



The aftermath of transnational illegal adoptions: Redressing human rights violations in the intercountry adoption system with instruments of transitional justice

Childhood
2021, Vol. 28(4) 477–491
© The Author(s) 2021



Article reuse guidelines:
sagepub.com/journals-permissions
DOI: 10.1177/09075682211064430
journals.sagepub.com/home/chd



Elvira C Loibl 

Faculty of Law, Department of Criminal Law and Criminology, Maastricht University, Maastricht, The Netherlands

Abstract

A growing movement of illegally adopted individuals request remedies and reparations for the human rights violations that they and their biological families had suffered. This article explores a number of measures that the stakeholders in the receiving countries can use in an effort to repair the human rights violations caused by illegal intercountry adoptions, borrowing ideas from transitional justice. In order to effectively redress the harm inflicted upon victims of illegal adoptions, a policy on remedies should combine instruments of retributive justice, aimed at holding wrongdoers accountable, with measures of restorative justice that focus on the victims' needs and interests.

Keywords

Illegal intercountry adoptions, receiving countries, transitional justice, human rights violations, remedies and reparations

Introduction

Crime within the intercountry adoption system is well documented. Numerous studies and reports describe the illegal means and methods whereby which children are obtained for purposes of adoption (Loibl, 2019; Maskew, 2004; Smolin, 2006; Stuy, 2014). For

Corresponding author:

Elvira C Loibl, Faculty of Law, Department of Criminal Law and Criminology, Maastricht University, Bouillonstraat 1-3, Maastricht 6211 LH, The Netherlands.

Email: elvira.loibl@maastrichtuniversity.nl

example, children are purchased from their impoverished families or abducted from their homes, the streets or from childcare institutions; or vulnerable birth parents are coerced or provided with misleading information in order to obtain their consent for an adoption (Dickens, 2002; King, 2012; Meier, 2008; Smolin 2006). The illegally obtained children are then 'laundered' through the adoption system: their birth certificates and other documents necessary for an adoption are falsified or fabricated in order to hide their illegal origin and to identify them as legally abandoned orphans (Loibl, 2020; Smolin, 2006).

Many victims of these illegal practices have grown up, embarked on a search for their roots in their countries of origin and discovered that the adoption documents were false and that they had living parents who actually never agreed to give them up for adoption. A number of them request redress and accountability for the harm and human rights violations that they and their biological families had suffered (Long, 2020; Pieters, 2018).

The stakeholders of the intercountry adoption system in the receiving countries (i.e. adoption agencies and authorities) often deny any wrongdoing on their part when confronted with claims about irregularities. They argue that the responsibility to control whether an adoption is in compliance with the legal standards rests with the authorities in the sending countries and that they had no other option than to trust the integrity of the foreign adoption system and the reliability of the information provided about the children (Loibl, 2019). Indeed, illegal adoption practices take place in the children's country of origin and are commonly carried out by legitimate individuals and organizations from both the public and the private sector (Loibl, 2019). In most known cases of illegal adoptions, there is no evidence indicating that the stakeholders in the receiving countries were actively involved in illegally obtaining children. Rather, they would encourage and facilitate misconduct in the receiving countries by allowing inordinate sums of money (in the form of 'adoption fees' and 'donations') to be transferred to the sending countries, by failing to properly monitor and control the activities of the actors in the sending countries and by ignoring signs of irregularities (Loibl, 2019; Smolin 2006). Numerous cases of illegal adoptions were uncovered in which adoption agencies approved the placement of children whose paperwork included incomplete or inconsistent information (Loibl, 2019) and/or in which the authorities in the recipient state had actual knowledge of irregular practices abroad but nonetheless allowed adoptions to continue (Bitter et al., 2020; Commissie Onderzoek Interlandelijke Adoptie, 2021; Loibl, 2019). Their claim that they are not responsible for the human rights violations caused by the illegal practices in the sending countries is, thus, unfounded. Hence, which measures can the adoption system of a receiving country provide in order to redress human rights violations suffered by victims of illegal adoptions?

According to international human rights law, victims of human rights violations have the right to an effective remedy and reparation. However, international instruments on intercountry adoption, most notably the 1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (hereinafter Hague Convention), do not provide specific standards regarding remedies and reparations for illegal adoptions (Smolin, 2021). This article explores a number of instruments that the adoption stakeholders in the receiving countries may use in an effort to repair the injustice and harm inflicted upon adoptees and their families of origin, borrowing ideas from

transitional justice. Transitional justice is a field of academic inquiry and political practice concerned with the aftermath of conflict and large-scale human rights abuse. It is defined (UN, 2010) as

the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or non at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

Transitional justice is, thus, to be understood as a toolbox of various measures that can be used to respond to historical wrongs. The measures are commonly divided into instruments of retributive justice, which are aimed at punishing the lawbreakers, and instruments of restorative justice, which seek to repair harm by providing an opportunity for victims and offenders to communicate about the causes, circumstances, and impact of harmful practices, and to address the victims' related needs (Malcontent, 2016).

