violence, are prominent root causes of and risk factors for illegal adoption, abandonments and relinquishments. An overarching enabling factor for illegal adoptions is weak or inexistent child protection systems at the national and local levels.

54. Vulnerability owing to poverty underlies decisions to abandon children and relinquish parental rights over them, thus rendering them adoptable. Nevertheless, poverty alone cannot be invoked as sufficient justification for placing or receiving a child in alternative care.⁵⁰ National authorities and foreign actors — the latter being more inclined to finance “orphanages” than family-strengthening programmes — are failing in their responsibilities to support vulnerable families through comprehensive child protection systems.

55. As highlighted in the previous section, multiple forms of discrimination have been at the origin of several large-scale practices of forced adoption. In particular, gender-based violence and discrimination, and discrimination against families in vulnerable socioeconomic situations (e.g. families from rural areas or belonging to indigenous peoples) have been used to justify the removal of children from their parents without any regard for their consent.

56. In the context of conflicts or following a natural disaster, children are often separated from their families and the national infrastructure is weakened or rendered incapable of functioning. In such situations, adoption processes are particularly open to abuse: children may be deemed adoptable even though their parents are still alive or there may be no monitoring function to ensure that no illegal acts are being committed.⁵¹

57. In respect of intercountry adoptions, the enabling environment points to prevailing conditions in countries of origin (such as limited domestic care options, laws that influence the determination of adoptability and the lack of adequate resources to verify the origins of children and to ensure the free and informed consent of biological parents) and to the approach taken by receiving countries, including the pressure they exert and the conditions they accept in order to secure children for adoption, as well as the lack of information provided to prospective adoptive parents. In addition, corruption and impunity allow illegal acts and illicit practices to proliferate.

58. Such systemic issues create an environment that enables illegal adoptions and that Governments, both in countries of origin and in receiving countries, are allowing or promoting through laws and policies, often taking advantage of them.

⁵⁰ See General Assembly resolution 64/142, annex, para. 15.

⁵¹ A/HRC/19/63 and Corr.1.

1. Pressure of demand

59. A major enabling factor for illegal adoptions is the significant discrepancy between the number of prospective parents seeking to adopt and the number of children who are truly adoptable. The discrepancy is greatest in respect of the most sought-after children (generally, those who are young and healthy), while the children most often found in care are older and have a variety of specific requirements. The unrealistic number of prospective parents fuels frustration and sometimes leads to the commission of illegal acts to obtain the much lower number of adoptable children.

60. The disproportionate demand for adoption is particularly relevant in the context of intercountry adoptions and leads to excessive pressures from receiving countries on countries of origin.⁵² Furthermore, when the number of intercountry adoptions suddenly and rapidly increases in a country of origin, the existing infrastructure will often not be able to cope, intensifying the risk of illegal acts and illicit practices.

2. Financial transactions

61. The lack of transparency regarding the costs of an adoption and other related payments are at the root of most illegal acts. Particularly in the context of intercountry adoptions, the costs of the whole procedure are not set, which leads to great fluctuations in prices and many opportunities for corruption. Nor is there transparency regarding the purpose and use of other “adoption-related payments”, blurring further the line between required and unjustified amounts.⁵³ Payments also create a dependency (e.g. among “orphanages” and intermediaries) that can fuel illegal adoptions.⁵⁴

62. The undue payment of intermediaries both in the context of domestic and intercountry adoptions is a major issue, as shown in the country profiles maintained by the Bureau of Consular Affairs of the United States Department of State, which describe the practice of unofficially expediting the transfer of money or unexpected fees, as well as donations, to several countries of origin.⁵⁵

63. The linking of development aid to intercountry adoptions is another type of transaction that jeopardizes the transparency of the process and can lead to violations of the rights of the child.⁵⁶ Faced with the possibility of obtaining a large sum of money for processing an adoption, many countries of origin make sure that children are available for adoption regardless of the actual need. In Viet Nam, for example, agencies are required to provide humanitarian aid before they can process an adoption.⁵⁷ The provision of development aid has the perverse effect of encouraging countries of origin to “procure” children for adoption; in most cases, the aid will not contribute to the delivery of alternative care for children.

