



Briefing Note : Safeguarding search for origins from illicit post-adoption practices

Introduction

Intercountry adoption (ICA) is designed to be a child protection measure and is recognised as such in international standards, notably the [United Nations Convention on the Rights of the Child \(UN CRC\)](#) and the [1993 Adoption Convention](#). Within these standards, there is a recognised right for the child to be registered at birth and to know his or her identity, including name, nationality and family relations. The importance of an adoptee's identity is closely linked to legal, medical and psychosocial considerations, which can have a significant life and inter-generational impact. For many adoptees, the right to know one's origins can only be achieved through search activities in the State of origin, especially when records available in the receiving State prove to be incomplete or spurious.

Search activities can involve multiple actors including adoptive families, Central Adoption Authorities and other State bodies and institutions, Accredited Adoption Bodies, civil registry, police, tribunals, lawyers, residential care providers, health professionals and facilities, private investigators and associations, travel agents, interpreters etc, each with their own mandate, interests and priorities.

Adoptee identity issues are complicated and accentuated with the ever-growing recognition in international and national reports of systemic illegal intercountry adoptions over the entire modern era of intercountry adoption. Search activities in those contexts in principle becomes a legally required response, and a part of the process of investigation, remedy, and reparation of illegal intercountry adoption. State responsibilities are heightened due to this documented history of systemic illegal intercountry adoption.

Risks with search activities

Searches have usually been left to the self-remedying actions of adoption triad members, most often adult adoptees. Even in instances where illegal practices are known or reasonably suspected, adoptees most often are left to navigate and pay for searches without significant State assistance. There is the added difficulty that, as to suspected illegal adoptions, State actors sometimes have a conflict of interest as investigation may show intentional or negligent State involvement.

Within this vacuum, actors with varying expertise, ethics, and motivation have emerged, often marketing their search services to adoption triad members. The lack of regulation has created an enabling environment for the exploitation of adoption triad members and for illicit post-adoption practices.

In order to avoid these harms, States should be proactive in providing a robust regulatory environment for search activities, which cannot be left to criminal or civil law alone to resolve.

State responsibilities

States have five essential responsibilities in relation to searches:

First, States should create easily accessible and free processes for adoptees and, as appropriate, birth families and adoptive parents, to all significant information and documents in their possession.

Second, States should work cooperatively with other States in relation to searches in individual cases, initiating contact with, and responding to requests from, other States.

Third, where illegal adoption is reasonably suspected, States have obligations as to investigation, truth-seeking, remedies and non-recurrence. Where an adoptee has been illegally deprived of some or all of the elements of their identity, States have obligations to provide appropriate assistance and protection, with a view to re-establishing that identity.

Fourth, States should fund independent centres and/or non-profit organizations with expertise, integrity, and experience assisting searches, focusing particularly (but not exclusively) on organizations with adoptee or first parent leadership. Search activities should not be monopolized by States, due to the State's potential conflicts of interest, particularly in situations where intentional or negligent State wrongdoing may be involved.

Fifth, States should provide a regulatory framework, particularly directed at individuals and organizations that are either for-profit or that – even if ostensibly non-profit – charge adoption triad members for search or investigative services. States should also consider covering or contributing to the fees validly required of adoptees in exercising their right to access information on their origins.

Principles for Regulatory Frameworks of Searches and Investigative Activities

1. Adoptees have a right to search and should not be discouraged, impeded or prevented from doing so.
2. First families also have rights in respect to searches and information, particularly if there is reasonable suspicion of illicit conduct in the separation of the child from the family and/or the adoption.
3. While adoptees are still minors, adoptive parents should feel free to initiate searches in order to find and retain information critical to their adoptive children's identity while such information is more likely to still be obtainable, and to ascertain whether any illicit acts were involved. Children who are capable of forming their own views should have the opportunity to express those views concerning these searches and their opinion be given due weight in accordance with their age and maturity. Any relevant professional support should be made available to the child and adoptive family, whenever needed.
4. All information related to the adoption process, whether or not secured from searches, should be given by law to adoptees at the latest by the age of 18 years. States should consider introducing mechanisms that allow adoptees who are minors to initiate a search, if necessary, without the approval of the adoptive parents.
5. Third parties, whether denominated for-profit or non-profit, that offer search services and charge fees, mandated donations, etc., however described, should be regulated in the following ways:
 - a. Withholding information from adoption triad members, in order to guarantee payment of fees, or purportedly in the best interests of any of the parties, is not permitted; such third parties do not have the authority to withhold information from those to whom the information rightfully belongs.

- b. All fees must be reasonable, taking into account comparable fees for comparable work in the places where the search and investigation are to be conducted. Profiteering is forbidden.
- c. Third parties must respect the confidentiality and privacy of client information, while at the same time being obligated to share information as relevant between adult adoptees and first families (see 5a).
- d. Third parties should be required to notify their clients of complaint procedures, which should be established by the State.

7 September 2023