This article discusses these measures and their promises as well as practical challenges with regard to redressing the harm caused by illegal adoptions. It analyses international legal instruments addressing the forced removal of children and discusses the measures of assistance that they oblige states to take. In addition, it deals with the 2005 UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (hereinafter UN Basic Principles) and the four categories of reparations that they distinguish. The UN Basic Principles, which are aimed at restorative justice, may inspire adoption stakeholders in the receiving countries in the development of a policy on remedies for illegal adoptions. A number of examples are presented, in which reparations were offered to victims of forced adoptions.

Retributive justice

Retributive justice focuses on the criminal or administrative punishment of lawbreakers. Its objective is to sanction wrongdoers out of fairness towards those who have been harmed and to deter others from engaging in wrongful actions (Malcontent, 2016). It serves to restore the rule of law and respect for human rights by making it clear that certain actions are not only prohibited by law but also subject to punishment and accountability (Sriram, 2004).

A retributive approach towards illegal adoptions demands accountability of the wrongdoers not just because of the objectionable nature of their abusive activities, but also because the failure to properly punish might encourage repetition: failing to hold those that were involved in abusive practices responsible is to invite other stakeholders within the adoption system to consider such practices as legitimate and acceptable.

Some international legal instruments require states to take a retributive approach towards illegal adoption practices by holding those involved in them criminally

accountable for their actions. The 2000 Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (hereinafter OPSC) obliges states parties to prohibit, *inter alia*, the sale of children (art. 1) defined as ‘any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration’ (art. 2(a)). Art. 3 lists a minimum number of acts and activities taking place within the context of sale of children that have to be fully covered by criminal law, whether committed domestically or transnationally. With regard to adoption, art. 3(1) (ii) provides that states parties shall criminalize and appropriately punish ‘improperly inducing consent, as an intermediary, for the adoption of a child’. Furthermore, the 2006 United Nations International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter CED) provides that states parties shall prevent and punish under their criminal law the forced/wrongful removal of children as well as the falsification, concealment or destruction of documents attesting to the true identity of these children (art. 25(1)).

The probability that the actors in the sending countries involved in illegally obtaining children for adoption receive a criminal punishment that is designed to punish the unjustness involved in their practices is low (Dohle, 2008; Loibl, 2019). Also, the stakeholders in the recipient states do often not face negative consequences if an illegal adoption is being uncovered. Since the illegal practices take place in the sending countries, it is difficult for the authorities in the receiving countries to investigate the role played by the adoption agency’s personnel in the abusive practices abroad. Their criminal liability for accessory to the commission of, for instance, child abduction or forgery of documents by the agency’s co-operation partner is often excluded as the personnel’s *mens rea* is lacking or difficult to establish. The adoption agencies commonly claim that they did not have knowledge of the illegal practices abroad, and the opposite is often impossible to prove beyond a reasonable doubt (Loibl, 2019). This problem is aggravated by the fact that many cases of illegal adoption are uncovered only years after the placement took place. Abusive adoption practices often remain invisible. Since the children are laundered through the legal adoption system, they cannot easily be identified and construed as illegally obtained (Loibl, 2019; Smolin, 2006). The true circumstances of an adoption are – if at all – often only detected after the adoptee has grown up. However, 20 or 30 years after the illegal adoption took place, it is not only extremely difficult to establish as to what exactly has happened and what the staff members of an adoption agency carrying out the placement did and had knowledge of; also the statutes of limitation have often already expired, eliminating the possibility to investigate and prosecute the adoption agency personnel.

While the high standards of proof and the short statutes of limitation make it difficult to hold the personnel of an adoption agency criminally accountable, handing down an administrative punishment, by revoking the agency’s accreditation or imposing a fine, is much more feasible. However, adoption systems of receiving countries commonly only hold agencies accountable for their own activities or those of their representatives, but not for the actions of foreign governmental or accredited institutions that they work together with (Loibl, 2019). They, therefore, usually escape responsibility for abusive practices in the sending countries, claiming that they trusted the organizations they had co-operated

with. This lack of accountability, combined with the agency's ideological and financial motivation to place as many children for adoption as possible, creates an incentive for them to turn a blind eye to signs of irregularities in the sending countries (Loibl, 2019; Smolin 2006).

Holding adoption agencies accountable for the activities of their foreign co-operation partners would punish knowledge of or apathy towards wrongdoing abroad and encourage due diligence and care (Graff, 2010; Loibl, 2019; Rotabi and Gibbons, 2011; Smolin, 2004). Agency responsibility would create an incentive for the agencies to choose their co-operation partners more carefully, to better investigate how they find adoptable children, and to immediately stop placing children if signs of abuses emerge. Thus, it would remove the agencies' blind trust in the integrity of the foreign adoption system.