64. Similarly, direct donations to childcare institutions in the context of intercountry adoptions — construed as “care costs” for children whose adoption order is being finalized — increase the risk of illegal adoptions. Such costs, which are generally not fixed and often far exceed the local expenditures, are an indication that a profit-driven scheme is involved. In Haiti, for example, a fixed amount is charged by childcare institutions for the care of

⁵² See <https://travel.state.gov/content/dam/aa/pdfs/2015NarrativeAnnualReportonIntercountryAdoptions.pdf>.

⁵³ See https://assets.hcch.net/upload/wop/factsheet_finasp_en.pdf.

⁵⁴ See https://assets.hcch.net/upload/wop/note33fa2015_en.pdf.

⁵⁵ See <https://travel.state.gov/content/adoptionsabroad/en/country-information.html>.

⁵⁶ CRC/C/ESP/CO/3-4.

⁵⁷ See https://www.unicef.org/vietnam/Eng_Adoption_report.pdf, pp. 57-65.

selected children; that amount represents more than half of the cost of adoption and is unrelated to the local cost of living.⁵⁸

3. Role of intermediaries

65. The fact that intercountry adoptions are mediated by private agencies means that they too can enable illegal practices. This is particularly true in respect of private agencies that are not authorized to work as adoption accredited bodies.⁵⁹ Such agencies usually finance their operations by charging fees to prospective adoptive parents. As those fees will not be forthcoming unless the agency secures children for adoption, some agencies employ methods or accept conditions that encourage the commission of illegal acts and illicit practices. In some instances, the demand for adoptable children creates an unhealthy competition among agencies. Adoption agencies often claim that they lack knowledge of illicit practices or that they lack control over intermediaries in countries of origin. However, the financial gain behind the illicit practices, which is often linked to money-laundering, often puts such claims into question.

66. When adoption agencies establish privileged links with childcare facilities, there is an additional possibility for illegal adoptions to happen. The risk is all the greater when care facilities are not registered or when their operation depends on payments provided by adoption agencies.⁶⁰ As already mentioned, the need for payments means that alternative care institutions must ensure a constant supply of adoptable children to guarantee their existence, regardless of the actual child protection needs.

4. Circumventing the 1993 Hague Convention

67. The existence of intercountry adoptions from countries of origin that are not party to the 1993 Hague Convention is linked to a higher risk of illegal adoptions. Some major States of origin, such as Ethiopia, the Russian Federation and Ukraine, are not yet party to the Convention, which means that many intercountry adoptions do not benefit from its guarantees and safeguards.⁶¹ States parties to the Convention, in their relations with non-contracting States, are expected to apply as far as practicable the standards and safeguards of the Convention.⁶²

68. Although some bilateral agreements have been signed between countries of origin that are not parties to the 1993 Hague Convention and receiving countries,⁶³ they often do not meet the standards of the Convention and delay accession to it by non-States parties. Moreover, the existence of such agreements increases the risk of undue pressure from the receiving country on the country of origin to ensure that intercountry adoptions occur regardless of the actual need.⁶⁴

⁵⁸ See www.ibesr.com/fichier/Haiti-Co%C3%BBt%20de%20la%20proc%C3%A9dure%20d'adoption.pdf.

⁵⁹ See <https://assets.hcch.net/upload/adoguide2en.pdf>.

⁶⁰ Flavie Fuentes, Hervé Boéchat and Felicity Northcott, *Investigating the Grey Zones of Intercountry Adoption* (International Social Service, 2012), p. 92.

⁶¹ See <https://assets.hcch.net/docs/f9f65ec0-1795-435c-aadf-77617816011c.pdf>.

⁶² See https://assets.hcch.net/upload/adoguide_e.pdf.

⁶³ All major receiving States are parties to the 1993 Hague Convention.