Adoption agencies should be obliged to assess the integrity of their co-operation partners as well as of the foreign adoption system *in abstracto* before placing adoptees from a sending country. Thus, an agency must be held responsible for the illegal practices of its co-operation partner if there were red flags signalling irregularities in the foreign adoption system that rendered adoptions risky in general. It should not be accepted that adoption agencies continue placing children despite signs of abuses and then claim that they are not responsible for the illegal practices of the foreign organizations as they could not control what was happening abroad. In addition, they should be required to scrutinize the reliability of the information provided about the child *in concreto* (Loibl, 2019). Hence, an adoption agency's rejection of responsibility for an illegal adoption should also not be accepted if it had approved a child proposal including incomplete and inconsistent information about a child that turns out to be in the intercountry adoption system illegally (Loibl, 2019).

Administrative sanctions should be used as a primary enforcement mechanism for agencies' failure to carefully choose their co-operation partners, to properly investigate how children are sourced for an adoption, and to stop placing children earlier if signs of irregularities become apparent. They can be imposed faster, are more effective, and less expensive than criminal sanctions. The criminal accountability, on the other hand, should be considered for agency personnel that did not only act negligently, by ignoring signs of wrongdoing in the sending country, but were actively involved in illegally obtaining children for adoption purposes (e.g. by providing money/goods to an orphanage or a child's family in exchange for the required consent to the adoption) or laundering them (Loibl, 2019).

As mentioned, many cases of illegal adoptions are uncovered only years after the placement took place, once the adoptees have grown up. While the latter might be satisfied to see that the agency is held accountable for the irregularities that took place in their adoption procedures (if that is at all possible years after the placement), they might also request measures and remedies that focus on their current needs and interests: for example, acknowledgement of harm, search and reunion assistance, access to counselling and support services, promises of non-repetition. This is why a receiving country's policy on remedies should not only provide for retributive but also restorative measures.

Restorative justice

The UN Basic Principles offer guidelines on how to redress victims of gross violations of international human rights law and serious violations of international humanitarian law. These guidelines aim at restorative justice: they adopt a victim-oriented perspective by providing standards for repairing the harm that has been done (Malcontent, 2016). The UN Basic Principles distinguish four categories of reparations – restitution, satisfaction, compensation and rehabilitation, as well as guarantees of non-repetition – which may inspire adoption stakeholders in the receiving countries in the development of a policy on remedies for abuses and illegal practices.

Restitution

Restitution refers to measures that restore victims, in as much as possible, to the original situation before the gross human rights violation(s) occurred. This includes, as appropriate: ‘restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property’ (principle 19). In the context of illegal adoptions, which commonly involve altering details related to the identity of the adoptees (i.e. age, name, date and place of birth and family relations), restitution requires restoring the child’s identity, including their nationality, name and family relations. Article 8 of the 1989 UN Convention on the Rights of the Child (hereinafter UNCRC), which lays down the child’s right to identity preservation, obliges states to set up a legal mechanism for re-establishing the identity of the adoptee (para. 2):

[w]here a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

States are not only required to provide assistance and protection aimed at re-establishing the child’s identity but also to make sure that it is appropriate for achieving this end (Tobin, 2019). The UNCRC does not specify which forms of assistance and protection are appropriate, states, therefore, have discretion in that respect. With regard to illegal adoptions, the CED provides for specific measures of appropriate assistance in its Article 25. The Convention requires states to have legal procedures in place to review and, if appropriate, annul any adoption or placement where there is an indication of enforced disappearance (art. 25(4)). It obliges states to take the necessary measures to search for and identify children subjected to enforced disappearance, whereby they are required to co-operate (art. 25(3)). Such necessary measures could include providing access to information or carrying out DNA tests. The Convention furthermore requires states to return children subjected to enforced removal to their families of origin, in accordance with legal procedures and applicable international agreements (art. 25(2)). In practice, there are only a few reported cases, in which an adoptee was returned to their natural parents after the

illegal circumstances of their international adoption were uncovered (Cheney, 2021; Goldfeder, 2013; Jaffe, 1991; Ribke and Bourdon, 2016).

The process of re-establishing the identity of an illegally adopted child can raise difficult questions regarding the child's best interests. According to art. 3(1) UNCRC, the best interests of the child must be a primary consideration when deciding on how to re-establish their identity. Consequently, states are required to carry out the process of re-establishing the child's identity in a way that prevents, or at least minimizes, any harm to the child's emotional or psychological development (Tobin, 2019).