⁶⁴ See www.mfof.se/Documents/remissvar-och-rapporter/Report%20to%20Swedish%20Government%20March%202015%20-%20Commission%20conc%20bilateral%20agreements%20on%20intercountry%20adoption.pdf.

E. Measures to prevent and combat illegal adoptions

69. States have adopted various measures to prevent and combat illegal acts and illicit practices that result in the sale of children and illegal adoption. Few States have adopted measures to respond to cases of large-scale illegal adoption; of those that have, many have done so in response to the sustained advocacy efforts of civil society, in particular victims' organizations. That said, there are no strategies aimed at tackling the systemic issues that give rise to an enabling environment for illegal adoptions and at ensuring that adoptions take place solely in the best interests of the child and in conformity with international norms and standards.

1. National child protection systems

70. The way in which child protection and alternative care systems are designed, organized, resourced and monitored has a considerable impact on the degree to which they become implicated in illicit practices leading to illegal adoptions. For instance, the provision of alternative care that relies primarily on privately run residential facilities constitutes a major risk for the occurrence of illegal adoption. Moreover, States where such arrangements are prevalent are often not in a position to exercise the oversight necessary to ensure adherence with international standards.⁶⁵

71. An advisory council in the Netherlands has concluded that intercountry adoption negatively affects the development of child protection systems in countries of origin, rendering the services provided by the latter of a lesser quality than would be the case if no intercountry adoption existed. It has called upon Governments to focus on protecting children in countries of origin by supporting the implementation and advancement of national child protection systems.⁶⁶

2. Regulation and supervision of adoption processes

72. States have adopted various measures to regulate and control adoption processes with the aim of preventing and addressing illegal acts and illicit practices. Most of the measures covered in the present section apply to intercountry adoptions and reflect the efforts of both countries of origin and receiving countries to tackle the numerous illegal acts and illicit practices affecting such adoptions.⁶⁷

Prohibition of private and independent adoptions

73. Private and independent adoptions are initiated and processed without the oversight of competent authorities, and therefore often involve illicit practices.⁶⁸ They are incompatible with the 1993 Hague Convention.⁶⁹ Many such adoptions, however, occur in countries of origin that are not parties to the Convention, where procedures and systems may fall below international standards. Some receiving States also permit private and independent adoptions when they are carried out from countries of origin that are not

⁶⁵ See www.alternativecareguidelines.org/Home/tabid/2372/language/en-GB/Default.aspx.

⁶⁶ See https://www.rsj.nl/binaries/Samenvatting%20Interlandelijke%20adoptie%20Engels%2020161101_tcm26-176572.pdf.

⁶⁷ Guide No. 1 on good practices for the implementation of the 1993 Hague Convention establishes that contracting States are not bound to engage in any particular level of intercountry adoption (see sect. 8.2 on placing limits on intercountry adoption). See https://assets.hcch.net/upload/adoguide_e.pdf.

⁶⁸ Defence for Children International, *Preliminary Findings of a Joint Investigation on Independent Intercountry Adoptions* (1991, Geneva).

⁶⁹ See https://assets.hcch.net/upload/adoguide_e.pdf.

parties to the Convention.⁷⁰ This may spur those determined to adopt at any cost to turn to non-States parties to the Convention.

Accreditation and monitoring of adoption agencies

74. The 1993 Hague Convention allows adoption agencies to play a key role in mediating intercountry adoptions. It requires that they be accredited by the receiving country and authorized by the country of origin to operate in that country. An agency accredited to mediate intercountry adoptions should employ a sufficiently large multidisciplinary team of professional staff for its operations. Accredited bodies should be supervised by a competent authority at least as regards “their composition, operation and financial situation”, including the regular monitoring of their websites “to examine the quality, accuracy and currency of their information”.⁷¹

75. Attitudes towards the accreditation of adoption agencies vary among receiving States, with some accrediting a small number of bodies that have the resources to provide all the necessary professional services and can be monitored effectively,⁷² and others having multiple and diverse accredited bodies.⁷³ Accreditation is no guarantee of professionalism, however. The fact that adoption agencies are not effectively monitored and vetted for their professionalism and ethics is a major problem.

Limiting adoption agencies working in or with a country of origin

76. It is the joint responsibility of countries of origin and receiving countries to regulate the number of adoption accredited bodies wanting to engage in intercountry adoptions, as a means of limiting the number of adoptions to the number of legally adoptable children.⁷⁴ When the Government of a country of origin authorizes too many agencies to operate within its borders, such agencies must compete to identify and secure “adoptable” children, which in turn makes it difficult to monitor their activities effectively. When adoption bodies in one country partner with agencies in other countries, the resulting web of agency activities is all the more difficult to monitor effectively.

Limiting the approval of prospective adoptive parents

77. Issuing “fitness-to-adopt certificates” to an unlimited number of prospective adoptive parents is dangerous when the number of adoptable children is relatively small. That discrepancy is not only a cause of frustration among prospective adoptive parents but may also contribute to a level of unsatisfied demand that can lead some prospective adoptive parents to consider options involving illicit practices. It can also fuel calls for greater efforts on the part of the authorities of receiving countries to identify more sources of adoptable children, generally in countries of origin that are not compliant with the 1993 Hague Convention.

Restricting the transmission of adoption applications

78. Some central authorities in countries of origin consider the setting of quotas as a positive measure to filter demand and repel pressure from receiving countries. Others, however, argue that quotas are instituted to address the actual demand and consequently do

⁷⁰ See www.diplomatie.gouv.fr/fr/adopter-a-l-etranger/comment-adopter-a-l-etranger/le-guide-de-l-adoption-a-l/.

⁷¹ See <https://assets.hcch.net/upload/adoguide2en.pdf>.

⁷² Denmark has one accredited body; Finland, Norway and Sweden each have three.

⁷³ The United States has 184 accredited bodies and France has 32 such bodies.

⁷⁴ See <https://assets.hcch.net/upload/adoguide2en.pdf>.

not resolve the issues raised by excessive demand. International Social Service, a federation of non-governmental organizations, has long argued for “a reversal in the flow of files” to ensure that intercountry adoptions are processed in the best interests of the child. Such a reversal would mean that adoption applications should only be sent to the authorities of a country of origin in response to a request made for prospective adoptive parents appropriate for a specific child in need of adoption.⁷⁵

Preventing rapid increases in adoptions from a country of origin

79. Central authorities in receiving countries have sometimes strengthened efforts to conclude adoptions from countries of origin that are not parties to the 1993 Hague Convention, where regulations and procedures may be less strict. That approach involves major increases in intercountry adoptions from the countries concerned until it is deemed necessary to take measures to address the illicit practices that stem from it.⁷⁶

3. Accountability of perpetrators and redress for victims

80. Illegal adoptions are rarely investigated and perpetrators are rarely prosecuted, in part because there is a lack of comprehensive legislation criminalizing such illicit practices as illegal adoptions. Many of the illegal acts involved in illegal adoptions are criminalized individually as minor offences (e.g. falsification of documents) and sanctions rarely reflect the gravity of the crime. Moreover, illegal adoptions are usually not investigated ex officio but require ex parte complaints.⁷⁷ Criminal investigation and prosecution strategies targeted at criminal structures involved in the sale of and trafficking in children and illegal adoptions are also absent. Consequently, few individuals and criminal networks are ever prosecuted for illicit activities in connection with adoptions, which results in impunity.

81. The various parties involved in illegal adoptions are reluctant to report or denounce suspected illegalities because of the possible implications. The birth parents are the notable exception, at least those whose children have been abducted or placed for adoption without their informed consent; unfortunately, they are the least likely to file a complaint, as many of them fear the consequences or lack the appropriate knowledge and access to remedies. Most adoptive parents do not know with certainty whether the adoption process involved illicit or criminal practices,⁷⁸ although they may come to suspect as much during or after the adoption process. The responses of prospective or adoptive parents to such suspicions will depend on a number of factors, including the extent to which they feel they were directly implicated and their assessment of the likely consequences of notifying the competent authorities. Complaints filed and collaboration extended by adoptive parents increase the chances of success of criminal investigations and prosecutions.