The appropriate form of assistance of course depends on the circumstances of each individual case. Annuling an adoption and returning the child to their original family might be in the child's best interests in cases where the abuses were discovered shortly after the adoption took place or where the adoptee was older at the time of the placement. An older child has already acquired a deep sense of cultural and community identity, was likely severely traumatized by the forced removal from their (family) environment and will probably have great difficulties to integrate in the receiving country. Arranging the child's return to the child's country of origin might in such a case be an appropriate form of remedy. However, this may be different in cases where the child was still a baby at the time of the adoption and has already lived with the new adoptive family for a couple of years when the illegal circumstances of the adoption were discovered (Loibl, 2019). Re-establishing the child's old identity by sending the child back to the country of origin might involve a traumatizing destruction of the child's adoptive identity, which has come to be important to the child.

The question regarding the best interests of the child in re-establishing the child's identity emerged in the case involving the 18-months old Indian adoptee Rahul who was placed into an adoptive family in the Netherlands in 2000 (Loibl, 2019). Eight years after the adoption took place, it transpired that the co-operation partner of the Dutch adoption agency, which carried Rahul's placement, was involved in arranging adoptions of illegally obtained children. Rahul's case was one of at least 350 illegal adoptions that led to criminal investigations in India in 2005. His alleged biological parents claimed that he was kidnapped in 1999, and that they were desperately searching for him ever since. They managed to track down their supposed son and went to the Netherlands where they requested a DNA examination to verify that they were Rahul's parents. This is extraordinary considering that birth parents do usually not have the capacity to seek justice for the illegal removal of their child (Smolin, 2007). The Dutch family court, however, rejected the Indian couple's request. It argued that the best interests of Rahul, who refused to participate in the DNA test as he feared being returned to India in case of positive results, outweighed the interests of the alleged biological parents as well as the public interests in the criminal investigations in India (Loibl, 2019).

According to art. 8(2) UNCRC and art. 25(2) CED, the Dutch family court would have been obliged to take an active role in investigating the serious allegations, by allowing a DNA test to be performed in order to establish Rahul's original identity (Loibl, 2019). Arranging a reunification with the biological parents in case of a positive test result would have been in the best interests of Rahul who has the right to know his parents (art. 7

UNCRC) and who, like many adoptees entering adulthood, is likely to develop a desire to learn about his inheritance and biological relatives (Van Wichelen, 2018).

Another question is whether restoring the victims to the original situation by annulling the adoption and arranging Rahul's return to his family in India would have been an appropriate measure if a biological link between Rahul and his alleged parents had indeed been established. As mentioned, once an illegally adopted child has lived with their adoptive family for a certain period of time and got used to the new environment, separating the child from the caretakers and returning him or her to the country of origin might not be in the child's best interests as this will likely cause (further) trauma.

A policy on remedies for illegal adoptions should provide for the possibility to re-establish aspects of the child's original identity while still maintaining elements of the adoptive family life and identity if this is appropriate to the child's best interests or adult adoptee's wishes. This could be accomplished by an open adoption arrangement where the child is in contact with both the biological and the adoptive parents or by other forms of adoption that allow for both identities of the adoptee to exist.

Satisfaction

Satisfaction includes a broad range of measures, ranging from establishing and publicly disclosing the truth, searching for the whereabouts of the disappeared and for the identities of the children abducted, acknowledging wrongful conduct, accepting responsibility, issuing judicial and administrative sanctions against those persons involved in the violations as well as a public apology (Van Boven, 2010).

Many victims of human rights violations and serious abuses have a desire to find out as to what has happened in the past and why it happened. Thus, truth commissions have become an indispensable part of the transitional justice tool-kit in recent years. Truth commissions are temporary, non-judicial investigative bodies set up with the official support of a State to inquire the facts, root causes and consequences of past human rights violations and abuses (UN, 2006). While they do not replace the need for prosecuting the wrongdoers, they do offer some form of accounting for the past and have, thus, been of particular interest in cases where prosecutions for human rights violations were impossible or unlikely (UN, 2006). The final reports of truth commissions often include specific recommendations for measures to repair past abuses and for institutional and policy reforms to prevent future wrongdoing.

In the past, several committees have been established with the task to inquire into past abuses in adoptions. For example in the early 1980s, the Manitoba government set up a Review Committee on Indian and Métis Adoptions and Placements which investigated in detail the forced removal of indigenous children and their placement into non-indigenous foster homes and adoptive families between the 1960s and 1980s (Kimelman, 1985). In 1995, the Australian government launched an inquiry into similar 'assimilation' practices carried out in Australia between 1910 and 1970 (Human Rights and Equal Opportunity Commission, 1997). In 2010, the Community Affairs References Committee was established in Australia to investigate forced adoptions of babies born to unwed mothers in

Australia that took place between the late 1950s and the mid-1970s ([Community Affairs References Committee, 2012](#)).