82. A good practice related to the proactive detection of illegal acts and illicit practices in receiving countries is the protocol for responding to allegations of child trafficking in intercountry adoption, which was designed by the Government of Australia to respond to concerns of adoptive parents and adoptees regarding abduction, sale and trafficking in intercountry adoptions.⁷⁹

⁷⁵ Ibid.

⁷⁶ David M. Smolin, “Child laundering and the Hague Convention on Intercountry Adoption: the future and past of intercountry adoption”, *University of Louisville Law Review*, vol. 48, No. 3 (2010), p. 471.

⁷⁷ David M. Smolin, foreword to Brian H. Stuy, “Open secret: cash and coercion in China’s international adoption program”, *Cumberland Law Review*, vol. 44, No. 3 (2014), p. 359.

⁷⁸ See PowerPoint presentation at https://works.bepress.com/david_smolin/12.

⁷⁹ See <https://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Documents/Protocolforrespondingtoallegationsofchildtraffickinginintercountryadoption.pdf>.

83. Individual adoptions and adoption systems must be investigated as soon as there are indications of illicit practices. In 2014, the General Prosecutor's Office of Kazakhstan conducted an investigation into the possible sale of children for intercountry adoption after having detected inaccuracies in data on children adopted abroad, which led to court rulings on intercountry adoptions being reviewed and reversed.⁸⁰ However, investigations and prosecutions in receiving countries against their own nationals for having arranged illegal intercountry adoptions are rare.

84. Guatemala presents one of the few examples of investigation and prosecution efforts having been made with the aim of dismantling criminal structures. In 2011, with the support of the United Nations-backed International Commission against Impunity in Guatemala, the Public Prosecutor's Office proved the existence of a criminal structure involved in trafficking in children for the purpose of illegal intercountry adoptions operated by owners of residential facilities with the complicity of lawyers, registrars and judges.⁸¹ Despite the convictions, the case illustrated the difficulties in balancing the conflicting needs and desires of those involved in adoptions (adoptees, adoptive parents and biological parents) and the interests of justice.⁸²

85. In all cases of systemic illegal adoptions, States must ensure redress for victims through remedies that include reparation for victims and support to adoptees in their search for their origins. The experiences of adoptees trying to establish the truth behind their "abandonment" and illegal adoption are telling, as are the obstacles they encounter and the good practices of competent authorities.⁸³ Gradually, efforts are being made to facilitate the search process. For example, an adoption manual has been developed by the adoption service and the Ministry of Health and Welfare of the Republic of Korea, containing information on the steps to be taken searching one's birth family. The search for truth and origins is one of the main issues addressed by associations of intercountry adoptees.⁸⁴ Such initiatives are still rare, however.

4. Illegal adoptions and transitional justice

86. Various countries emerging from conflict or an authoritarian regime have been confronted with allegations of systematic illegal adoptions as part of past large-scale abuses. Few countries have responded to victims' calls for truth, justice, reparation and guarantees of non-recurrence, however, and none have done so in a comprehensive manner.⁸⁵ Argentina has pioneered such responses, in particular in relation to enforced disappearances, through truth-seeking and accountability.⁸⁶ Genetic tracing and the establishment of a national genetic database have played a key role in identifying

⁸⁰ See <http://prokuror.gov.kz/rus/novosti/press-releasy/vystuplenie-generalnogo-prokurora-ashata-daulbaeva-na-zasedanii-kollegii> and information elicited through a questionnaire.

⁸¹ See www.cicig.org/index.php?page=01080-2009-00470.

⁸² See www.iss-ssi.org/images/News/Illegal_Adoption_ISS_Professional_Handbook.pdf.

⁸³ *Ibid.*

⁸⁴ See <https://justicespeaking.wordpress.com>.

⁸⁵ The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has underscored the importance of taking a comprehensive approach to addressing gross violations of human rights and serious violations of international humanitarian law, one that combines elements of truth-seeking, justice initiatives, reparations and guarantees of non-recurrence in a complementary and mutually reinforcing manner (see A/HRC/21/46).

⁸⁶ Article 25 of the International Convention for the Protection of All Persons from Enforced Disappearance criminalizes the wrongful removal of children who are subjected to enforced disappearance and those whose parents or guardian has been subjected to enforced disappearance, as well as the falsification, concealment or destruction of documents attesting to the true identity of the children.

disappeared children who were subjected to illegal adoption and in efforts to seek judicial accountability. Moreover, the “disappeared” children, now adults, are stepping forward to uncover their biological origins and some are playing a role in the prosecution of their adoptive parents.⁸⁷

87. Even though transitional justice measures in the context of searches for biological origins have been applied following regime change, the same principles can be used to respond to the quests for truth, justice, reparation and guarantees of non-recurrence carried out by victims of other large-scale illegal adoptions, when such violations have been tolerated or directly committed by the State. The few responses of States to such cases reflect a piecemeal approach and a chequered pattern of denial, resistance, acknowledgement and assistance. The exception to this is Australia, where in 2012 the Senate released the findings and recommendations arising from an enquiry into former forced adoption policies and practices. The decision to release the findings and recommendations constituted an exercise in truth-seeking, a recognition of past wrongdoing, reparation and guarantees of non-recurrence through legislative, institutional and policy reforms.⁸⁸

88. Demands for truth, justice, reparation and guarantees of non-recurrence from victims of past large-scale or systematic cases of illegal adoptions continue to be ignored and inadequately addressed by States. Public instances of recognition of past wrongdoing are rare, depend on the willingness of those responsible and do not entail concrete action. In addition, public inquiries to establish the truth and recognize the experiences of victims have been incomplete and have failed to address the concerns of all victims.⁸⁹ Consequently, in many cases, victims’ demands for acknowledgement, apology and redress are yet to be met.⁹⁰

5. Transnational cooperation

89. An expert group on the financial aspects of intercountry adoption and a working group on preventing and addressing illicit practices in intercountry adoption set up by the Hague Conference on Private International Law have developed concrete solutions.⁹¹ The former has produced a note on the financial aspects of intercountry adoption and a table on costs associated with such adoptions and has invited States parties to the 1993 Hague Convention to publicly provide those financial details. In addition, the Hague Conference, often with the support of the United Nations Children’s Fund (UNICEF), has provided technical assistance to countries of origin to set up or strengthen national child protection systems, including by establishing the conditions for the implementation and operation of the Convention.

90. In the context of intercountry adoptions, there have been calls to ensure coordinated responses from both receiving countries and countries of origin faced with illegal adoptions or highly fragile situations. Following the 2004 tsunami in the Indian Ocean, both countries of origin and receiving countries, with the support of UNICEF and the Hague Conference on Private International Law, stated that no intercountry adoption would take place in the

⁸⁷ Michelle Harvey-Blankenship, Phuong N. Pham and Rachel Shikegane, “Genetic tracing, disappeared children and justice”, Innocenti Working Papers (UNICEF, 2010).

⁸⁸ See www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2010-13/commcontribformerforcedadoption/report/index.

⁸⁹ For Ireland, see http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IRL/INT_CEDAW_NGO_IRL_21867_E.pdf.

⁹⁰ For Spain, see <http://sosbebesrobadosmadrid.com> and <http://anadir.es>; and, for the United Kingdom, see <https://movementforanadoptionapology.org>.