More and more Western countries recently set up truth commissions to inquire into abusive practices in past international adoptions. In 2019, the Dutch Minister of Justice and Security established the ‘Committee Investigating Intercountry Adoption in the Past’, led by Tjibbe Joustra (hereinafter short Joustra Committee), to examine possible abuses in intercountry adoptions within the period of 1967–1998, focussing on Bangladesh, Brazil, Colombia, Indonesia and Sri Lanka ([COIA, 2021](#)). In the same year, also the government in Switzerland commissioned a team of historians to investigate the role of Swiss authorities in illegal adoptions from Sri Lanka from 173 until 1997 ([Bitter et al., 2020](#)). Also in Belgium, an official inquiry into illegal adoptions from Ethiopia between 1997 and 2017 took place ([Expertenpanel Inzake Interlandelijke Adoptie, 2021](#)).

A truth commission can be an important tool to advance reconciliation. Yet, its strength is dependent on a number of factors. The commission’s members and the procedure of their appointment are among the most fundamental elements determining its success or failure ([Parmentier and Aciru, 2016](#)). Ideally, they should be widely respected experts who are accepted as neutral by all sides ([UN, 2006](#)). In an open letter to the Dutch Minister of Justice and Security from April 2019, the Dutch association United Adoptees International expressed doubts concerning the Joustra Committee’s independence considering that two of its three members were, it was claimed, tightly linked to the Ministry of Justice and Security – the Central Authority in the Netherlands – whose actions had to be scrutinized and investigated ([Van der Mee and Mollema, 2020](#)).

Furthermore, a commission’s success is strongly influenced by its focus and operation. A truth commission is victim-centred. It should provide a forum to victims of human rights violations to tell their stories and voice their expectations ([Parmentier and Aciru, 2016](#)). By giving victims the opportunity to share their experiences, often hidden from public view, to the public at large, a commission can formally and publicly acknowledge past wrongs and help a society understand a contested or denied history ([UN, 2006](#)).

Many illegally adopted individuals want the widespread abuses within the intercountry adoption system and the harmful effects they have had on them and their natural families as well as on other victims to be acknowledged ([Long, 2019](#)). However, often they experience that the harm caused by their illegal adoptions is not being taken seriously. They might be told that they are better off in a Western country anyway and that they should be grateful for the opportunities they would not have had in their countries of origin. By providing adoptees a public platform to tell their stories, a truth commission can help educate society about the dark underside of intercountry adoption, which is still commonly perceived as the ultimate humanitarian deed that always saves and never harms children ([Loibl, 2019](#); [Smolin, 2006](#)).

Several Dutch adoptees claim that the Joustra Committee did not give them the opportunity to tell their stories and that it failed to acknowledge the negative consequences their illegal adoptions had on them and their parents. Only four adoptees were heard by the commission itself. Some others were interviewed by researchers working for the commission and allege that the interview reports did not give an accurate account of what they actually said ([Van der Mee and Mollema, 2020](#)). The Committee also arranged a

questionnaire to be carried out with adoptees, in which they were asked to indicate whether they are satisfied with their upbringing and whether they got along with their adoptive parents (BNNVARA, 2020). This has caused confusion and irritation among adoptees who rightly argued that the focus should be placed on the irregularities in their adoptions, which cannot be done away or justified by the fact that they had a happy childhood in the Netherlands (see, e.g. Deijle, 2020).

While the work of a truth commission as such can already contribute to healing and reconciliation (provided it is being done properly), it should be followed by concrete measures designed to repair the consequences of the abuses it shone a light on. Such measures could include public apologies, financial compensation, rehabilitation or restitution. Public apologies and acceptance of responsibility are important elements of a transitional justice policy if carried out in a way that is meaningful and sensitive to the victims' moral and material needs. They can effectively convey recognition, in some cases for the first time, of what survivors and victims suffered (Carranza et al., 2015).

In Australia, several formal statements of apology were made to victims of forced domestic adoptions, following reports of truth commissions. Most notably, in 2013, Prime Minister Gillard apologized on behalf of the nation for the policies and practices that forcefully removed babies born to unwed mothers in Australia in the late 1950s and the mid-1970s. The apology deplored the shameful practices and recognized the harm suffered by many parents whose children were forcibly removed and by the children who were separated from their parents (Parliament of Australia, 2013):

8. To each of you who were adopted or removed, who were led to believe your mother had rejected you and who were denied the opportunity to grow up with your family and community of origin and to connect with your culture, we say sorry. 9. We apologise to the sons and daughters who grew up not knowing how much you were wanted and loved. 10. We acknowledge that many of you still experience a constant struggle with identity, uncertainty and loss, and feel a persistent tension between loyalty to one family and yearning for another.

In her official apology address, Gillard noted that the practices had their 'beginnings in a wrongful belief that women could be separated from their babies and it would all be for the best' and criticized 'the bullying arrogance of a society that presumed to know what was best' (Parliament of Australia, 2013).

Such confirmatory acts and recognition of past abuses have been deemed essential for the victims' process of reconciliation and healing. Numerous adoptees and experts are demanding that the apologies for forced domestic adoptions be extended to people harmed by illegal intercountry adoptions (Fronek and Cuthbert, 2013).