⁹¹ See <https://www.hcch.net/en/instruments/conventions/specialised-sections/intercountry-adoption>.

immediate aftermath of the tsunami.⁹² Similar conclusions were drawn following the earthquakes that hit Haiti in 2010⁹³ and Nepal in 2015.⁹⁴

IV. Conclusions and recommendations

A. Conclusions

91. **Illegal adoptions, namely adoptions that are the result of crimes such as the abduction and sale of and the trafficking in children or that are processed through the commission of other illegal acts or illicit practices such as the lack of proper consent of biological parents, fraud and improper financial gain, violate multiple child rights norms and principles, including the best interests of the child.**

92. **States have been reluctant to react adequately to illegal adoptions. The lack of accountability and redress for victims of illegal adoptions, in part due to a lack of comprehensive national legislation criminalizing illegal adoption as a separate offence, is a major concern. In addition, investigations and prosecutions are rarely targeted at criminal structures involved in the commission of systematic illegal adoptions, often with State complicity. Sanctions for acts related to illegal adoptions rarely reflect the gravity of the crimes.**

93. **In order to effectively prevent and eradicate illegal adoption, States must take measures to address the push and pull factors, as well as the enabling environment, of the current adoption system, in which illegal adoption persists. In respect of intercountry adoptions, countries of origin and receiving countries bear joint responsibility for tackling systemic problems. The current system not only facilitates and encourages illegal adoptions but also accepts measures that foster them. A major factor enabling illegal adoptions is the level of financial advantage that can be obtained from the procurement of children for intercountry adoption. As long as adoption fees and costs are not reasonable and not made transparent and as long as contributions and donations are involved, there will continue to be a substantial incentive for illegal adoptions to take place.**

94. **In addition, countries of origin and receiving countries bear joint responsibility for ensuring the rights to truth, justice, reparation and guarantees of non-recurrence of victims of large-scale illegal adoptions that were tolerated or actively promoted by the State. States must acknowledge their responsibility vis-à-vis illegal adoptions by anticipating strategies and adopting comprehensive measures to ensure accountability and provide redress to victims.**

B. Recommendations

1. At the national level

95. **The Special Rapporteur invites all States to:**

(a) **Ratify the Convention on the Rights of the Child and its three Optional Protocols, as well as the 1993 Hague Convention on Protection of Children and**

⁹² See <https://www.unicef.org/protection/Separated-20Children-20Guiding-20Principles-20Tsunami%281%29.pdf>.

⁹³ See <https://www.hcch.net/en/publications-and-studies/details4/?pid=4933&dtid=28>.

⁹⁴ See www.un.org/apps/news/story.asp?NewsID=51213#.WC3JDuQppfc.

Cooperation in Respect of Intercountry Adoption, and incorporate the 2009 Guidelines for the Alternative Care of Children into national legislation;

(b) Adopt clear and comprehensive legislation that prohibits and criminalizes illegal adoption as a separate offence, as well as the sale of and trafficking in children that result in illegal adoptions, with sanctions that reflect the gravity of the crimes;

(c) Review national laws and regulations to ensure that they do not contribute to the creation or maintenance of an enabling environment for illegal adoptions;

(d) Strengthen and invest more in effective national child protection systems, inter alia, by increasing support to vulnerable families, by providing alternative childcare measures in which adoption and in particular intercountry adoption respect the principle of subsidiarity and ensure the best interests of the child and by establishing adequate birth registration mechanisms;

(e) Establish and implement a single, well-recognized process for adoption that includes a holistic assessment of the child's full range of rights, and prohibit private and independent adoptions;

(f) Adopt adequate regulation on procedures and safeguards in relation to domestic and intercountry adoptions, including in relation to the determination of adoptability, and establish effective and well-resourced mechanisms for overseeing adoption processes, especially with respect to strictly verifying the background of any child who is declared an orphan and his or her documents;

(g) Take particular care in the use of adoption orders to establish a parent-child relationship in cases of international commercial surrogacy, and ensure that the adoption order is consistent with the child's rights and best interests, in order to avoid the illegal adoption of children born through international commercial surrogacy;

(h) Establish and implement standardized information systems to obtain and share accurate and reliable data on domestic and intercountry adoptions, on children subject to adoption and on their family and background;

(i) Establish mechanisms for addressing the concerns of adoptees, adoptive parents and biological parents about the circumstances of an adoption and for facilitating the search for origins and the request for reparations where appropriate, providing adequate psychosocial support when necessary;

(j) Ensure the right to information about one's origins and access to information about the rights of victims of illegal adoptions, and facilitate the work of victims' organizations in that respect, including in terms of helping them to trace biological parents and children;

(k) Ensure the right to truth, justice, reparation and guarantees of non-recurrence of victims of large-scale illegal adoptions, inter alia, by reforming institutions that were either involved in or incapable of preventing abuses, and guarantee the effective and meaningful participation of victims in the design and implementation of measures to obtain comprehensive redress;

(l) Take effective measures to protect children who are victims of armed conflict and natural disasters from becoming victims of illegal adoption.

96. Specifically in respect of intercountry adoptions:

(a) Central authorities should ensure the effective monitoring of activities of adoption accredited bodies to guarantee their transparency and accountability;

(b) Governments of receiving countries should limit the number of adoption agencies accredited to work with any given country on the basis of a realistic assessment of the number of children who might require adoption abroad, and Governments of countries of origin should deny approval to accredited agencies when their number surpasses the objective needs;

(c) Governments should increase awareness of the need to bring the number of approvals of prospective adoptive parents into line with the projected number of adoptees, adopt stricter criteria for approval and provide more complete information, including on mechanisms available to report and denounce illicit practices, and better counselling and compulsory preparation for prospective adoptive parents by receiving countries;

(d) In dealing with States not parties to the 1993 Hague Convention, receiving countries that are parties to the Convention should apply as far as practicable the standards and safeguards of the Convention, prevent their nationals and agencies from creating a situation where illegal adoptions are bound to occur and assist authorities in States not parties to the Convention in stemming the flow;

(e) Official fees must be sufficient to cover costs and full details must be made available for public consultation;

(f) The provision of development or humanitarian aid must not be linked to an authorization to carry out adoptions;

(g) Contributions and donations should be clearly separated from adoption;

(h) Payments by agencies or prospective adopters to residential care facilities, including “care costs” for children awaiting the issuance of an adoption order, must be prohibited;

(i) Annual quotas for adoptions by countries and/or agencies should be eliminated and the “reversal in the flow of files” approach should be adopted by refusing to accept any application that has not been initiated in relation to a child identified as requiring adoption abroad;

(j) Governments should ensure that any technical assistance to countries of origin is provided in a coordinated and impartial manner, such as through the good offices of the Intercountry Adoption Technical Assistance Programme of the Hague Conference on Private International Law.

2. At the international level

97. The Special Rapporteur invites the international community and international bodies to:

(a) Increase technical cooperation to establish and strengthen effective child protection systems in countries of origin;

(b) In responding to illegal intercountry adoptions, enhance cooperation among receiving countries, among countries of origin and between receiving countries and countries of origin, within the framework of the 1993 Hague Convention, the Convention on the Civil Aspects of International Child Abduction and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children;

(c) Support the establishment of an international body of experts on transitional justice and illegal adoptions to advise on and promote measures to

provide redress to victims of large-scale illegal adoptions and prevent further abuses through adequate legal, policy and institutional reforms.

98. States parties to the 1993 Hague Convention should:

(a) Recognize and encourage the expert group on the financial aspects of intercountry adoption and the working group on preventing and addressing illicit practices in intercountry adoption of the Hague Conference on Private International Law to develop concrete proposals for tackling the enabling environment in which illegal adoptions flourish;

(b) Increase resources to the Hague Conference on Private International Law to enable the Special Commission on the practical operation of the 1993 Hague Convention to hold more regular meetings, and ensure that States of origin can attend those meetings;

(c) Encourage the Hague Conference to compile good practices and lessons learned regarding moratoriums on intercountry adoptions.

99. The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women should request States parties to the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography to provide information about concerns related to illegal adoptions and international commercial surrogacy arrangements, notably in preparation for the Committee's consideration of periodic reports.

100. National human rights institutions and civil society organizations should convey concerns about illegal adoptions and international commercial surrogacy arrangements in the context of the universal periodic review process and the review by the Committee on the Rights of the Child of State party reports.