In February 2021, the Joustra Committee published its report, which described systemic abuses in adoptions to the Netherlands and found that Dutch adoption agencies as well as several government officials had knowledge of these abuses, some of whom even facilitated illegal adoptions from abroad (COIA, 2021). Following the Committee's recommendations, the Dutch Minister recognized the harm caused by the adoption abuses, announced to suspend intercountry adoptions and apologized to the victims. It

was the first time that an official apology was offered to victims of illegal intercountry adoptions.

While apologies as a symbolic form of reparation have value in themselves, they should be combined with material forms of reparation, including restitution, compensation and rehabilitation, that affirm that the apologizer is committed to recognizing the rights and dignity of the victims and their well-being (ICTJ, 2015).

Compensation and rehabilitation

According to the UN Basic Principles, compensation should be made available ‘for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case’ (principle 20). A policy on remedies for illegal adoptions needs to provide for compensation for the human rights violations themselves as well as (or at least) for the costs that victims experienced as a result of past harm, including expenses for searches and reunion.

Following the recommendations of the truth commission ([Community Affairs References Committee, 2012](#)), the Australian government made a reparation fund available for search and reunion assistance as well as counselling and support services offered to victims of forced adoptions. A reparation fund was also promised by the Dutch Minister, which will be used to establish an expertise centre. While the exact tasks of this centre still need to be defined, it will assist adoptees in their root searches, offer them psychological support and provide a platform for critical discussions about adoptions.

Compensation offered to victims is an important measure to be considered in the aftermath of illegal adoptions. Many illegally placed adoptees desire to find out as to what exactly happened and to trace down their relatives in their countries of origin. However, often hardly any assistance is offered by the adoption system’s stakeholders to support victims in that respect, probably out of fear that their lack of due diligence and care be revealed. They often seem to do more to cover up signs of illegal adoptions than to investigate them ([Smolin, 2021](#)). Several organizations, set up by adoptees or adoptive parents, seek to help adoptees search and reunify with their biological families ([Baglietto et al., 2016](#); [Cheney 2021](#)). The costs for searches and reunions are usually high as money has to be paid for travelling, gaining access to birth and adoption records, DNA tests etc. A reparation fund should be made available to assist victims of illegal adoptions to find their relatives and to compensate for their search expenses. Financial contributions for setting up such a fund could be sought from the state as well as the institutions and organizations that were involved in abusive adoption placements. In addition, adoption agencies and state authorities in the receiving countries should be obliged to turn over all relevant information in their possession (e.g. adoption dossiers) that can facilitate the investigations.

The UN Basic Principles finally provide that rehabilitation should be made available to victims of human rights violations. Rehabilitation ‘should include medical and psychological care as well as legal and social services’ (principle 21). Numerous victims of illegal adoptions have to deal with unresolved issues of grief, the impact of the trauma resulting from a forced adoption or of a reunion and other issues centred on identity ([Long, 2019](#)). In order to redress the harm caused by illegal adoptions, funding should be

provided for counselling and support services offered to adoptees, their original families as well as their adoptive families who were unaware of the illegal circumstances of the placement. These services can provide opportunities for victims to talk about their experiences and to explore ways to facilitate the personal journey of healing.

Guarantees of non-repetition

Guarantees of non-repetition are measures that serve as safeguard against the repetition of human rights violations and abuses. They are an important component of a comprehensive transitional justice strategy as they aim to have a broader social impact by policy and institutional reforms. It makes little sense to investigate and publicly acknowledge historical wrongs if the structures that encourage and facilitate future abuses remain in place. In the context of illegal adoptions, [Cantwell \(2017\)](#) rightly claims:

Any attempt to deal with massive abuses and systematic practices from a transitional justice perspective must aim to end and combat the structures that allowed this practice to start in the first place, by sending a strong message to all victims, perpetrators and society in general that this type of abuses will never again be tolerated.

Previous research has identified and explained the numerous factors within the intercountry adoption systems of the receiving countries that are conducive to illegal adoption practices ([Loibl, 2019](#); [Smolin, 2006](#)). The financial and ideological motivation of adoption agencies to place as many children as possible, the unrestricted flow of Western money into the poor sending countries where it incites actors to illegally obtain children for adoption, the weak monitoring and control of foreign representatives and co-operation partners and blind trust in the integrity of sending countries that have ratified the Hague Convention are structural weaknesses that will continue to incentivize human rights violations in the intercountry adoption system ([Loibl, 2019](#)). Reconciliation and restoration can only be successful if the stakeholders involved in international adoptions learn from their mistakes by substantially reforming their policies and practices or abolishing intercountry adoptions altogether. Receiving countries have often promised change after adoption scandals have emerged, only to continue with business as usual after public outrage has subsided. However, only if guarantees for non-repetition are implemented, future abuses can be prevented and reconciliation can be advanced.

Conclusion

A growing movement of adoptees and experts demand redress for human rights violations within the intercountry adoption system ([Long, 2019](#); [Smolin, 2021](#)). More and more illegally adopted individuals request remedies and reparations for the harm done to them and their biological families from the stakeholders in the receiving countries that, they argue, have encouraged and facilitated their illegal placements. This article explored a number of instruments that the receiving countries can use in an effort to repair the injustice and harm inflicted upon victims of illegal adoptions, borrowing ideas from

transitional justice. In order to effectively redress human rights violations caused by abuses in the adoption system, a policy on remedies should combine instruments of retributive justice, aimed at holding wrongdoers accountable, with measures of restorative justice that focus on victims needs and interests: for example, acknowledgement of harm, search and reunion assistance, access to counselling and support services, promises of non-repetition.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship and/or publication of this article.

ORCID iD

Elvira C Loibl  <https://orcid.org/0000-0001-7779-7407>

References

- Baglietto C, Cantwell N and Dambach M (2016) *Responding to Illegal Adoptions: A Professional Handbook*. Switzerland: International Social Service.
- Bitter S, Annika B and Nadja R (2020) *Adoptionen von Kindern aus Sri Lanka in der Schweiz 1973 - 1997: zur Praxis der privaten Vermittlungsstellen und der Behörden. Historische Analyse betreffend das Postulat Ruiz 17.4181 im Auftrag des Bundesamts für Justiz*. Zürich: ZHAW Zürcher Hochschule für Angewandte Wissenschaften. available at DOI: [10.21256/zhaw-2382](https://doi.org/10.21256/zhaw-2382) (accessed 16.11.2021).
- BNNVARA (2020) CBS-onderzoek onder geadopteerden valt totaal verkeerd. 29 May <https://www.bnnvara.nl/zembla/artikelen/cbs-onderzoek-onder-geadopteerden-valt-totaal-verkeerd?fbclid=IwAR2A1Vk7-5OfLwzpvIBhjdBbwzlcAvJxQLuvtY0TV0nGrJYBAPxMyYJzkvM> (accessed 16.11.2021).
- Cantwell N (2017) *The Sale of Children and Illegal Adoption*. Netherlands: Terre des Hommes.
- Carranza R, Correa C and Naughton E (2015) *Reparative Justice: More than Words, Apologies as a Form of Reparation*. December: ICTJ.
- Cheney KE (2021) Closing new loopholes: protecting children in Uganda's international adoption practices. *Childhood* 22: 1–15.
- COIA (Commissie Onderzoek Interlandelijke Adoptie) (2021) Rapport Commissie Onderzoek Interlandekijk Adoptie. 8 February <https://www.rijksoverheid.nl/documenten/rapporten/2021/02/08/tk-bijlage-coia-rapport> (accessed 16.11.2021).
- Community Affairs References Committee (2012) Commonwealth Contribution to Former Forced Adoption Policies and Practices. 29 February, available at https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2010-13/commcontribormerforcedadoption/report/index (last accessed on 03.12.2021).
- Deijle D (2020) CBS onderzoek in opdracht van de commissie Joustra. *OJAU*. 21 April <https://www.ojau.nl/cbs-vragenlijst-adoptie/> (accessed 16.11.2021).

- Dickens J (2002) The paradox of inter-country adoption: analysing Romania's experience as a sending country. *International Journal of Social Welfare* 11(1): 76–83.
- Dohle A (2008) Inside story of an adoption Scandal. *Cumberland Law Review* 39(1): 131–186.
- Expertenpanel Inzake Interlandelijke Adoptie (2021) Eindrapport. 14 September <https://www.opgroeien.be/sites/default/files/documents/expertenpanel-interlandelijke-adoptie-eindrapport-met-aanbevelingen.pdf> (accessed 16.11.2021).
- Fronek P and Cuthbert D (2013) Apologies for forced adoption practices: implications for contemporary intercountry adoption. *Australian Social Work* 66(3): 402–414.
- Goldfeder M (2013) The adoption of children in Judaism and in Israel; a conceptual and practical review. *Cardozo Journal of International & Comparative Law* 22: 321–353.
- Graff EJ (2010) The baby business. *Democracy Journal*. Summer, No. 17. <https://democracyjournal.org/magazine/17/the-baby-business/> (accessed 16.11.2021).
- Human Rights and Equal Opportunity Commission (1997) *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. April.
- Jaffe ED (1991) Foreign adoptions in Israel: private paths to parenthood. In: Altstein H and Simon RJ (eds), *Intercountry Adoption: A Multinational Perspective*. New York: Praeger, pp. 161–181.
- Kimelman EC (1985) No quiet place: final report to the Honourable Muriel Smith, Minister of Community Services. Review Committee on Indian and Metis Adoptions and Placements. Available at <https://digitalcollection.gov.mb.ca/awweb/pdfopener?smd=1&did=24788&md=1> (last accessed on 03.12.2021).
- King S (2012) Owing Laura Silsby's Shame: how the Haitian child trafficking scheme embodies the Western disregard for the integrity of poor families. *Harvard Human Rights Journal* 25: 1–47.
- Loibl E (2019) *The Transnational Illegal Adoption Market: A Criminological Study of the German and Dutch Intercountry Adoption Systems*. The Hague: Eleven International Publishing.
- Loibl E (2020) Trafficking in children for adoption purposes: a criminological analysis of the illegal adoption market. In: Winterdyk JA and Jones J (eds), *The Palgrave International Handbook of Human Trafficking*. London: Palgrave Macmillan, 401–417.
- Long L (2019) Adoptee activism in America. *Intercountry Adoption Voices*. 21 September, available at <https://intercountryadopteevoices.com/2019/09/21/adoptee-activism-in-america/> (accessed 16.11.2021).
- Long L (2020) *ICAV Perspective Paper Illicit Intercountry Adoptions: Lived Experience Views on How Authorities and Bodies Could Respond*. July, available at <https://intercountryadopteevoices.com/wp-content/uploads/2020/07/Illicit-Adoptions-Responses-from-Lived-Experience.pdf> (accessed 16.11.2021).
- Malcontent P (2016) *Facing the Past: Amending Historical Injustices through Instruments of Transitional Justice*. Cambridge: Intersentia.
- Maskew T (2004) Child Trafficking and intercountry adoption: the cambodian experience. *Cumberland Law Review* 35: 619–638.
- Meier PJ (2008) Small commodities: how child traffickers exploit children and families in intercountry adoption and what the United States must do to stop them. *The Journal of Gender, Race & Justice* 12: 185–224.

- Parliament of Australia (2013) *National Apology for Forced Adoptions Address*. Canberra, 21 March. available at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/2314332%22> (accessed 16.11.2021).
- Parmentier S and Aciru M (2016) The whole trust and nothing but the trust? On the role of truth commissions in facing the past. In: Malcontent P (ed), *Facing the Past: Amending Historical Injustices Through Instruments of Transitional Justice*. Cambridge: Intersentia, 225–246.
- Pieters J (2018) Adopted kids Sue Dutch government over abuses in the ‘80s. *NL Times*, 28 March, available at <https://nltimes.nl/2018/03/28/adopted-kids-sue-dutch-govt-abuses-80s> (accessed 16.11.2021).
- Ribke N and Bourdon J (2016) Transnational activism, new and old media: the case of Israeli adoptees from Brazil. *New Media & Society* 18(11): 2649–2663.
- Rotabi KS and Gibbons JL (2011) Does the Hague convention on intercountry adoption adequately protect orphaned and vulnerable children and their families? *Journal of Child and Family Studies* 21(1): 106–119.
- Smolin DM (2004) The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals. *Seton Hall Law Review* 35: 403–493.
- Smolin DM (2006) Child laundering: how the intercountry adoption system legitimizes and incentivizes the practices of buying, trafficking, kidnapping, and stealing children. *The Wayne Law Review* 52(1): 113–200.
- Smolin DM (2007) Child laundering as exploitation: applying anti-trafficking norms to intercountry adoption under the coming Hague regime. *Vermont Law Review* 32(1): 1–55.
- Smolin DM (2021) The case for Moratoria on intercountry adoption. *Southern California Interdisciplinary Law Journal* 30(2): 2021.
- Sriram CL (2004) *Confronting Past Human Rights Violations: Justice vs Peace in Times of Transition*. London: Routledge.
- Stuy BH (2014) Open secret: cash and Coercion in China’s international adoption program. *Cumberland Law Review* 44(3): 355–422.
- Tobin J (2019) *The UN Convention on the Rights of the Child: A Commentary*. Oxford: Oxford University Press.
- UN (2010) Guidance Note of the Secretary General, United Nations Approach to Transitional Justice. Available at https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf (last accessed on 03.12.2021).
- UN High Commissioner for Human Rights (2006) *Rule-of-law Tools for Post-conflict States: Truth Commissions*.
- Van Boven T (2010) The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Available at https://legal.un.org/avl/ha/ga_60-147/ga_60-147.html (last accessed on 03.12.2021).
- Van der Mee T and Mollema G (2020) Geadopteerden Ontevreden over Onderzoek: ‘Commissie Lijkt Waarheid Te Verdraaien’. *Algemeen Dagblad*, July, available at <https://www.ad.nl/binnenland/geadopteerden-ontevreden-over-onderzoek-commissie-lijkt-waarheid-te-verdraaien~aa17635e/> (accessed 16.11.2021).
- Van Wichelen S (2018) *Legitimizing Life: Adoption in the Age of Globalization and Biotechnology*. New Jersey: Rutgers University Press.